



Creating One African Market

**REPORT TO THE SPECIALISED TECHNICAL COMMITTEE ON TRADE,
INDUSTRY AND MINERALS: PROGRESS ON THE AFRICAN
CONTINENTAL FREE TRADE AREA (AfCFTA) FOR THE PERIOD FROM
MAY 2016 TO DECEMBER 2018**

I. INTRODUCTION

1. The Specialized Technical Committee on Trade, Industry and Minerals will recall that the African Continental Free Trade Area is one of the flagship projects of the First Ten Year Implementation Plan under the African Union **Agenda 2063 – The Africa We Want**. Phase 1 of the AfCFTA negotiations has covered areas of Trade in Goods and Trade in Services. Phase 2 will cover areas of Investment, Intellectual Property Rights and Competition Policy.
2. The institutions involved in the negotiations are the AfCFTA-Negotiating Forum (AfCFTA-NF), Senior Trade Officials (STOs) and African Union Ministers of Trade (AMOT).
3. The STC will further recall that the 1st meeting of the AfCFTA-NF was held in February 2016, followed by the 1st meetings of the STO and AMOT both of which were held in May 2016.
4. The 28th Ordinary Session of the African Union Heads of State and Government held in Addis Ababa, Ethiopia in January 2017 mandated His Excellency Issoufou Mahamadou, President of the Republic of Niger to be the Leader of the African Continental Free Trade Area (AfCFTA) Negotiations.
5. During the 30th Ordinary Session of the African Union Heads of State and Government held in Addis Ababa, Ethiopia in January 2018, the name African Continental Free Trade Area (AfCFTA) was adopted as it identifies the free trade area with the continent.

II. PROGRESS ON THE AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA) NEGOTIATIONS

6. The following sections and paragraphs will highlight the progress so far made in AfCFTA Negotiations.

i. *Negotiations Conducted*

7. In line with the approved indicative Roadmap for the establishment of the AfCFTA, the AUC Department of Trade and Industry (DTI) has successfully organized the following meetings of the AfCFTA Negotiating Institutions between February 2016 and December 2018:
 - a) 14 Meetings of the AfCFTA NF;
 - b) 7 Meetings of the STOs; and
 - c) 7 Meetings of AMOT.

The meetings of the negotiating structures were also supported by various meetings of the Technical Working Groups (TWGs), the Continental Task Force (CTF) and workshops on specific technical areas.

8. In this regard, DTI has worked with Member States and key strategic partners to generate results. The strategic partners are the Regional Economic Communities, the African Development Bank (AfDB), the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Economic Commission for Africa (UNECA).
9. The achievements attained during the early phases of the negotiations going up to 2016 included:
 - a) **The Establishment of the dedicated AfCFTA Support Unit** to provide technical and negotiating assistance to countries as well as secretarial and technical support to the AfCFTA negotiations structure;
 - b) **Implementing a Capacity Building Program** for those involved in the negotiations. The program included technical studies on the AfCFTA while the process of capacity building is continuous.
 - c) **Awareness Creation** for regional and continental stakeholders. The program included engagement of private sector, civil society organizations as well as other non-state actors to own the AfCFTA process.
 - d) **Establishment of Seven Technical Working Groups** created by the AfCFTA-NF to provide technical inputs;

In conjunction with strategic partners, **developing draft texts of legal instruments for the AfCFTA**, and

- e) **Technical Studies Conducted.** Some of the resource mobilization effort has culminated in technical studies to inform the AfCFTA processes. The EU provided financial support for the engagement of GFA Consultants to undertake up to 36 high quality technical studies to support AU Member States on the AfCFTA. The purpose of doing so has been to conduct the AfCFTA negotiations based on a clear understanding of benefits, challenges, and costs of various options related to the AfCFTA. The DTI is still looking into ways and means to secure additional technical assistance to the remaining works in the months ahead.

ii. Negotiations outcome

10. The 3rd Meeting of the African Union Ministers for Trade which was held in Niamey, Niger, decided on the modalities for the liberalization of trade in goods and for trade in services in line with the parameters set by the Assembly during the launch of the negotiations. The modalities provided clear guidelines to the negotiations. The modalities were as follows:
 - a) **Agreement on modalities for AfCFTA Trade in Goods Negotiations**
11. AMOT agreed on an ambitious target of 90% for tariff liberalization, which takes into account the overall goal of an integrated continent. At the same time, the adopted modalities provide sufficient flexibilities and length of time for some countries to adjust

and implement the significant commitments they will be undertaking under the AfCFTA. The next stage after this will be the submission of tariff offers in which would provide details of goods to be traded duty free and also those that would be considered sensitive or excluded. The offers will be consolidated into an Annex 1 of the AfCFTA Agreement. Seven Member States; i.e., Ethiopia, Djibouti, Madagascar, Malawi, Sudan, Zambia and Zimbabwe had sought a variation from this based on their economic circumstances. The Champion of the AfCFTA, His Excellency Issoufou Mahamadou, President of the Republic of Niger, was mandated to hold consultations with these countries. Djibouti has since withdrawn its reservation, but the remaining six countries require special dispensation.

b) *Agreement on modalities for AfCFTA Trade in Services Negotiations*

12. The modalities provide a basis for the liberalization of trade in services sectors among the AfCFTA Member States, as well as a basis for future regulatory cooperation, in line with their agreed commitments. It was agreed that the negotiations on Trade in Services would proceed on the basis of progressive liberalization that combines GATS-type scheduling of specific commitments, on the one hand, with regulatory cooperation, on the other hand, in a mixed approach.

c) *Signing of the AfCFTA Agreement*

13. During the 10th Extraordinary Session of the African Union Heads of State and Government, held on 21st March 2018 in Kigali, Rwanda the AfCFTA Agreement was signed following the conclusion of the negotiations of the following legal texts:
 - a) Agreement Establishing the AfCFTA;
 - b) Protocol on Trade in Goods;
 - c) Protocol on Trade in Services; and
 - d) Protocol on Rules and Procedures on the Settlement of Disputes,
14. During the 31st Ordinary Summit held in Nouakchott, Mauritania, in July 2018 the following legal texts and their annexes were adopted by Heads of States and Governments.
 - a) Annexes to the Protocol on Trade in Goods, being:
 - (i) Annex 1 on Schedules of tariff Concessions;
 - (ii) Annex 2 on Rules of Origin;
 - (iii) Annex 3 on Customs Cooperation and Mutual Administrative Assistance;
 - (iv) Annex 4 on Trade Facilitation;
 - (v) Annex 5 on Non-Tariff Barriers;
 - (vi) Annex 6 on Technical Barriers to Trade;
 - (vii) Annex 7 on Sanitary and Phytosanitary Measures;
 - (viii) Annex 8 on Transit, and
 - (ix) Annex 9 on Trade Remedies
 - b) Annexes to the Protocol on Rules and Procedures on the Settlement of Disputes being:
 - (i) Annex 1 on Working Procedures of the Panel;
 - (ii) Annex 2 on Expert Review; and

(iii) Annex 3 on Code of Conduct for Arbitrators and Panelists

15. Further the Heads of State and Government in their Decision of the 31st Ordinary Summit held in Nouakchott, Mauritania, in July 2018, adopted the five priority service sectors of Transport, Communication, Finance, Tourism and Business services.
16. Article 28 of the Protocol on Trade in Services provides that Member States may develop Annexes on:
 - a) Schedules of Specific Commitments;
 - b) MFN Exemption(s);
 - c) Air Transport Services;
 - d) List of Priority Sectors; and
 - e) Framework on Regulatory Cooperation

This will form part of Phase 1 implementation processes.

17. The last series of AfCFTA meetings were held in Cairo, Egypt in December 2018 and these included: 10th TWG Meeting on Rules of Origin; NF 14; STO 7 and these ended with AMOT 7. The Ministers of Trade came up with clear directions and decisions on, amongst others, the following:
 - a) Adoption of the template which will be used for tariff offers;
 - b) Development and revision of a roadmap for the completion of outstanding work
 - c) Clarity on the designation of sensitive products, exclusion lists, anti-concentration clause and double qualification;
 - d) Approval of the Guidelines for Development of Schedules of Specific Commitments and Framework for Regulatory Cooperation;
 - e) Establishment of three separate technical working groups to facilitate work on Phase 2 issues in the areas of Investment, Intellectual Property Rights and Competition Policy.

III. WAY FORWARD

i. *Built in Agenda for Phase I Negotiations*

18. While a lot of work has been done to conclude the major issues of the AfCFTA Agreement, there are a number of activities in the Built-In-Agenda to be undertaken for the operationalization of Phase 1 of the AfCFTA. Some of these are:
 - a) Conclusion of outstanding issues on modalities for tariff liberalization as this paves the way for the development of schedules of tariff concessions;
 - b) Appendix IV on Rules of Origin with details of the AfCFTA hybrid rules of origin as well as operating guidelines;
 - c) Conclusion of outstanding issues in the Annex on Rules of Origin including treatment of goods produced under the Special Economic Arrangements / Zones;
 - d) Finalisation of Guidelines for Implementation of Trade Remedies;
 - e) Necessary work to ensure preparedness in the implementation of the Annexes;

- f) Work related to negotiations on Trade in Services, such as, developing guidelines for negotiations; Schedules of Specific Commitments for each Member States in the priority service sectors;
 - g) Development of regulatory frameworks on all the services sectors; and
 - h) Broad-based awareness to stakeholders such as ordinary citizens and business people at national, regional and continental levels.
19. The above activities demand timely preparation and submission of technical studies. DTI is working on the same and equally it has engaged its strategic partners for their support.

ii. Phase 2 Negotiation Issues

20. Preparatory work on Phase 2 issues which comprise agreement on the Protocol on Investment, the Protocol on Intellectual Property Rights and a Protocol on Competition Policy is already under way. The 7th meeting of AMOT which was held Cairo, Egypt in December 2018 directed that the negotiations on these subject matters be concluded by June 2020.

iii. Ratification and Entry Into Force of the Agreement Establishing the AfCFTA

21. Article 23 of the Agreement Establishing the AfCFTA provides that the Agreement shall enter into force thirty (30) days after the deposit of the twenty second (22nd) instrument of ratification. As at 31st December 2018, forty nine countries had signed the AfCFTA Agreement. The remaining six are Benin, Botswana, Eritrea, Guinea Bissau, Nigeria and Zambia. Further the following nine countries: namely, Chad, Cote d'Ivoire, Eswatini, Ghana, Guinea, Kenya, Niger, Rwanda and Uganda have submitted their instruments of ratification. The Commission has also received information of additional countries who will be submitting their instruments of ratification in due course, while a number of countries are in various stages of ratification in line with their domestic requirements.
22. The achievement so far has been tremendously encouraging and to consolidate the signing and ratification process, DTI has developed AfCFTA stakeholder engagement strategy to be implemented in the months ahead.

iv. Establishment of AfCFTA Secretariat

23. On the 19th of March 2018, at the 18th Extraordinary Session, in Kigali, Rwanda, the Executive Council had requested the AU Commission to develop criteria that would ensure the establishment of an efficient AfCFTA Secretariat, which would in the interim be located within the Commission.
24. Accordingly, a study that would inform the discussions on the options to establish the AfCFTA Secretariat is underway and is expected to be submitted to the Commission soon.

IV. CONCLUSION

25. The AUC wishes to acknowledge the support and time which all the negotiating structures have put in coming up with the AfCFTA Agreement within such a record time. We would also wish to appreciate the tremendous support and drive given by His Excellency Issoufou Mahamadou, President of the Republic of Niger, who is the Leader of the African Continental Free Trade Area (AfCFTA) Negotiations. During the negotiations he has invited the negotiation structures twice to hold meetings in Niger, Niamey, and has supported the process by providing facilities and resources and by engaging with Member States at various levels, including the highest political levels.