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MINISTRY OF INDUSTRY, TRADE AND
COOPERATIVES

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MEMORANDUM TO PARLIAMENT

ON

COMESA-EAC-SADC TRIPARTITE FREE
TRADE AREA (TFTA)

28TH MARCH 2018

1. OBJECTIVES OF THE MEMORANDUM

The objectives of this Memorandum are to:

- i. Inform Parliament on the finalisation of the COMESA-EAC-SADC Tripartite Free Trade Agreement (TFTA);
- ii. Inform Parliament of the approval of TFTA by Cabinet on 27th March, 2018 for ratification; and
- iii. Seek Parliament's ratification of the TFTA to facilitate the entry into force once the minimum number required (14 Instruments of ratification) for ratifications is reached, to enable Kenya exploit the opportunities in the new liberalised TFTA market;

2. BACKGROUND

- i. The TFTA process begun when the first COMESA-EAC-SADC Tripartite Summit of Heads of State and Government in its meeting held on 22nd October 2008 in Uganda directed that Member/Partner States of the three Regional Economic Communities (RECs) i.e. COMESA, EAC, and SADC establish a Tripartite Free Trade Area (TFTA);
- ii. The official launch for negotiation for establishing the Tripartite FTA took place during the second Tripartite Summit held on 12th June 2011 in (Santon City), Johannesburg, where twenty three (23) Heads of State and Government, including Kenya, committed themselves to the process through signing the declaration launching the TFTA negotiations;
- iii. The TFTA comprises of all the twenty-seven (27) countries of COMESA, EAC and SADC. Twenty-two (22) of these countries are already participating in their respective Free Trade Areas, therefore forming a critical mass necessary to establish the Tripartite FTA. The Tripartite region has a combined population of over 625 million people and a combined GDP in excess of US\$ 1.3 trillion. This constitutes more than half of the African Union (AU) in terms of membership, and contributes over 58% to GDP of the region and 57% of the total population of the African Union. The establishment of the Tripartite FTA would build upon and consolidate the individual RECs level of integration (while maintaining the *acquis/status quo*);
- iv. The Tripartite FTA is anchored on three pillars, namely; Market Integration; Infrastructure Development, and Industrial Development, together with the Movement of Business Persons which Summit directed it be fast-tracked under a separate arrangement to facilitate movement of businesspersons with the goods. Negotiations on all the pillars are being done concurrently.

3. OBJECTIVES OF THE TFTA

- i. The main objectives of the Tripartite FTA are to increase intra-regional trade through establishing of a **larger market**, with a single economic space and to address the challenges of **multiple memberships** by harmonizing rules and policies such as health and technical standards, rules of origin and customs, trade facilitation, and transit trade issues, with long-term goals of moving to other deeper levels of integration.
- ii. It is further envisaged that with the expanded market the TFTA would result in enhanced FDIs as well as intra-regional investment flows into the region.

4. THE NEGOTIATION PROCESS

- i. The negotiation process was guided by clear **principles** that sought to maintain co-existence of the already existing frameworks and being sensitive to the varied levels of economic development of the Tripartite Member States;
- ii. The negotiations maintained an institutional framework/structure, to ensure efficiency, effectiveness and checks with a view to achieving the intended objective of the TFTA. These framework includes Tripartite Summit; Tripartite Council of Ministers, Tripartite Sectoral Ministerial Committee (TSMC), Tripartite Committee of Senior Officials (TCSO) and Tripartite Trade Negotiation Forum (TTNF);
- iii. Negotiations were structured to take place in two phases. Phase 1 includes negotiations on the following Annexes which forms an integral part of the TFTA Agreement:- Tariff liberalization (Tariff Offers), Rules of Origin, Customs Cooperation; Trade Facilitation and Transit Trade, Sanitary and Phyto-sanitary Measures, Technical Barriers to Trade, Tariff and Non-Tariff Barriers, (SPS/TBT/NTB), Trade Remedies and Dispute Settlement, and Framework Agreement on Movement of Business Persons;
- iv. Negotiations on Phase II of the TFTA covering; Trade in Services; and Trade Related issues, such as; Intellectual Property Rights, Competition Policy, Investments, and Trade Development and Competitiveness, among others, will be undertaken as soon as the few outstanding issues of Phase I are concluded within a few months.

5. MODALITIES FOR TARIFF LIBERALISATION

- i. The Council of Ministers agreed to liberalise tariff immediately upon entry into force of the TFTA between 60%-85% of the total tariff lines and the remaining 15% for further negotiations. However, countries or regions could liberalise immediately beyond 85% depending on their interests in the targeted market, but subject to reciprocal commitments. Member States that are already in FTA will not negotiate but simply consolidate their level of liberalisation.

- ii. EAC is negotiating the TFTA as a bloc. EAC has already finalised tariff offers for liberalisation for the Countries that they are not in an FTA with, namely; Angola, Eritrea, Ethiopia, Mozambique and the SACU Group (Botswana, Namibia, Lesotho, South Africa and Swaziland). EAC and SACU tariff offers negotiations are in the final stages of conclusion after several rounds of tariff offers/liberalisation negotiations;
- iii. The third Tripartite Summit held on 10th June, 2015 in Sharm el Sheikh, Egypt launched the TFTA following the conclusion of negotiations of the main TFTA legal instruments. During the launch, His Excellency the Deputy President, William S. Ruto, and Head of Kenyan Delegation expressed Kenya's interest to host the Secretariat for the Tripartite FTA;
- iv. The main annexes that were outstanding at the time of the launch of the TFTA have been finalised and adopted by Tripartite Council of Ministers during the last meeting held in July 2017, in Kampala, Uganda;

6. PROGRESS OF RATIFICATIONS HITHERTO

- i. To date, twenty-two out of the twenty-seven Member/Partner States have signed the TFTA, with the latest ones being Madagascar, South Africa and Mauritius.
- ii. The TFTA will enter into force once fourteen (14), (50% +1) Member States have ratified the Agreement and deposit the instruments of ratification with the depositary.
- iii. The Arab Republic of Egypt and the Republic of Uganda are the only countries that have ratified the Agreement. However, EAC Partner States had committed to lead the way in ratifying the TFTA by end of last year. A similar commitment has been taken by the EAC to fast-track the ratification.

7. JUSTIFICATION FOR KENYA TO RAITIFY THE AfCFTA

- i. Currently, intra-African trade is so low (about 12%) as compared to the intra- trade in EU and Asia, which stands at over 60% and 40% respectively. The current trading blocs which all-African countries belong to, has not helped improve the intra-African trade.
- ii. This is attributed to a number of factors such as belonging to more than one REC hence conflicting trade regimes; technical and health standards and; high tariffs for non-members of same REC, complex customs procedures and rules of origin and transit trade issues, weak industrial base within the TFTA complicated further by structural infrastructure, including air and road connectivity challenges.
- iii. Restrictive movement of business persons requirements has contributed to low intra-regional trade. It was with this background that the Summit decided to form the TFTA with the aim of boosting intra -regional trade.

- iv. Kenya has been trading with Africa as much as it has been trading with the rest of the world. Kenya's exports to Africa have ranged between 41% to 45% in the last decade and have been mostly to EAC and COMESA Markets. With the implementation of the AfCFTA, Kenya will be able to access the Southern Africa (SADC) on a duty free basis. This will greatly boost Kenya's exports.
- v. Under the big 4 Agenda of the government, the share of manufacturing to GDP is to be raised from current level of 9% to 15% by 2022. The TFTA will be very important for the realization of this goal since majority of Kenya's exports to Africa are manufactured goods.
- vi. Given the critical importance of the TFTA and its potential to contribute to Kenya's development aspirations, it is our recommendation that **Kenya Parliament ratifies the Agreement Establishing the AfCFTA.**

8. CONSTITUTIONAL IMPLICATIONS

The ratification of the TFTA does not envisage amendments to the constitution of Kenya.

9. EXPECTED BENEFITS OF THE AGREEMENT

The benefits Kenya stands to gain once the TFTA enters into force after the ratification by the required numbers are:-

- i. Wider and expanded market, from Cape to Cairo, for both manufactured and primary products with a single economic space with a population of over 625 million people and a combined GDP of over \$ 1.3 trillion . The expanded market is a sure way of enhancing intra-regional trade, which now stands at about 12%. SACU for instance has offered to open market for EAC products on preferential terms, that includes Kenya export products such as fruits, tea, coffee, spices, vegetables, flowers, and a number of manufactured products;
- ii. The large investment area created by the establishment of TFTA, increases Kenya investment competitiveness as it enhances determinants for attracting FDI, Kenya being the strategic hub for Africa. Tripartite promotes Cross Border Investment (CBI). This will increase- Kenya entrepreneurs' potential to invest across Africa. This will further increase business and investment opportunities for the marginalised including creation of employment for women and youth in addition to enhanced backward and forward linkages;
- iii. Policies such as the rules of origin, customs cooperation and transit facilitations, technical and healthy standards have been harmonised in the negotiations and hence will facilitate and ease the movement of goods and business persons. This will therefore boost intra-regional trade, as lack of harmonisation has been the major

source of Non-Tariff Barriers (NTBs). This will enhance Kenya's exports into the region;

- iv. It is expected that challenges of multiple memberships to different RECs which has been addressed through harmonisation of the trade regimes in the negotiations will pave way to further boost intra-regional trade;
- v. The provisions in the TFTA Agreement on trade facilitation will enhance trade facilitation which will substantially reduce the cost of doing business;
- vi. The identified projects under the Infrastructure pillar once implemented will enhance inter-connectivity in the Tripartite region and create more momentum for regional infrastructural projects; Overall the industrial and infrastructure pillar will enhance industrial and infrastructure development;
- vii. The identified areas of cooperation in the industrial pillar, as detailed in the Work Programme, once implemented will enhance production and will address the perennial supply side constraints to take advantage of the TFTA expanded market through value addition of products and boosting competitiveness of companies in the region. Kenyan companies will benefit by participating in the regional value chains, enhanced value of products and increased volume of exports; and,
- viii. Enhanced cooperation in customs thereby minimizing unfair trade practices.

10. TRADE DEFENCE MEASURES

- i. The TFTA is aimed at creating a liberalised market through reduction of customs duties. The Agreement contains provisions that will provide trade defence and safeguard against any unforeseen influx of imports as a result of reduction of customs tariffs. These provisions includes Safeguards measures that provide safeguards to infant and strategic sectors from unfair competitions; Countervailing measures and Antidumping provisions that will deal with cases of subsidised imports and dumping causing unfair competition in the Kenyan market.
- ii. Already, parliament has enacted the trade remedy law (*Trade Remedies Act, 2017*). The government is now in the process of establishing a trade remedy agency that will deal with antidumping, countervailing and safeguard measures. Fears that AfCFTA will lead to damping of the Kenya market by cheap imports have therefore been taken care of.
- iii. In addition, the modalities for liberalisation provides room to designate sensitive products for longer liberalisation period and products to be excluded completely from liberalisation, particularly highly sensitive products, infant industries and strategic sectors.

11. FINANCIAL IMPLICATIONS

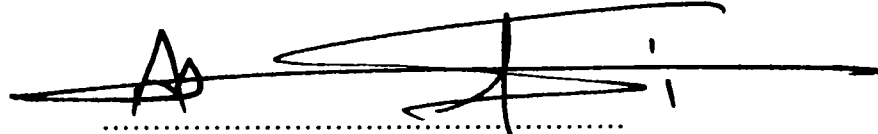
The Ministry responsible for Trade will need additional resources for implementation of the Agreement pay the annual subscriptions and cost of sensitization of the various

stakeholders. A Cabinet memo to implement the AfCFTA and other aspects of the National Trade Policy approved in December 2015 has been prepared and will be considered following due process.

12. RECOMMENDATIONS TO PARLIAMENT

The Parliament is requested to:

- i. Take note of the content of this Memorandum;
- ii. Take note of the Cabinet approval of TFTA for ratification;
- iii. Ratify the Tripartite Free Trade Area Agreement to facilitate entry into force of the TFTA and pave the way for Kenya to exploit the opportunities arising from the TFTA.
- iv. Support Kenya's desire to host the Secretariat for the Tripartite FTA.



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Hon. Adan Mohamed, EGH
Cabinet Secretary
MINISTRY OF INDUSTRY, TRADE AND COOPERATIVES

28TH MARCH 2018

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Date