

PROTOCOL

On Amendment and Supplements to the Agreement on the Creation of a Free-Trade Area of 15 April 1994

States-Signatories of the Agreement on the Creation of a free-trade area, of 15 April 1994 (hereinafter referred to as the Agreement),

With the view to develop and deepen [expand] the provisions of this Agreement, and to speed up the processes of forming a free-trade area,

Hereby agreed to make the following amendments and supplements to the Agreement:

1. In Article 1, item 1, after the words "in solving concrete tasks", replace the words "of the first stage of the creation of the Economic Union" by the words "of the creation of a free-trade area".
2. In Article 1, item 1, the second bullet should have the following content: "abolishment of customs duties, and also taxes and levies, that have effect equivalent to them, and quantitative restrictions."
3. In Article 1, item 1, the fifth and sixth bullets should be united and should have the following content: "cooperation in carrying out trade and economic policy for achieving the objectives of this Agreement in the area of industry, agriculture, transport, finance, investments and social sphere, and in the development of fair competition, and etc."
4. In Article 1, item 2, should have the following content: "2. This Agreement shall be applied on customs territories of the Contracting Parties, as they are defined by their national legislation."
5. In Article 1, item 3, the first paragraph, after the words "the Vienna Convention on the Right of International Agreements of 1969" add "and agreements of GATT/WTO."
6. Add new Article 1(a) of the following content to the Agreement:

"Article 1(a)

Body that coordinates actions of the contracting parties for the fulfilment of the Agreement's provisions

To achieve the objectives of this Agreement, the Inter-State Economic Committee of the Economic Union (further referred to as the Committee) shall perform the supervision of the course of the fulfilment of this Agreement by the Contracting Parties, working out proposals on the development of their trade and economic cooperation, agreement and coordination of the economic policy."

7. Exclude Article 2.
8. The name of Article 3 should be changed to the following:

"Customs Duties, and also Taxes and Levies which have Effect Equivalent to them, and Quantitative Restrictions".

9. In Article 3, item 1 should have the following content:

"1. The Contracting Parties shall not apply customs duties, and also taxes and levies, which have effect equivalent to them, and quantitative restrictions to the importation and (or) exportation of goods originating from the customs territory of one of the Contracting Parties and intended for customs territories of other Contracting Parties."

10. In Article 3, item 2 should have the following content:

"2. In trade between the Contracting Parties, from the date on which this Protocol comes into force for them, new quantitative and tariff import and (or) export restrictions, as well as measures that have equivalent effect, shall not be introduced in addition to those previously fixed in bilateral agreements.

Exceptions to the trade regime provided for in item 1 of this Article shall be applied on the basis of bilateral documents in which the Contracting Parties shall, within a 12-month period from the date of entry into force of this Protocol, coordinate their stage-by-stage abolishment and shall notify the Committee and the Agreement's depository about this."

11. In Article 3, item 3 should have the following content:

"3. For the objectives of this Agreement, quantitative restrictions and other administrative measures shall mean any measures which create while being applied a material barrier or restriction with respect to the importation of a commodity, originating from the territory of one Contracting Party, into the territory of the other Contracting Party, or with respect to the exportation of a commodity, originating from the territory of one Contracting Party, to the territory of the other Contracting Party, including quoting, licensing, control of prices or other terms of delivery, other specific export or import requirements that directly or indirectly restrict the rights of the exporter or importer in comparison to the rights of the seller or the buyer of a similar good who is located on the territory of the country of origin of the commodity and who carry out a purchase or sale on this territory. The provisions of this Article shall be applied without prejudice to and by no means affect the right of the application by any of the Contracting Parties of measures provided for in Articles 13 and 13(a) hereof, as well as measures applied by any of the Contracting Parties for purposes of fulfilling its commitments under other international agreements."

12. Article 4 should have the following content:

"1. Each of the Contracting Parties shall grant to the goods, that originate from the customs territory of any other Contracting Party and are imported to its territory, a treatment not worse than that applied to national goods or goods of any third country with respect to technical and quality requirements.

2. The provisions of item 1 of this Article shall be applied without prejudice to measures which can be applied by any of the Contracting Parties for the purposes of implementing agreements on mutual recognition of tests' results, quality certificates and other similar agreements, as well as in cases of threat or likelihood of threat to life and health of people, flora and fauna.

3. The Contracting Parties shall cooperate and exchange information in the area of standardization, metrology and certification with the view to eliminate technical barriers and other special requirements (restrictions) in trade."

13. In Article 5, item 2, after the word "inform" add the word "Committee".

14. In Article 5, item 4, after the word "fumigation" add the words "and other import- and export-related procedures".

15. In Article 7, item 1, the second sentence, after the words "Contracting Parties" exclude the words "if necessary".

16. In Article 8, item 1 should be added with the following:

"These goods shall be granted a treatment no less favourable than that granted to similar domestic goods in respect of all laws, rules and requirements that affect their sale in the domestic market, offer for sale, purchase, transportation, distribution or use."

17. Add new Article 8(a) of the following content to the Agreement:

"Article 8(a)

Procedure of applying indirect taxes

1. In mutual trade, the Contracting Parties shall not impose indirect taxes (VAT, excise) on goods (works, services) exported from customs territory of one of the Contracting Parties to customs territory of the other Contracting Party.

2. The provision provided for in item 1 of this Article shall mean the imposition of VAT at a zero rate, as well as exemption of exported goods from excises. In the States-Signatories of this Agreement in which national legislation does not provide for the imposition of VAT at a zero rate, the exemption of goods (works, services) from VAT shall be applied.

3. The procedure of applying indirect taxes provided for in this Article shall come into force in accordance with national legislation of the Contracting Parties from 1 January 2000."

18. Add the following items to Article 9:

"2. The Contracting Parties shall provide transparency of measures on providing subsidies by exchanging information at the request of any of the Contracting Parties.

3. The Committee shall carry out the supervision of the situation of using subsidies different from the State's assistance to exportation, and shall develop rules that regulate their use being guided by international practice.

4. If any of the Contracting Parties considers that the practice of using subsidies is not compatible with item 1 of this Article, it may apply relevant measures according to the conditions and procedures stated in Article 13(a) of this Agreement."

19. In Article 10, item 3 should be considered item 4 of the following content:

"4. The conditions of transit, including tariffs on transportation by any kinds of transport and rendering of services, shall be determined by a separate agreement."

20. Article 10 should be added with item 3 of the following content:

"3. Transit via the territory of each Contracting Party shall be carried out on the basis of the transit freedom principle by ways [tracks, routes, roads] more appropriate for international transit transportation and transit transportation to or from the territories of other Contracting Parties without any distinction or discrimination based on the flag of ships and place of origin, shipment, putting in, leaving or destination, or based on some circumstances relating to title to goods, ships or other transport facilities."

21. Article 11 should have the following content:

"The re-export of goods being delivered within the framework of this Agreement shall be regulated by the Agreement on the Re-export of Goods and Procedure of Granting Permissions for Re-export, of 15 April 1994, between the member States of the Community of Independent States."

22. In Article 13, item 1, after the words "of which it is a signatory or is intended to become a signatory", replace the words "if these measures concern" by "if these measures are not applied on an arbitrary or discriminatory basis and concern:" and further according to the text.

23. Add new Article 13(a) of the following content to the Agreement:

"Article 13(a)

Special trade measures

1. Nothing in this Agreement shall prevent any Contracting Party, after an appropriate investigation has been performed, from applying special trade measures with respect to the importation of goods originating from the territories of other Contracting Parties in case where this importation is carried out in such quantities and under such terms and conditions that cause damage to the Contracting Party or create inevitable threat of damage, as well as in connection with a dumping and subsidized importation that causes damage to the Contracting Party or creates inevitable threat of damage.

2. Special trade measures can be introduced in the form of quantitative import restrictions or in the form of special import duties, anti-dumping and countervailing duties for a period necessary for removing damage or threat of damage in accordance with the provisions of this Article and (or) national legislation of the Contracting Party.

2.1 A special trade measure may be introduced only after holding consultations between the interested Contracting Parties. A Contracting Party that intends to introduce an emergency measure shall, in good time but no later than 30 days before the planned introduction of the measure, inform the interested Contracting Parties of this and shall propose to conduct consultations. The proposal on conducting consultations shall be submitted in writing with the materials attached that confirm the fact of damage because of importation or inevitable threat of such damage.

For the objectives of this Agreement, damage shall mean a significant damage to a branch of economy, threat of a significant damage to the branch or a serious barrier to the creation or development of such a branch.

2.2 Confirmation of the fact of damage should be based on available actual data and should include an objective analysis both of imports volume and its influence on the market prices for a similar or directly competing commodity, and consequences of such imports for the producers of the branch of the affected Contracting Party.

2.3 The volume of imports shall be considered from the point of view of its substantial increase in absolute and relative values with respect to the level of production and consumption of a competing commodity on the territory of the affected Contracting Party.

2.4 Influence of imports on the market prices shall be determined by establishing the fact of a considerable difference between the import prices and the prices for similar competing domestically produced goods, or the fact of other substantial influence of imports on these prices that leads or can lead to their decrease or prevents or will prevent from increasing such prices that would take place in case of absence of importation.

2.5 The evidence of influence of importation on a branch of economy should be based on the evaluation of all significant economic factors that affect the condition of the branch, including, in particular, the decrease in sales, profit and volume of production, share in the market, productivity, recoupment of capital investments, and exploitation of production capacities that has taken place or is possible in the near future, and of the factors that affect domestic prices, actual and potential influence on income, stocks in warehouses, occupation, salary, rates of growth, and possibility of increasing an overall authorized capital of enterprises of the branch or increasing their capital investments.

2.6 The evidence of damage or threat of damage to a branch of economy should be also based on the study of factors (other than import), which negatively affect the condition of the branch, as well as the volume of and level of prices for importation carried out on normal conditions, the change in demand, change in consumption, consequences of a restrictive trade practice and competition between foreign and domestic producers, technological inventions, and export and production indicators of the branch of economy. Damage caused by such factors should not be considered as one that occurs because of importation to which the application of emergency measures is possible.

2.7 The establishment of threat of damage to the branch of economy shall be based exclusively on facts. In this respect, the following facts should be considered:

- the dynamics of increase in imports that testifies to the real possibility of continuing a substantial increase in imports;
- availability of free production capacities or an inevitable obvious development of the exporter's production capacities that testifies to the real possibility of a substantial increase in imports to the territory of the affected Contracting Party, taking into account the potential capacity of other sales markets;

- such level of import prices that gives a substantial overwhelming effect on prices of domestic producers and can lead to further growth of imports demand;
- the volume of stocks of a competing commodity.

2.8 No one of the factors or facts mentioned in this Article in itself should be a mandatory ground for concluding that there is damage or threat of damage. The conclusion on the presence or absence of damage or threat of damage shall be made on the basis of the study of the whole complex of all the factors or facts. In some cases when damage or threat of damage is caused by only a sharp increase in imports, or in the absence of such increase, by the fact that import is carried out at prices or on conditions that cause damage to the branch of economy, a special trade measure can be taken if there is a casual and consequential relationship between damage or threat of damage to the branch of economy and a sharp increase in imports or the carrying out of importation on specific conditions.

3. In the course of consultations, the Contracting Parties shall aspire to find a mutually acceptable solution of the problem.
 4. In case where such a solution is not found, a Contracting Party, that has proposed to conduct consultations, shall have the right to take special trade measures.
 5. In case of urgency, special trade measures may be taken before conducting consultations, provided the conducting of such consultations will be immediately organized.
 6. Nothing in this Article shall cause damage or somehow affect the taking by any Contracting Party of special, anti-dumping or countervailing measures in accordance with generally accepted international rules and (or) national legislation of the Contracting Party.
 - In respect of investigations that precede the introduction of special, anti-dumping and countervailing measures, each Contracting Party agrees to study what is presented by the other Contracting Party and shall inform the interested Contracting Parties of important facts and considerations on the basis of which final decisions will be made.
 - Before the decision on the introduction of special, anti-dumping or countervailing measures is taken, the Contracting Parties will take all possible steps for the constructive solving of the problem.
 7. Nothing in this Agreement shall prevent the Contracting Parties from restricting the exportation of essentially important competing goods in case of their critical deficit in the domestic market."
24. Exclude Article 14.
25. Exclude Article 15.
26. In Article 17, item 1, after the words "Contracting Parties", add "will create conditions for liberalization of national markets of services and", further – according to the text.
27. Add new Article 17(a) of the following content to the Agreement:

"Article 17(a)

Competition in entrepreneurial activity

The mentioned below is not compatible with a proper fulfilment of this Agreement in that degree in which it can affect trade in a free-trade area:

- all agreements between enterprises, and associations of enterprises of which a conciliatory practice has a purpose or is a consequence of removing, preventing from, restricting or distorting competition;
- illegal use by one or more enterprises of a dominant position on the territory of the free-trade area on the whole or in its significant part."

28. Add new Article 17(b) of the following content to the Agreement:

"Article 17(b)

Government procurement

The Contracting parties shall create conditions for liberalization of national markets of government procurement on the basis of non-discrimination and mutuality."

29. Exclude Article 18.

30. Article 19 should have the following content:

- "1. The Parties shall take all necessary measures for the fulfilment of their commitments under this Agreement.
2. Without prejudice to the provisions of Article 13(a) hereof, in case where one of the Contracting Parties believes that the other Contracting Party does not fulfill its commitments under this Agreement, and in case where such non-fulfilment of the commitments damages or threatens to damage the economic interests of the first Contracting Party, it may make a request to such other Contracting Party regarding consultations to be provided within a 2-month period from the date of a written request with a view to search for a solution acceptable for both Contracting Parties. A copy of the relevant request shall be sent to all the other Contracting Parties to this Agreement, and any of them may, if it believes that the circumstances mentioned in the first sentence of this item affect its interests, participate in the consultations.

All the information on the essence of the problem shall be attached to the written request.

3. In case where in the course of the consultations mentioned in item 2 of this Article the Contracting Parties do not reach a mutually acceptable solution of the problem, the Contracting Party that has requested the consultations shall have the right to settle disputes, that affect the rights and obligations of the Contracting Parties, within the framework of a special conciliatory procedure to be recommended by the Committee within 30 days from the date on which it receives the request (by creating working parties to study dispute materials and develop recommendations).

4. In case where in the course of the consultations mentioned in item 2 of this Article and the special procedure mentioned in item 3 of this Article the Contracting Parties do not reach a mutually acceptable solution of the problem, the Contracting Party that has requested the consultations shall have the right to deviate from the fulfilment of its commitments under this Agreement with respect to about equivalent volume of trade or take other measures which it considers necessary for preventing from damage to the national economy. When choosing such measures, preference should be given to those, which in the least degree break the effect of this Agreement. The application of such measures should be immediately suspended as soon as the decisions by the other Contracting Party, which led to the introduction of those, are annulled.
 5. The provision of this Article shall by no means prevent the Contracting Parties from settling disputes occurring between them within the framework of procedures provided by international law."
31. In Article 20, item 1, should be added with the second paragraph of the following content:
- "This provision shall by no means affect the rights of the Contracting Parties to independently determine the regime of foreign economic relations with States not parties to this Agreement."
32. In Article 20, item 2, should have the following content:
- "2. The provisions of this Agreement shall not affect the rights and advantages of the Contracting Parties granted by the Contracting Parties within the framework of economic associations, frontier trade, and preferences to developing countries and free economic or customs areas regulated by domestic legislation or on the basis of international agreements."
33. In Article 20, item 3, should be excluded.
34. Exclude Article 21.
35. In Article 24, item 1, it should have the following content:
- "1. This Agreement shall be open to join for any State that admits the provisions of this Agreement valid on the date of joining and that expresses its readiness to implement them in full."
36. In Article 25, item 2, should have the following content:
- "2. If any of the Contracting Parties breaks the provisions of this Agreement that causes a serious damage to the achievement of its objectives, the other Contracting Parties may apply extreme measures by suspending the effect of the Agreement or of some provisions of the Agreement with respect to the Contracting Party."

This Protocol shall come into force from the day on which the third notification on the fulfilment by the signatory Contracting Parties of all necessary inner-State procedures is submitted to a depository for keeping.

For the Contracting Parties having fulfilled necessary inner-State procedures later, this Protocol shall come into force on the day when relevant documents are submitted to the depository.

Done in the city of Moscow on 2 April 1999, in one original, in Russian. The original shall be kept in the Executive Secretariat of the Community of Independent States that will send its certified copy to each State-Signatory of this Protocol.

RESERVATION OF THE AZERBAIDJAN REPUBLIC

To the Protocol on Amendments and Supplements to the Agreement on the Creation of a Free-Trade Area, of 15 April 1994

The Azerbaijan Republic declares that no rights, commitments and provisions stated in the Agreement on the Creation of a Free-Trade Area of 15 April 1994, and of the Protocol on amendments and supplements to the aforementioned Agreement will be adopted by the Azerbaijan Republic with respect to the Republic of Armenia.

The Azerbaijan Republic shall keep the right to change or exclude, in any time, the provision of item 1 of this Reservation, and the other Parties shall be notified in writing of any such changes and exclusions.

President of the Azerbaijan Republic
Geidar Aliev

GEORGIA'S SPECIFIC OPINION

To the Draft Protocol on Amendments and Supplements to the Agreement on the Creation of a Free-Trade Area, of 15 April 1994

Georgia on the whole approves the submitted draft Protocol on Amendments and Supplements to the Agreement on the Creation of a Free-Trade Area, of 15 April 1994, but at the same time confirms the Specific Opinion expressed by the State Minister of Georgia at the meeting of the Council of the Governments' Heads on 1 April 1999.

E. Shevarnadze

SPECIFIC OPINION OF GEORGIA

To the Draft Protocol on Amendments and Supplements to the Agreement on the Creation of a Free-Trade Area, of 15 April 1994

Georgia on the whole supports the draft Protocol on Amendments and Supplements to the Agreement on the Creation of a Free-Trade Area of 15 April 1994.

At the same time we consider it necessary to state the second paragraph of item 2 of Article 3 as follows: "Exceptions to the trade regime provided for in item 1 of this Article shall be applied on the basis of bilateral documents in which the Contracting Parties coordinate their abolition ...", and further according to the text, as well as in Article 20, item 1, in the first paragraph remove from the text the final phrase "... provided these obligations do not contradict the provisions and objectives of this Agreement."

V. Lordkipanidze
