

PREFERENTIAL TRADE AGREEMENT AMONG D-8 MEMBER STATES

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PREFERENTIAL TRADE AGREEMENT AMONG D-8 MEMBER STATES

PREAMBLE

The Governments of the People's Republic of Bangladesh; The Arab Republic of Egypt; The Republic of Indonesia; The Islamic Republic of Iran; Malaysia; The Federal Republic of Nigeria; The Islamic Republic of Pakistan; The Republic of Turkey (hereinafter referred to as the Contracting Members).

CONSCIOUS of their longstanding friendship and fraternity;

EXPECTING that this Agreement will create a new climate for economic and trade relations between them;

RECOGNIZING that strengthening of their closer economic partnership will bring economic and special benefits and improve the living standards of their peoples;

BEARING in mind that the expansion of mutual trade and economic relations will promote world peace and stability;

BELIEVING that this arrangement would expand gradually and extend to new areas of mutual interests;

AGREEING that those Contracting Members that are not members of the World Trade Organization (WTO) will continue to pursue the WTO accession process and those Contracting Members that are WTO members shall facilitate and support their accession through appropriate efforts;

CONSIDERING that rights and obligation of the Contracting Members arising from other bilateral, regional or multilateral agreements shall not be affected by the provisions of this agreement:

STRESSING the need for the diversification of traded goods with a view to fostering further development of their respective economies;

RECOGNIZING that progressive reductions and elimination of barriers to trade will also contribute towards the expansion of trade;

Have agreed as follows:

Article 1
DEFINITIONS

For the purposes of this Agreement;

a. "Member States" refers to the Member States of the D-8.

b. "Contracting Members" means Member States, which have ratified this Agreement.

c. "Tariffs" means customs duties or import duties stipulated in the national tariff schedules of the Contracting Members.

d. "Para-Tariffs" means border charges and fees/taxes other than tariffs on foreign trade transactions of a tariff like effect which are levied solely on imports but not those indirect taxes and charges which are levied in the same manner on like domestic goods. Import charges corresponding to specific services rendered, are not considered as para-tariff measures.

e. "Non-tariff barriers" means any measure, regulation, or practice, other than tariff and para-tariff, the effect of which is to restrict imports or significantly distort trade between the Contracting Members.

f. "Goods" constitute those scheduled under the Harmonized Commodity Description and Coding System.

g. "Preferential treatment" means any tariff, para-tariff and non-tariff barriers concession or privilege by Contracting Members.

h. "Serious injury" means significant damage to domestic industry of like or similar goods resulting from a substantial increase of preferential imports in situations which cause substantial losses in terms of earnings, production or employment unsustainable in the short term. The examinations of the import on the domestic industry concerned shall also include an evaluation of either relevant economic factors and indices having a bearing on the state of the domestic industry of that product.

i. "Threat of Serious Injury" means a situation in which a substantial increase of preferential imports is of a nature so as to cause Serious Injury to domestic goods and that such injury, although not yet existing, in clearly imminent. A determination of threat of Serious Injury shall be based on facts and not on mere allegation, conjecture, or remote or hypothetical possibility.

j. "Critical Circumstances" means the emergence of an exceptional situation, where massive preferential imports are causing or threatening to cause "Serious Injury" difficult to repair and which calls for immediate action.

k. "Domestic industry" means the producers as a whole of the like or directly competitive product operating in the territory of Contracting Members or those whose collective output of the like or directly competitive product constitutes a major proportion of the total domestic production of those products.

l. "Dumping" means the introduction of a product into the commerce of the other Contracting Member at less than its normal value which is the comparable price in the ordinary course of trade for the like product destined for consumption in the exporting country, or in the absence of such domestic price, the comparable price for the like product for export to appropariate third country in the ordinary course of trade, or the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.

m. "Least Developed Contracting Member" means a Contracting Member which is designated as a least developed country by the United Nations.

n. "Supervisory Committee" means a committee established under Article 27.

o. "Trade Ministers Council (TMC)" means a council established under Article 28.

Article 2
OBJECTIVES

The objectives of this Agreement are to strengthen trade relations among Contracting Members in particular through the:

a. general principles referred to in Article 3;

b. reduction of tariffs and elemination of non-tarrif barriers and para-tarrifs;

c. promotion and expansion of trade, contributing towards the harmonious development of economic relations among the Contracting Members;

d. creation of enabling conditions for fair competition among the Contracting Members;

e. facilitation of mutual trade and contribution towards expansion of world trade;

f. creation of a more predictable and secure environment for sustainable growth of trade among the Contracting Members; and

g. facilitation in the diversification of commercial exchanges among the Contracting Members.

Article 3
GENERAL PRINCIPLES

1. This Agreement shall be governed in accordance with the following principles:

   a. Overall reciprocity and mutuality of advantages to benefit equitably all Contracting Members, taking into account their respective levels of economic development, external trade, tariff policies and import procedures; and

   b. Recognition of needs of the Least Developed Contracting Members; and

   c. Negotiations and implementation of the concessions in phases.

2. The Contracting Members shall establish and evolve a mechanism to promote and maintain mutual trade and economic cooperation.

Article 4
SCOPE

The provisions of this Agreement shall apply to trade in goods, contained in the national tariff schedules of concessions and originating in the territories of the Contracting Members.

Article 5
TARIFF REDUCTION MODALITY

1. Upon entry into force of the Agreement, unless otherwise provided therein, the Contracting Members :

(a) shall not increase the applied Tariff rates on the imports of the products covered under this Agreement without approval of the Supervisory Committee;

(b) shall notify one another of their respective applied tariff rates;

(c) shall reduce the applied tariff rates on goods specified in the national tariff schedules in accordance with the following modalities:

i. Tariff reduction shall cover 8% of each Contracting Member's total HS lines with tariff rates above 10%.

ii. Tariffs reduction modality shall be as follows:

- above 25 % shall be reduced to 25 %;
- above 15 % and up to 25 % shall be reduced to 15 %; and
- above 10% and up to 15% shall be reduced to 10%;

in eight annual installments by the LDCs and in four annual installments by other Contracting Members.

2. Contracting Members shall notify the D-8 Secretariat of their specific annual installments of reduction along with the list of goods within three months; from the date of entry into force of this Agreement.

3. Contracting Members shall review their tariffs three years after the entry into force of this Agreement with the objective of expanding product coverage and / or deepening concessions and shortening the time frame.

Article 6
SCHEDULES OF CONCESSIONS

The tariff concessions negotiated and exchanged among the Contracting Members shall be Annexed as an integral part of this Agreement.

Article 7
MOST FAVORED NATION TREATMENT

1. The exchange of negotiated concession under this Agreement shall be implemented on a most favored nation (MFN) basis, and its benefits shall accrue to all the Contracting Members.

2. Each Contracting Member shall extend to all the other Contracting Members treatment no less favorable than that extended, or will be extended, to any other state or customs territory in relation to tariff, para-tariffs, non-tariff barriers and any other trade related rules and regulations. The provisions of this paragraph shall not apply to concessions granted or to be granted within other bilateral and regional trade agreements.

Article 8
NATIONAL TREATMENT

The goods of any Contracting Member, imported to any other Contracting Member shall be accorded treatment no less favorable than that accorded to like goods of national origin, in respect of laws, regulations and requirements affecting their sale, offer for sale, purchase, transportation, distribution or use.

Article 9
PARA-TARIFFS

1. Contracting Members shall eliminate, upon entry into force of this Agreement, and in the case of LDCs within three years, their para-tariffs on the goods which are subject to reduction. This period for LDCs may be extended, if a request is made to and approved by TMC.

2. Upon entry into force of this Agreement no new para-tariffs shall be introduced, nor shall those already applied be increased, on the goods, which are subject to tariff reduction under this Agreement.



Article 10
NON-TARIFF BARRIERS

1. Contracting Members shall eliminate, upon entry into force of this Agreement, and in the case of LDCs within three years, their non-tariff barriers on the goods, which are subject to tariff reduction. This period for LDCs may be extended if a request is made to and approved by the TMC.

2. Upon entry into force of this Agreement no new non-tariffs shall be introduced, nor shall those already applied be increased, on the goods, which are subject to tariff reduction under this Agreement.

Article 11
MAINTENANCE OF THE VALUE OF CONCESSIONS

Except otherwise provided in this Agreement, no Contracting Member shall impair or nullify the concessions granted under this Agreement through the application of any tariff, para-tariff or non-tariff barriers or any other restrictive measures.

Article 12
RULES OF ORIGIN

Goods contained in the national schedules of concessions shall be eligible for preferential treatment if they satisfy the rules of origin which will be annexed to and form an integral part of this Agreement.

Article 13
ANTIDUMPING AND COUNTERVAILING MEASURES

In order to counter dumping or export subsidies, the Contracting Members shall have the right to initiate anti dumping and countervailing measures.

Article 14
SAFEGUARD MEASURES

1. If any product, which is a subject of a concession with respect to a preference under this Agreement, is imported into the territory of contracting members in such condition as to cause or threaten to cause serious injury to the domestic industry of those contracting members, the contracting members shall have the right to apply safeguard measures.

2. Before applying safeguard measures, the Contracting Member intending to apply such measure shall supply the Supervisory Committee with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Contracting Members. In order to find such solution, the Contracting Members shall immediately hold Consultations within the Supervisory Committee. If, as a result of the consultations, the Contracting Members do not reach an agreement within 30 days, the Contracting Member may apply safeguard measures provisionally.

Article 15

STANDARDS, TECHNICAL REGULATIONS AND SPS MEASURES

1. The Contracting Members shall ensure that technical regulations, conformity assessment procedures and standards are not prepared, adopted or applied with a view to creating barriers to mutual trade or to protect domestic production.

2. Accordingly, the Contracting Members shall ensure that:

   (a) any sanitary or phytosanitary measures are applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient evidence, taking into account the availability of relevant scientific information and regional conditions.

   (b) technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to mutual trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking into account the risks non-fulfillment would create. Such legitimate objectives are, inter alia, those described in Article (exceptions): prevention of deceptive practices; protection of environment. In assessing such risks, relevant elements of consideration are, inter alia, available scientific and technical information, related processing technology or intended end uses of goods.

3. Contracting Members may upon entry into force of this Agreement, enter into negotiations to develop Mutual Recognition Arrangements in the areas of standards, technical regulations, SPS standards, and accreditation of testing laboratories for certification of goods of Contracting Members.

Article 16
COOPERATION WITH INTERNATIONAL AND REGIONAL ORGANISATIONS AND GROUPINGS

In order to promote trade, the Contracting Members agree to make arrangements, where appropriate, for cooperation with its specialized agencies, and other international and regional trade, and economic organizations and Groupings.

Article 17
RELATIONSHIP WITH OTHER AGREEMENTS

Notwithstanding the measures as set out in Article 5, the provisions of the Agreement shall not apply in relation to trade preferential arrangements under which preferences already granted by any Contracting Member to other Contracting Members outside the framework of the Agreement, and to third countries through bilateral and regional trade arrangements. The Contracting Members shall not be obliged to grant preferences in the Agreement, which impairs the concession extended under those arrangements.

Article 18
PAYMENTS AND TRANSFERS

1. Contracting Members shall not apply restrictions on international transfers and payments in freely useable currencies for current transactions.

2. Nothing in this Agreement 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 the Agreement, provided that a Contracting Member shall not impose restrictions on any current transactions inconsistently with its schedules of concessions regarding such transactions, except under Article 20 of this Agreement or at the request of the Fund.

Article 19
RE-EXPORT AND SHORTAGE

1. In the event a Contracting Member adopts or maintains a prohibition or restriction on the import from and export to a non-Contracting Member of goods, nothing in this Agreement shall be construed to prevent that Contracting Member from:

   a. limiting or prohibiting imports from the territory of the other Contracting Members of such goods of that non-Contracting Member; or

   b. requiring as a condition of export of such goods of the Contracting Member to the territory of the other Contracting Members, that the goods not be re-exported to the non-Contacting Member, directly or indirectly, without being consumed in territory of the other Contracting Members.

2. In addition, none of the provisions of this Agreement shall preclude the maintenance or adoption by any Contracting Member of any trade restrictive measures necessary to remove or forestall a serious shortage, or threat thereof, of goods essential to the exporting Contracting Member.

Article 20
RESTRICTIONS TO SAFEGUARD THE BALANCE OF PAYMENTS

1. In the event of serious balance of payments and external financial difficulties or threats thereof, Contracting Member may adopt or maintain restrictions on trade in goods on which it has undertaken concessions, including on payments or transfers for transactions related to such concessions. It is recognized that particular pressures on the balance of payments of a Contracting Member 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 programs of economic development or economic transition.

2. The restrictions referred to in Para 1 of this Article:

   (a) shall not discriminate among Contracting Members;

   (b) shall be consistent with the relevant Articles of Agreement of the International Monetary Fund;

(c) shall avoid un-necessary damage to the commercial, economic and financial interests of any other Contracting Member;

(d) shall not exceed those necessary to deal with the circumstances described in paragraph 1;

(e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

Article 21
GENERAL EXCEPTIONS

Subject to the condition that such measures are not applied in a manner so as to constitute arbitrary or unjustifiable discrimination or a disguised restriction on a trade between the Contracting Members, nothing in this Agreement shall preclude prohibitions or restrictions on imports, exports and/or goods in transit justified on grounds of public morality, religious values, national security, the protection of human, animal and plant life and health, the protection of national treasures possessing artistic, historic or archeological value, the protection of exhaustible natural resources and genetic reserves, regulations concerning gold or silver and regulations concerning exports of goods the price of which are held below the world price as part of a government stabilisation plan.

Article 22
SECURITY EXCEPTIONS

Nothing in this Agreement shall prevent a Contracting Member from taking any measures, which it considers necessary for security requirements:

a) to prevent the disclosure of confidential information contrary to its essential security interest;

b) for the protection of its essential security interests or for the implementation of international obligations or national policies such as:

   i. relating to the traffic in arms, ammunition and implements of war, provided that such measures do not impair the conditions of competition in respect of goods not intended for specifically military purposes, and to such traffic in other goods, materials and services as is carried on directly or indirectly for the purpose of supplying a military establishment; or

ii. relating to the non-proliferation of biological and chemical weapons, nuclear weapons or other nuclear explosive devices; or

iii. taken in time of war or other serious international tension.

Article 23
TRANSPARENCY

Laws, regulations and other relevant measures of general application including standards, specifications and certifications, which pertain to or effect the operation of this Agreement, shall be notified to the Supervisory Committee, and be made available among the contracting members upon request.

Article 24
TECHNICAL ASSISTANCE

Request from LDCs for Technical Assistance and cooperation shall be favorably considered by the other Contracting Members.

Article 25
CONSULTATIONS

1. Each Contracting Member shall accord sympathetic consideration to and shall afford adequate opportunity for consultations regarding such representations as may be made by any Contracting Member with respect to any matter affecting the implementation of this Agreement.

2. The Supervisory Committee established under Article 27 of this Agreement shall meet at the request of any Contracting Member to consider any matter for which it has not been possible to find a satisfactory solution through consultations under paragraph 1 above.

Article 26
DISPUTE SETTLEMENT

1. Any dispute arising from the interpretation and/or application of this Agreement shall first be settled amicably through mutual consultations, among the concerned disputing parties.

2. If the consultations fail to settle a dispute within 30 days after the date of receipt of the request for consultations which may be extended by a further period of 30 days through mutual consent, the complaining Contracting Member may request the Supervisory Committee to settle the dispute within 30 days on an ad-referendum basis or through extraordinary meeting of the Supervisory Committee.

3. In case the dispute is not settled, the Supervisory Committee shall refer it to the Arbitration Panel.

4. The Contracting Members shall within one year after the entry into force of this Agreement, determine the procedures for the Arbitration Panel which shall be annexed to and form an integral part of this Agreement.

Article 27
SUPERVISORY COMMITTEE

1. A Supervisory Committee shall be established, comprising the representatives of the Contracting Members, at senior official level. The Supervisory Committee shall meet initially within six (6) months upon entry into force of this Agreement and thereafter at least once a year to review the progress made in the implementation of this Agreement. Any Contracting Member may also request for holding of extraordinary meeting by notifying the D-8 Secretariat and other Contracting Members.

2. The Supervisory Committee shall undertake any function assigned to it under the provisions of this Agreement. Upon request by any Contracting Member and subject to the approval of all other Contracting Members, the Supervisory Committee shall also examine any other matter affecting the implementation of this Agreement.

3. Decisions of the Supervisory Committee shall be made by consensus where possible. In case consensus is not reached, the Supervisory Committee shall decide by a two third majority of total votes.

4. The Supervisory Committee shall set its own rules of procedures within six (6) months after its establishment. The Supervisory Committee may also set any other subsidiary bodies and expert groups, as it may consider necessary.

5. The Supervisory Committee shall present an annual report to the TMC Meeting.

Article 28
TRADE MINISTERS COUNCIL

1. The Contracting Members shall establish the TMC at the Ministerial level.

2. For the purpose of this Agreement, the TMC shall be the highest policy making body.

3. The TMC shall meet as and when considered necessary by the Contracting Members.

Article 29
SECRETARIAT

The D-8 Secretariat shall serve as the secretariat for the TMC and the Supervisory Committee.

Article 30
AMENDMENTS AND REVIEW

1. The Contracting Members may amend the provisions of this Agreement, having regard to the experience gained in its implementation and the need for meeting new requirements.

2. This Agreement may be amended by the mutual consent of all the Contracting Members through a Protocol agreed by the TMC. Such a Protocol shall come into force 30 days following the date on which all Contracting Members have notified the depository of their instruments of ratification.

3. The Contracting Members shall review within four (4) years upon entry into force of this Agreement to consider further trade liberalization and expansion of this Agreement, taking into account the future needs to make it more comprehensive.

4. The decisions made under this Article shall be effected by a consensus vote of all the Contracting Members.

Article 31
MODIFICATION OF CONCESSIONS

1. Any Contracting Member may, after a period of three years from the day the concession was extended, notify the Supervisory Committee of its intention to modify or withdraw any concession included in its appropriate schedule.

2. The Contracting Member intending to withdraw or modify a concession shall enter into consultation and/or negotiations, with a view to reaching agreement on any necessary and appropriate compensation, with Contracting Members with which such concession was initially negotiated and with any other Contracting Members that have a prihcipal or substantial supplying interest as may be determined by the Supervisory Committee.

3. Should no agreement be reached between the Contracting Members concerned within six months of the receipt of notification and should the notifying Contracting Member proceed with its modification or withdrawal of such concessions, the affected Contracting Members as determined by the Supervisory Committee may withdraw or modify equivalent concessions in their appropriate schedules. Any such modification or withdrawal shall be notified to the Supervisory Committee.

Article 32
WITHDRAWAL AND VALIDITY

A Contracting Member may withdraw from the Agreement at any time after its entry into force. Such withdrawal shall become effective six months following the date on which that Contracting Member has informed the Supervisory Committee to that end through a written notice.

Article 33
ANNEXES AND PROTOCOLS

The Annexes and Protocols to the Agreement are an integral part of this Agreement.

Article 34
ENTRY INTO FORCE

This Agreement shall enter into force thirty days following the date on which D-8 Executive Director, the depository, has received the instruments of ratification by at least four Member States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement

DONE at Bali, Indonesia on the 13th day of May 2006 in the English language in one original copy.

For the Government of the People's Republic of Bangladesh

(H.E. M. Morshed Khan, MP)
Minister of Foreign Affairs

For the Government of the Arab Republic of Egypt

(H.E. Fayza Aboulnaga)
Minister of International Cooperation

For the Government of the Republic of Indonesia

(H.E. Mari Elka Pangestu)
Minister of Trade

For the Government of the Islamic Republic of Iran

(H.E. Manouchehr Mottaki)
Minister of Foreign Affairs

For the Government of Malaysia

(H.E. Dato' Seri Syed Hamid Albar)
Minister of Foreign Affairs

For the Government of the Federal Republic of Nigeria

(H.E. Alhaji Abubakar Tanko)
Minister of State for Foreign Affairs

For the Government of the Islamic Republic of Pakistan

(H.E. Humayun Akhtar Khan)
Minister for Commerce

For the Government of the Republic of Turkey

(H.E. Kürşad Tüzmen)
Minister of State