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MINISTRY OF INDUSTRY, TRADE AND
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MEMORANDUM TO PARLIAMENT

ON

THE AFRICAN CONTINENTAL FREE TRADE
AREA (AfCFTA)

28TH MARCH 2018

1. OBJECTIVES OF THE MEMORANDUM

The objectives of this Memorandum are to:

- i. Inform the National Assembly on the finalization and signing of the Agreement Establishing the African Continental Free Area (AfCFTA) by 44 countries including Kenya on 21st February 2018 in Kigali Rwanda;
- ii. Inform Parliament on the approval of AfCFTA by Cabinet on 27th March, 2018 for ratification; and
- iii. Seek Parliament's ratification of the AfCFTA in good time to facilitate the entry into force of the AfCFTA once the minimum number required (22 Instruments of ratification) for ratifications is reached, to enable Kenya exploit the opportunities in the new liberalised CFTA market.

2. BACKGROUND

- i. In January 2012, the Assembly of Heads of State and Government of the African Union (AU) took a decision to enhance intra-African trade by endorsing an Action Plan for Boosting Intra-African Trade (BIAT) and agreed on a roadmap to establish a Continental Free Trade Area (AfCFTA) by 2017. The initiative is a flagship project of the AU Agenda 2063, which is a strategic framework for the socio-economic transformation of the continent in the next 45 years.
- ii. Subsequent to the 2012 decision, the African Union Assembly launched the AfCFTA negotiations at the 25th Ordinary Summit of Heads of State and Government, on 15th June 2015, Johannesburg, South Africa. Subsequently in July 2017, the 27th Ordinary Summit of the African Union Heads of State and Government that took place in Kigali, Rwanda reaffirmed its commitment to fast track the establishment of the AfCFTA by December 2017.
- iii. The underlying principle of the roadmap is to build upon the current levels of tariff liberalization among the Regional Economic Communities (RECs), as well as the existing achievements of the RECs.

3. SCOPE AND STRUCTURE OF THE AfCFTA NEGOTIATIONS

a) Scope of the Negotiations

- i. The final AfCFTA Agreement comprises of; the Agreement Establishing the AfCFTA, Protocol on Trade in Goods and associated annexes, Protocol on Trade in Services and associated annexes, Protocol on Rules and Procedures on the Settlement of Disputes and associated annexes.
- ii. Other Protocols on Intellectual Property Rights, Investment and Competition Policy, which shall also form an integral part of the Agreement, will be concluded in Phase II of the negotiations.

b) Sequence of the Negotiations

- i. Negotiations were structured to be conducted in **two phases**. Phase 1 covers The Framework Agreement Establishing the African Continental Free Trade Area (AfCFTA), Protocol on Trade in Goods, Protocol on Trade in Services, Protocol on Rules and Procedures on the Settlement of Disputes, and the related Annexes that forms an integral part of the AfCFTA Agreement, namely; Annex on Tariff liberalization (Tariff Schedules), Rules of Origin, Customs Cooperation, Trade Facilitation, Transit Trade, Trade Remedies , Sanitary and Phyto-sanitary Measures (SPS), Technical Barriers to Trade and Non-Tariff Barriers,(TBT/NTB) and Trade Remedies.
- ii. Negotiations on Phase II of the AfCFTA will cover; Trade Related issues, such as; Intellectual Property Rights, Competition Policy, and Investment, and will be undertaken upon conclusion of the outstanding issues in Phase I negotiations.

c. Structure of the Negotiations

- i. The negotiations are carried out within the Framework of the Institutional Arrangements for the Negotiations of the AfCFTA.
- ii. The AfCFTA negotiating institutions are:
 - a) the Assembly of Heads of States and Government (HATC)
 - b) the African Union Ministers of Trade (AMOT);
 - c) the Committee of Senior Officials (Principal/Permanent Secretaries) (CSO); and
 - d) the Continental Free Trade Area- Negotiating Forum (CFTA-NF).
- iii. The CFTA-NF is a body established by the Assembly and is composed of trade experts from the AU Member States. It has the responsibility of conducting trade negotiations at the technical level. The CFTA-NF reports to the Committee of Senior Trade Officials who in turn report to the African Union Ministers Trade. The CFTA-NF negotiations are supported by seven (7) Technical Working Groups (TWGs).¹ **Annex I contains the details of AfCFTA phase I negotiations.**

4. KEY ELEMENTS OF THE AfCFTA

Critical elements to achieve the AfCFTA are:

- i. progressive elimination of tariffs on trade between FTA members and the application of simple and transparent Rules of Origin;

¹ These TWGs are: Rules of Origin; SPS; TBT and NTB; Trade Remedies; Customs Cooperation and Trade in Services.

- ii. Removal of Non-Tariff Barriers (NTBs) and the transparent application of necessary Sanitary and Phytosanitary (SPS) measures and Technical Barriers to Trade (TBT) so that originating goods can be granted free market access; and,
- iii. Undertaking trade facilitation measures to establish a transparent and predictable environment for cross-border trade transactions based on simple, standardized customs procedures and practices, documentation requirements, cargo and transit operations, and trade and transport arrangements.
- iv. The Agreement Establishing the AfCFTA will enter into force thirty (30) days after the deposit of the twenty second (22nd) instrument of ratification to the Chair of the AU Commission.

5. OBJECTIVES OF AfCFTA

The main objectives of the AfCFTA are to:

- i. 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;
- ii. 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;
- iii. lay the foundations for the establishment, at a later stage, a Continental Customs Union;
- iv. promote and attain sustainable and inclusive social and economic development and structural transformation of the State Parties;
- v. enhance the competitiveness of the economies of State Parties within the continent and at the global market;
- vi. promote industrial development through diversification and regional value chain development, Agricultural Development and Food Security; and,
- vii. resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes.
- viii. Create a large investment area capable of attracting long term investments in key strategic sectors in line with UN Sustainable Development Goals and the AU Agenda 2063. Its implementation will resolve the numerous challenges hindering the intra-

African trade, such as Non-Tariff Barriers including health and technical standards, trade facilitation, transit trade issues and multiple memberships to various Regional Economic Communities (RECs).

6. MODALITIES FOR TARIFF LIBERALISATION

- i. The modalities for tariff liberalisation negotiated in phase 1 were adopted in June 2017 and provide for liberalisation of up to 90% of total tariff lines, for each member state, including the *sensitive products* within a *period of 13 years for Least Developed Countries (LDCs) and 10 years for non-LDCs*.
- ii. The modalities further provide for designation of *sensitive products* and *excluded products* by each Member State to take care of the sensitive and strategic sectors of the Members. Member States that are interested and willing to go deeper in the liberalisation beyond the above modalities can *engage on bilateral levels* as provided for in the Supplementary modalities.
- iii. Hybrid Modalities were adopted for trade in services, where commitments will be undertaken on the services sectors to be liberalised supplemented by regulatory framework cooperation aimed at improving market access conditions
- iv. The Framework Agreement Establishing the AfCFTA and its Protocols on Trade in Goods, Trade in Services, Rules and Procedures of Settlement of Disputes, and the related annexes have been concluded and legally scrubbed. Legal scrubbing for the remaining annexes will be undertaken in due course.

7. TRADE DEFENCE MEASURES

- i. The AfCFTA 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 include 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.

8. SECRETARIAT OF AfCFTA

- i. In order to ensure efficient and effective implementation of the AfCFTA, the African Ministers of Trade (AMOT) agreed to establish a Secretariat which is functionally autonomous with a legal personality, but within the AU systems.
- ii. The Assembly approved the establishment of the Secretariat, and that the structure and the functions will be determined by the Council of Ministers and adopted by the AU Assembly who will also decide on its Headquarters.
- iii. A number of countries have indicated interest to host, but only Ghana has officially written to AU to express interest to host the headquarters. The African Union Commission will work out a detailed criteria to be used in deciding on the Headquarters of the AfCFTA Secretariat. Hosting the Secretariat will enhance Conference Tourism and will therefore bring benefits to the hosting economy.

9. SIGNING OF THE AGREEMENT

- i. Following the finalisation of negotiations on Framework Establishing the AfCFTA, its Protocol and Annexes, the AU Assembly during its Extraordinary Summit held on 21st March 2018 in Kigali, Rwanda, considered and signed the Agreement Establishing the AfCFTA.
- ii. The AfCFTA Agreement, its Protocols and Annexes are hereby attached for perusal and further information.

10. 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. This is attributed to a number of factors such as high tariffs for non-members of same REC, challenges emanating from belonging to more than one REC hence implementation of overlapping trade regimes; technical and health standards, customs, transit trade and rules of origin challenges.
- ii. Furthermore, industrial base and infrastructure challenges, including both land and air connectivity in Africa is weak and pose immense challenges in terms of productions and movement of goods to the export markets. It was with this background that the AU Assembly decided to establish the AfCFTA with the aim of resolving the above challenges in order to boost intra -African trade.
- iii. 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), the central Africa (ECCAs), the Western Africa (ECOWAS) and the Northern Africa (MAGRHEB) on a duty free basis. This will greatly boost Kenya's exports.

- iv. 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 AfCFTA will be very important for the realization of this goal since majority of Kenya's exports to Africa are manufactured goods.
- v. Given the critical importance of the AfCFTA and its potential to contribute to Kenya's development aspirations, it is our recommendation that **Kenya Parliament ratifies the Agreement Establishing the AfCFTA.**

11. CONSTITUTIONAL IMPLICATIONS

In accordance with the Constitution of Kenya and the Treaty Making and Ratification Act, once the AfCFTA is signed and ratified it shall form part of the Laws of Kenya.

12. EXPECTED BENEFITS OF THE AfCFTA AGREEMENT

Implementation of the AfCFTA, once it enters into force after ratification, will bring benefits and gains to Kenya, some of which includes:-

- i. Creation of a wider and expanded market with the current combined population of over 1.2 billion people, with a growing middle class, and a combined gross domestic product of more than US\$3.4 trillion. Intra-Trade is projected to double by 2022 while the population would reach 2 billion by 2050. All this will offer substantial economic and social gains to Kenya;
- ii. The large investment area created by the establishment of AfCFTA, increases Kenya's investment competitiveness as it enhances determinants for attracting FDI, Kenya being the strategic hub for Africa. AfCFTA will also promote Cross Border Investment (CBI). This will increase Kenya's entrepreneurs' potential to invest across Africa which in effect will further increase business and investment opportunities including creation of employment for women and youth in addition to enhanced backward and forward linkages;
- iii. The doubling of intra -Africa trade by 2022 as envisaged under Boosting Intra-African Trade (BIAT) Plan of Action, adopted by the AU Assembly, through substantial tariff reduction, will promote manufacturing, a key agenda for the Presidency. Currently Kenya's exports are mainly destined to EAC and COMESA while the populous West African and North African markets remains unexploited. Kenya's current exports to the West African market is quite low
- iv. It is expected that challenges of multiple memberships to different RECs, which has caused conflicts in implementing different trade regimes, will be addressed through harmonisation of the trade regimes which is underway. This will further boost intra-trade;
- v. Simplification of customs procedures and rules of origin, trade facilitation and transit trade, elimination of non-tariff barriers will facilitate and ease the movement of goods and services across the continent hence boosting intra-Africa trade. Kenya's exports to the continent have hitherto been affected by Non-Tariff Barriers (NTBs).

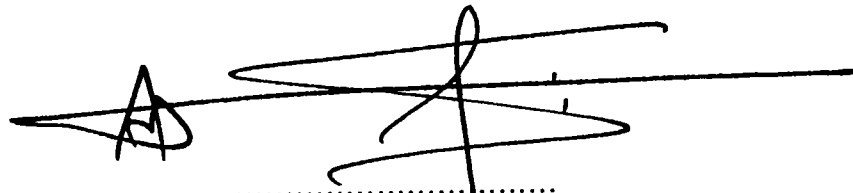
13. FINANCIAL IMPLICATIONS

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.

14. RECOMMENDATIONS TO PARLIAMENT

The Parliament is requested to:

- a) Take note of the content of this Memorandum;
- b) Take note of the Cabinet approval for signing, ratification, and engagement under the phase II;
- c) Ratify the Framework Establishing African Continental Free Trade Area in good time to facilitate entry into force of the AfCFTA and pave the way for Kenya to exploit the opportunities arising from the AfCFTA.



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

28TH MARCH 2018

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Date