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**REPORT OF THE SECRETARY GENERAL OF THE AFRICAN
CONTINENTAL FREE TRADE AREA (AFCFTA)**



Creating One Africa Market

AfCFTA
Secretariat

STATUS UPDATE ON THE AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA)

INTRODUCTION

1. This Report covers the period leading up to the 35th Ordinary Session of the Assembly of Heads of State and Government of the African Union, and provides an overview of developments and trends in the implementation of the Agreement Establishing the African Continental Free Trade Area (AfCFTA). It also captures the activities of the AfCFTA Secretariat, and highlights progress made towards the start of commercially meaningful trading under the AfCFTA. In addition, it also outlines progress in the Phase II negotiations and provides an update on the operational aspects of the Secretariat in making it fully functional, autonomous and effective in the discharge of its duties.

2. The Report is divided into four (4) Sections: **Section one** deals with the current status of signature and ratification of the Agreement Establishing the AfCFTA (the "Agreement"); **Section two** addresses status of outstanding negotiations; **Section three** is related to the Status of Implementation while **Section four** addresses matters related to intergovernmental and private Sector Engagements; and **Section five** makes recommendations as a way forward to build and sustain the momentum for full, timely and effective implementation of the AfCFTA Agreement.

SECTION ONE: CURRENT STATUS OF SIGNATURE AND RATIFICATION OF THE AGREEMENT ESTABLISHING THE AfCFTA

3. To date, the *Agreement Establishing the AfCFTA* has been signed by 54 AU Member States with only one country, Eritrea still not having signed. Forty (40) African Union Member States are also State Parties to the Agreement by virtue of their deposits of the instruments of ratification of the Agreement, demonstrating an unequivocal political will to achieve market integration in Africa. The AfCFTA Secretariat has been advocating and lobbying for 100% signature and ratification of the Agreement.

4. Thus, in parallel with the political steps we are taking to encourage Member States to ratify the Agreement, we urge the Executive Council to make the following recommendations to the *Summit of Heads of State and Government of the African Union*:

- a. *Engage the State of Eritrea to sign and ratify the AfCFTA Agreement;*
- b. *Urge constituent members of Customs Unions that have submitted their Schedules collectively as part of regional blocs to ratify and deposit their instruments of ratification of the Agreement before a specified timeline;*
- c. *Commend His Excellency Mahamadou Issoufou for his leadership as the Champion of the AfCFTA; and*

- d. *Urge the Secretariat to pay particular attention to countries that are yet to ratify and deposit their instruments of ratification of the Agreement, including the organization of missions to engage these*

SECTION TWO: STATUS OF NEGOTIATIONS

Rules of Origin and Market Access

5. On trade in goods, our countries have collectively undertaken commitments to liberalise substantially all trade by eliminating tariffs on 97 percent of tariff lines – over a specified period of time. The remaining 3 percent of the tariff lines – in fact the Exclusion List – are those products on which no reduction in tariffs would be proposed. So far, 43 countries representing 78% of African Union membership have submitted their tariff offers. We are currently in receipt of tariff offers from 4 Customs Unions, namely the Economic and Monetary Union of Central Africa (CEMAC); the East African Community (EAC); the Economic Community of West African States (ECOWAS) plus Mauritania; and the Southern African Customs Union (SACU). Together, these 4 Customs Unions account for more than two-thirds of all the offers submitted.

6. In accordance with the mandate entrusted to it by the Council of Ministers, the AfCFTA Secretariat continues the work on technical verification of the submitted offers to ensure that they are in compliance with the modalities adopted by the 29th Ordinary Session of the Assembly of Heads of State and Government of the African Union. The AfCFTA Secretariat also continues to provide technical support and capacity building towards preparation and submission of tariff offers. On a needs basis, technical support and capacity building is provided to Member States to ensure compliance with the Negotiating Modalities of the AfCFTA. The Secretariat shall continue to follow up with State Parties and Member States to submit their tariff offers.

7. At their 7th Meeting held in Accra, Ghana on 10 October 2021, the Council of Ministers responsible for Trade approved a Ministerial Directive aimed at ensuring the implementation of the Decision of the Assembly of Heads of State and Government of the African Union on the start of preferential trade under the AfCFTA. The Ministerial Directive will allow the start of preferential trade under the AfCFTA on the basis of the 28 technically verified offers¹ that meet the minimum threshold of 90% of the tariff lines as well as other offers which will meet the 90 % threshold at a later stage.

8. On Rules of Origin negotiations, about 87% of the tariff lines have been agreed upon. At the 7th Meeting of the Council of Ministers, Ministers of Trade endorsed the provisional application of Rules of Origin in existing trade regimes of Regional Economic Communities (RECs), pending the adoption of all outstanding issues in the Rules of Origin

¹ As a reminder, the offers from the following countries have already been certified: Democratic Republic of the Congo; Egypt; Madagascar; Malawi; Mauritius; Morocco; Seychelles; Zambia; Gabon; Cameroon; Central African Republic; Chad; Republic of Congo; Equatorial Guinea; Benin; Burkina Faso; Cabo Verde; Ivory Coast; The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

negotiations, in line with Article 42(3) of Annex 2 of the Protocol on Trade in Goods. In this regard, Ministers requested the AfCFTA Secretariat to develop guidelines for such application.

9. As decided by the 13th Extraordinary Session, the Schedules of Tariff Concessions adopted by Ministers will be applied provisionally, pending the adoption of the final Schedules of Tariff Concessions by the Assembly of Heads of State and Government in accordance with the AfCFTA Agreement and the Adopted Modalities.

10. *We therefore urge the Executive Council to take into consideration the following recommendations to the Assembly:*

- a. *Endorse the Ministerial Directive on the Application of the Provisional Schedules of Tariff Concession in order to ensure the provisional application of the tariff offers on a basis across the 29 Member States, pending the conclusion of all outstanding issues on the Schedules of Tariff Concession.*
- b. *Invite State Parties and non-State Parties and Customs Unions that are yet to submit their Initial Offers to urgently do so, in line with the decisions of the Assembly of Heads of State and Government.*
- c. *Urge all State Parties to finalize bilateral negotiations over the Sensitive Products and List of Exclusions to submit the final Schedules of Tariff Concessions as required by the AfCFTA Agreement.*

Trade and Services

11. On Trade in Services, there have been significant advancements in the implementation of the objectives of the Protocol on Trade in Services. So far, the Secretariat has received 46 initial offers submitted by State and non-State Parties, covering the five priority sectors, namely: Business, Communication, Financial, Tourism and Transport services sectors. Some State and non-State Parties, namely members of CEMAC, EAC, and ECOWAS, have all presented consolidated Offers as part of this process.

12. The Committee on Trade in Services (CTiS) was established to undertake the technical work required to achieve the objectives under the Protocol on Trade in Services. At the 1st Meeting of the CTiS, the Committee adopted its Terms of Reference (ToR) and recommended five (5) Sub-Committees (Sub-Committee on Specific Commitments (SCSC); Sub-Committee on Regulatory Frameworks (SCRF); Sub-Committee on Mutual Recognition of Professional Qualifications (SCMPRQ); Sub-Committee on Trade in Services-related Issues and Sub-Committee on AfCFTA Trade in Services Rules) to be established to assist its work. This was approved by the Council of Ministers, enabling some of these Sub - Committees to convene throughout the year.

13. In 2021, there was a total of nine (9) Sub - Committee Meetings at which capacity building sessions were held to technically equip the trade in services negotiators, TORs were adopted, and technical documents were considered and advanced to the CTiS for further consideration. There was also a total of five (5) Meetings of the CTiS, where the

documents from the Sub-Committees were considered and submitted to the STOs and COM for adoption. Negotiations on submitted offers in the five priority sectors (Business Services, Communications, Financial Services, Tourism and Transportation) also officially commenced in the CTiS and, were specifically carried out in four (4) Dedicated Sessions where State and non - State Parties exchanged requests and responses to requests on all submitted offers. By December 2021, 46 State and non-State Parties had submitted offers in the five priority sectors and horizontal section.

14. To assist State and non-State Parties in revising and submitting improved offers that are compliant with both the Trade in Services Protocol and the Guidelines for Services Negotiations under the AfCFTA Protocol on Trade in Services (Negotiating Guidelines), the AfCFTA Secretariat has undertaken an analysis of all offers submitted by State and non-State Parties. In addition, the Secretariat assisted State and non-State Parties in developing a verification methodology to be used for the verification of final schedules of specific commitments under the AfCFTA Protocol on Trade in Services. The Secretariat will continue to prepare verification reports of submitted schedules of specific commitments.

15. *We therefore urge the Executive Council to make the following recommendations to the Assembly of Heads of State and Government:*

- a. *Direct the Council of Ministers to conclude the negotiations on the schedules of specific commitments in the five priority sectors for endorsement at the next meeting of the Assembly of Heads of State and Government;*
- b. *Direct the Council of Ministers to commence negotiations in the remaining services sectors by July 2022 and to conclude the negotiations by December 2023.*
- c. *Endorse the Guiding Principles for Negotiating Regulatory Frameworks in Elements for Negotiating a Framework Document on Regulatory Cooperation Under the AfCFTA Protocol on Trade In Services; and*
- d. *Direct the Council of Ministers to fast track the completion of all outstanding issues in the 5 priority services sectors as it relates to the development of Regulatory Frameworks by October 2023.*

Phase II negotiations

16. Negotiations on Phase II are at different stages: On 3rd May 2021, the AfCFTA Council of Ministers responsible for Trade, established the Phase II Committees to facilitate negotiations on the Protocols on Investment; Competition Policy; Intellectual Property Rights; E-Commerce; and Women and Youth in Trade.

Protocol on Digital Trade

17. In February 2019, the Assembly of Heads of State and Government of the African Union directed the inclusion of e-commerce or digital trade in the AfCFTA negotiations. These negotiations are expected to result in the development of a Protocol on Digital Trade to the AfCFTA Agreement.

18. The AfCFTA Council of Ministers, during its 5th Meeting held on 3 May 2021 in Accra,

Ghana established the Committee on Digital Trade to coordinate and facilitate the negotiations of digital trade within the AfCFTA. The Committee is yet to have its inaugural meeting.

19. On 9 November 2021, the AfCFTA Secretariat facilitated a virtual Brainstorming Session which aimed to determine and identify potential issues to consider in the development of the Protocol on Digital Trade, in furtherance of the objectives of the AfCFTA. The Session brought together relevant digital economy agencies and policymakers to discuss and share their experiences and expertise in the digital economy and related matters with the principal objective of identifying specific substantive issues to include in the AfCFTA Protocol on Digital Trade. The Session considered issues relevant to developing a Protocol capable of advancing and realizing the objectives of the AfCFTA and, enabling AfCFTA State and non-State Parties to eliminate barriers to leverage the benefits of digital trade.

20. In addition, the AfCFTA Secretariat participated in several digital trade related meetings held at national, regional and continental levels. The participation of the AfCFTA Secretariat was aimed at providing participants with an overview of and update on the negotiations of digital trade within the AfCFTA.

Protocol on Investment

21. Activities toward the development of the Protocol on Investment commenced and the Committee on Investment was established by the Council of Ministers in 2021. The Committee developed and adopted their Terms of Reference and most importantly, the Negotiating Modalities and Guiding Principles for the negotiation of the Protocol on Investment. The Committee on Investment held two meetings in 2021.

22. In addition, the AfCFTA Secretariat facilitated capacity building engagements, and regional stakeholder engagements to receive views on the potential issues for inclusion in the Protocol. Discussions were held with the Committee on Investment to identify the key elements and possible focus areas for negotiations, in line with the States' needs, while building on the initiatives and developments in the State Parties and Continental and Regional Economic Communities.

23. A taskforce was set up to develop the zero draft of the Protocol on Investment. The Taskforce developed the Zero draft of the Protocol based on the stakeholder engagements previously held as relates to investment protection, investor obligations, investment dispute prevention and resolution and broader sustainable investment objectives. It was also based on the Situational Analysis undertaken on Investment treaties in Africa and, inputs from Regional Consultations and discussions presented during the 1st Meeting of the Committee on Investment. The zero draft aims at achieving the objectives outlined in the "Modalities and Principles for Negotiating the AfCFTA Protocol on Investment".

24. The Committee on Investment considered the Zero Draft AfCFTA Protocol on

Investment, exchanged views and provided initial comments and first impressions on the Preamble and Chapter 1, covering General Provisions (Definitions, Objective, Scope of Application; Denial of Benefits; and Relationship to International Investment Agreements). The Committee noted that the negotiations on the Protocol on Investment could not be concluded by 31st December 2021 and therefore presented the need to extend the deadline to conclude the negotiations of the AfCFTA Protocol on Investment.

Protocol on Intellectual Property Rights

25. The Committee on IPRs was established and its Terms of Reference was adopted by the Council of Ministers in 2021. Following that, the Committee convened its first meeting which developed and adopted the Negotiating Modalities and Guiding Principles for the negotiation of the Protocol on IPRs. The Committee on IPRs held one meeting in 2021.

26. In addition, the AfCFTA Secretariat organized capacity building activities to enhance the understanding of the members of the Committee on IPRs on regional as well as international IPR-related issues. The AfCFTA Secretariat also conducted a situational analysis study on the state of play of IPRs in Africa which was presented at the meeting of the Committee on IPRs and deliberated on by members of the Committee.

Protocol on Women and Youth in Trade

27. The Assembly of Heads of State and Government of the African Union, at its thirteenth (13th) Extraordinary Session held in December 2020, committed to 'broaden inclusiveness in the operation of the AfCFTA through interventions that support young Africans, women and small and medium enterprises as well as integrating informal cross-border traders into formal economy by implementing the simplified trade regime'.

28. The AfCFTA Secretariat is translating the commitment of the Assembly into concrete actions and has therefore begun the groundwork towards the negotiation of a Protocol on Women and Youth to the AfCFTA Agreement that will enable women and youth to meaningfully leverage trade opportunities under the AfCFTA.

29. The AfCFTA Secretariat, in collaboration with UNDP and UN Women, is engaging in national consultations and carrying out regional surveys to capture the voices of many women-led businesses to understand the constraints women face when trading on the continent and their expectations. As of December 2021, consultations have been held in 25 countries and additional consultations are ongoing. The consultations provide a platform for women in trade to express their opinion and voice their concerns and expectations vis-à-vis the AfCFTA. The consultations will culminate into an AfCFTA Women in Trade Conference that seeks will bring together women in trade and relevant stakeholders to discuss specific challenges women face in accessing markets on the continent and policies and programmes to address them. It is expected that the outcome of the Conference will feed into the negotiations of the Women and Youth in Trade Protocol.

30. The AfCFTA Secretariat has further engaged women and youth in trade and other relevant stakeholders (governments, financiers and development partners) through seminars that were held at the Intra-Africa Trade Fair 2021 in Durban, South Africa. The Secretariat kickstarted the IATF 2021 with a seminar on Women in Trade under the theme “Inclusive Trade under the AfCFTA: Creating an enabling environment to promote the meaningful participation of women in trade” and a seminar focusing on youth and the AfCFTA under the theme “Inclusive trading under the AfCFTA: Harnessing the benefits of the AfCFTA with and for the African youth”. The seminars discussed and brainstormed ways in which women and youth can harness the opportunities offered by the AfCFTA.

31. The AfCFTA Secretariat has attended a significant number of conferences, seminars and master classes on the AfCFTA and women and youth, to disseminate information with its audience about the AfCFTA and the different supporting tools developed to promote an inclusive trade ecosystem on the continent.

32. The AfCFTA Secretariat is planning a continental conference on women in trade to be held from 8 to 10 March 2022. The Conference is a culmination of all national consultations carried out in 2021 and will bring together policy makers, regulators, development partners, women in trade as well as women-led businesses to discuss constraints and bottlenecks hindering women's participation in intra-Africa trade and to identify opportunities of the AfCFTA for women-led businesses.

33. The AfCFTA Secretariat will further strengthen its engagement with the African youth to ensure that a consultative process similar to that of women in trade is undertaken ahead of the negotiations.

Protocol on Competition

34. The secretariat organized two meeting for the competition committee and the First (1st) Capacity Building Workshop on Competition Policy for the African Continental Free Trade Area (AfCFTA).

35. The committee developed its working plan for 2022 and adopted indicative work plan to sequence the negotiations. The AfCFTA secretariat has been mandated to develop the competition protocol draft by march 2022. Currently the Secretariat is developing an African made protocol on competition policies. Such protocol will eventually allow the creation of the first pan African competition commission under the AfCFTA.

SECTION THREE: STATUS OF IMPLEMENTATION

Operationalization of the AfCFTA

Structure of the AfCFTA Secretariat

36. It will be recalled that the Assembly vide Decision Assembly/AU/Dec.751(XXXIII) “DIRECTED the AfCFTA Council of Ministers and relevant Policy Organs of the AU to

finalize consideration of the Draft Organizational Structure, including the appropriate functions of the appointed directors and the adequate number of the Permanent Secretariat of the AfCFTA". Accordingly, and following the presentation of the said structure the Executive Council vide decision EX.CL/Dec.1126(XXXIX) recommended to the Assembly the approval of the AfCFTA Phase II Structures comprising of 296 staff, under a phased 4-year recruitment process. The Executive Council also approved the establishment of the AfCFTA Adjustment Facility – a structure which shall be financed from the interest earned from the investments managed by the Fund Manager (Afreximbank). It would further be recalled that, the Executive Council, as priority positions approved 104 positions for recruitment in the year 2022. In compliance with the AU procedures, I wish to inform you that the budgetary implications related to this recruitment is before the PRC Sub-Committee on budgetary matters.

Human Resources, Financial and budgetary matters

37. The Phase-1 structure of the AfCFTA Secretariat was approved in December 2020. This structure was comprising of 31 positions in it. Eighteen (18) out of the thirty-one (31) positions have been filled. The filled positions among others, include four Director positions, namely: Director Trade in Goods; the Director Trade in Services, the Director of Administration and Human Resources Management and the Director of Finance. The recruitment of these Directors was made on equal regional representation and on fully gender parity. We can report that 11 staff have already assumed duty and 7 are being on-boarded. I wish to note that the recruitment under Phase I, which is completed at 60%, was delayed in order to comply with the improvements that were being made to AU's new Merit Based Recruitment System (MBRS) by the AUC and the R10 Committee. Subsequently, a number of senior management positions were only advertised as soon as the system was ready in May 2021. I am now pleased to report that the recruitment of the remainder of the vacant positions in the Phase-1 structure is almost completed.

38. On Financial and budgetary matters, I also wish to inform you that the AfCFTA Secretariat has complied with Decision EX.CL/Dec.1031 (XXXIV) and EX.CL/Dec1057 (XXXV), which amongst others emphasizes on the need to strictly observe accountability and the oversight mechanism contained in the Golden Rules and overall the AU Financial Rules and Regulations. This includes the rollout and implementation of SAP, on timely submission of IPSAS compliance financial reports to the stakeholders, enhanced internal control on budget execution and strict adherence of AU Travel policy. All expenditures incurred during the year are authorized by the policy organs. The Secretariat also has successfully presented to the Member State its 2022 budget in compliance with Member States guidance to accompany any budget request with adopted structure. The Secretariat has managed to support the audit exercise conducted by Office of Internal Oversight, its recommendation of which will help to strengthen the internal control and improve the financial management system.

Customs operations

39. The AfCFTA Agreement under Article 4 provides for cooperation on customs matters for implementation of trade facilitation measures. Annex 3 of the AfCFTA Agreement on Customs co-operation and mutual administrative Assistance also sets out details aimed at improving the regulations of trade flows, enforcement of applicable laws within State Parties, and Mutual Administrative Assistance.

40. In recognition of the critical role of Customs in achieving the goals and objectives of the AfCFTA, the 4th Meeting of Council of Ministers approved the establishment of the AfCFTA Committee of the Director Generals of Customs. The Council of Ministers also established the Sub-Committee on Customs Cooperation, Trade Facilitation, and Transit.

41. In this regard and in line with the need to promote trade facilitation, transit and customs cooperation along the corridor the AfCFTA Secretariat in collaboration with the Government of Togo organized a meeting of Ministers responsible for trade, Director Generals of Customs, Customs and Trade Experts on 16th and 17th September 2021 to discuss issues of Trade Facilitation, Transit and Customs Cooperation along the Corridor.

42. As a pilot project, the Secretariat is directly engaging with the traders, economic operators and stakeholders on ground (public and private) so as to assess the implementation of the Abidjan – Lagos Corridor. This is of enormous importance to regional and intra-African trade and transport by linking economically vibrant and dynamic African cities of Abidjan, Accra, Cotonou, Lome and Lagos and accounts for over 75% of economic activities in the ECOWAS region. This will also aid the AfCFTA Secretariat's corridor by corridor approach to promoting trade facilitation, transit and customs cooperation programmes and the overall effective implementation of the AfCFTA Agreement. It is also worth noting that the Abidjan – Lagos Corridor is a flagship Programme for Infrastructure Development in Africa (PIDA).

Dispute Settlement Mechanism

43. The AfCFTA Secretariat has taken additional steps to ensure that work to operationalize the Dispute Settlement Mechanism to accompany the commencement of trading under the AfCFTA begun in earnest. The Dispute Settlement Body (DSB) was specifically tasked with the surveillance of implementation of the AfCFTA under Article 20 of the Agreement Establishing the AfCFTA as elaborated by the Protocol on Dispute Settlement.

44. Besides establishing the Appellate Body as a standing tribunal to hear appeals from cases adjudicated by Panels, we have invited the State Parties to nominate experts to the Indicative List of Panelists. The Dispute Settlement Body is the heart of the Agreement; it sends a very strong signal to investors that Africa is committed to abide by the rules of the AfCFTA.

Collaboration with Regional Economic Communities

45. The AfCFTA Agreement acknowledges the role of the Regional Economic Communities “as building blocks towards the establishment of the African Continental Free Trade Area (AfCFTA)”. It further emphasizes the need to “consolidate and build on achievements in services liberalization and regulatory harmonization at the Regional Economic Community (REC)”.

46. The implementation of the AfCFTA will likely influence future trade policies of the RECs. In this regard, effective collaboration between the RECs and the AfCFTA Secretariat is necessary to ensure that the AfCFTA outcomes are consistent with regional advancements in trade integration made thus far. Various steps have been taken by the Secretariat towards strengthening this collaboration.

47. The first Coordination Meeting of the Heads of the RECs on the Implementation of the AfCFTA was convened in Accra – Ghana in a hybrid format on 20 September 2021. With a view to enhancing the collaboration between the Secretariats of the AfCFTA and the RECs in the implementation of the AfCFTA through the adoption of an Action Plan for Collaboration. Monitoring of the implementation of the set Action plan will be conducted through regular meetings and reports to the AU Policy Organs.

Participation in the Mid-Year Coordination Meeting between AU, Regional Economic Communities and Regional Mechanisms

48. In parallel to the collaboration with the Secretariat of the RECs, the AfCFTA Secretariat takes part at the Mid-Year Coordination Meeting Between African Union (AU), Regional Economic Communities (RECs), and Regional Mechanisms (RMs).

49. The AfCFTA Secretariat reported on the implementation of efforts undertaken to accelerate the integration process and the coordination with the RECs at the Third Mid-Year Coordination Meeting in Addis Ababa, Ethiopia, on 16 October 2021. The report was presented by the AfCFTA Leader H.E. Mahamadou Isoufou accompanied by the Secretary General of the AfCFTA H.E. Wamkele Mene.

SECTION FOUR: PRIVATE SECTOR ENGAGEMENT

50. The key to delivering impact and economic recovery in the post-pandemic world will be engaging with stakeholders from across the private and public sector, and from across all corners of the continent to ensure an inclusive approach to implementing the AfCFTA. Agenda 2063 also emphasizes the need to accelerate Public-Private Partnership (PPP) in Africa. Meetings of the AU Policy Organs have also implored on the AfCFTA Secretariat to strengthen its collaboration with the private sector as its key for the implementation of the AfCFTA. The AfCFTA has set to achieve this goal through Value Chains Development, the operationalization of the Adjustment Facility, the Pan-African Payments and Settlements System (PAPSS), Launch of the AfCFTA Business Forum and Intra-Africa Trade Fair (IATF).

Value Chains Development

51. The potential for value chains development is critical to the implementation of the AfCFTA. Article 3 (g) of the AfCFTA Agreement sets the objective to “promote industrial development through diversification and regional value chain development, agricultural development and food security”.

52. In the implementation of the AfCFTA Agreement, and taking into account the importance of the private sector involvement, the AfCFTA Council of Ministers have identified priorities related to private sector engagement, focusing on specific value chains with the potential to boost intra-Africa trade and promote production. These value chains should be able to promote inclusivity, Small, Micro and Medium Enterprises (SMMEs), women, and youth participation as part of our plans to confront inequality, poverty, and unemployment. We prioritized an initial list of four value chains for the first set of interventions, based on high potential for meeting demand locally and the ability to produce the goods locally. These sectors are agriculture and agro-processing, automotive, pharmaceuticals, and transportation and logistics. In implementation of the set objectives, the AfCFTA Secretariat has also been coordinating its efforts with Africa CDC, the AUDA-NEPAD and other AU bodies.

The operationalization of the Adjustment Facility

53. There is no doubt that the AfCFTA will create significant general and long-term benefits across the continent and stimulate structural transformation. However, as with any major trade liberalization regime, the AfCFTA Agreement will also introduce near-term disruptions as tariff revenues by State Parties are reduced, industrial sectors are disordered, businesses and supply chains are reorganized, and employment is dislocated – often in ways that cannot be anticipated. It is estimated that funds that are required to ensure uninterrupted implementation of the AfCFTA and to eliminate the adjustment cost, will amount to \$7.7 billion over the next six to ten years.

54. In this regard, the Assembly by Decision Ext/Assembly/AU/ Decl.1(XII) of July 2019 committed to establishing an adjustment Facility (the “Facility”). As directed by the 4th Meeting of the Council of Trade Ministers of 2nd February 2021, the AfCFTA Secretariat is working with Afreximbank to establish an Interim Adjustment Facility (the “Interim Facility”). I am also pleased to report that the Afreximbank, as approved by its Board, has pledged a contribution of USD \$1 billion towards this effort.

55. The AfCFTA Adjustment Facility will address structural changes that may be required and supports State Parties to address revenue shortfalls. The Facility is expected to have preliminary three (3) components: The Credit Fund (debt financing); the General Fund (funds received from public and private individuals, and entities and offers of concessional financing and other loans); and the Base Fund (through the voluntary contribution of State Parties and other partners). It shall be part of the AfCFTA Secretariat in Accra, Ghana while the Afreximbank serves as the Fund Manager of the Facility. The Adjustment Facility is also designed in a manner that the Staff of the Secretariat shall

be financed from the interest earned from the investments managed by the Fund Manager. The Secretariat of the AfCFTA is currently finalizing the operationalization of the Facilities.

Pan-African Payments and Settlements System (PAPSS)

56. By Decision Ext/Assembly/AU/Dec.1(XII), the 12th Extra-Ordinary Session of the Assembly of Heads of States and Governments held in July 2019, launched the Pan-African Payments and Settlements System (PAPSS). The PAPSS is a revolutionary Financial Market Infrastructure that enables payment for intra-Africa trade in national currencies, thereby reducing the foreign currency transfer costs and time for the settlement of cross-border payments. By simplifying cross-border transactions and reducing the dependency on third currencies for these transactions, PAPSS is set to boost intra-African trade significantly and underpin the implementation of the AfCFTA.

57. On the 13th January 2022, the AfCFTA Secretariat and Afreximbank hosted a Commercial launch of the PAPSS, in Accra, Ghana. The launching of the PAPSS by the Heads of States and Governments is an exemplary system of Public-Private Partnership (PPP) for the operationalization of trading under the AfCFTA. It puts in place a platform and infrastructure for the efficient conduct of cross-border payments developed through the support of the African Export and Import Bank (Afreximbank).

58. The pilot for PAPSS is focused on the West African Monetary Zone (WAMZ) and as directed by the Council of Ministers, the AfCFTA Secretariat is working with the Afreximbank and African Central Bank Governors to develop a regulatory framework on cross-border payments to support the operationalization of the PAPSS.

Launch of the AfCFTA Business Investment Forum

59. Consolidating Africa into one trade area provided great opportunities for entrepreneurs, businesses, and consumers across the continent, unlocking trade and manufacturing potentials, enhancing industrialization in Africa. The implementation of the AfCFTA Agreement and the start of commercial engagements for meaningful trading under the AfCFTA only comes to life with the involvement of the businesses Sector.

60. In leading such engagements, the maiden AfCFTA - Business Investment Forum was launched on 3 August 2021 by H.E. João Manuel Gonçalves Lourenço, President of the Republic of Angola. The aim of the Forum is to further expand business relations through the promotion of investment and mutually complementary partnerships in the relations between the two countries, whilst the Secretariat provides a meaningful platform for engagement.

61. AfCFTA will continue to provide a platform for business to government engagements through the Business- Investment Forums and intends to strengthen its efforts for the year 2022. We will seek opportunities to support respective governments' engagements with the private sector.

Intra-Africa Trade Fair (IATF)

62. The 2nd IATF (IATF 2021) was hosted by the Republic of South Africa in Durban, from 15 to 21 November 2021 under the theme “Bridging Bridges for a Successful AfCFTA”. This bi-annual trade show is convened by the African Union Commission, the AfCFTA Secretariat, the African Export-Import Bank (Afreximbank), and the government of the host country, otherwise referred to as the IATF Advisory Council.

63. The overall aim of the IATF is to boost intra-African trade by filling existing trade and market information gaps that negatively affect the level of trade within the continent. The IATF is a platform that allows key trade stakeholders and players to share information and best practices on trade, investment, and markets; provides a unique opportunity for government, selected buyers, investors, entrepreneurs, and product manufacturers to discuss relevant trade-related policy issues and opportunities; and offers exhibitors an opportunity to showcase their goods and services and conclude deals.

64. During the second IATF, US\$42.1 billion worth of trade and investment deals were signed, against the preset target of US\$40 billion. IATF 2021 attracted 1161 exhibitors against the targeted 1100 exhibitors. The third edition of IATF will be hosted by the Republic of Cote d’Ivoire in November 2023.

Special Economic Zones

65. The AfCFTA Agreement under Article 23 provides for the establishment and operation of special economic arrangements or zones for the purpose of accelerating development. The First (1st) African Continental Free Trade Area (AfCFTA) Consultative Meeting on Special Economic Zones (SEZs) was convened in Libreville, Gabon on 1st to 2nd November, 2021. The Meeting was held in support to the government of Gabon, which spearheaded discussions on the treatment of SEZs under the AfCFTA. The overall objective of the meeting was to provide a platform for African Senior Trade Officials, SEZ policymakers, and experts to exchange views and experiences on SEZ policy in the context of developing SEZ regulations for the AfCFTA.

66. In light of the outcomes of this meeting, the AfCFTA Secretariat was requested to put together draft regulations on SEZs to be considered by the Council of Ministers taking into consideration the recommendations made during the Meeting.

SECTION FIVE: CHALLENGES AND RECOMMENDATIONS

67. In light of the above developments, the Council of Ministers Responsible for Trade that was held on 10 October 2021, in Accra, Ghana, recognized the critical importance of the role of the Assembly in advancing progress in the implementation of the AfCFTA and in the remainder of the AfCFTA negotiations, and recommended the convening of annual Extraordinary (Special) Summits, dedicated to the AfCFTA. This proposal is made as the implementation of the AfCFTA, a flagship program that addressed not only trade but developmental matters addressed a wide spectrum of matters, which would require a

dedicated sufficient time for guidance by the Assembly.

68. The next Meeting of the AfCFTA Council of Ministers is scheduled to take place in Accra, Ghana on the 28th and 29th January 2022. The Ministers are expected to make decisions on outstanding issues on AfCFTA and their report would be presented to the Assembly through the Executive Council. This will be followed by a Report by the Champion on AfCFTA to be presented to the Assembly of Heads of State and Government.

DRAFT DECISION ON THE AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA)

The Assembly,

1. **RECALLS** Decision Ext/Assembly/AU/Dec.1(XIII) adopted at its 13th Extraordinary Session held on 5 December 2020 to start trading under the AfCFTA on 1 January 2021, on the basis of legally implementable and reciprocal Schedules of Tariff Concessions, with agreed Rules of Origin, and Customs Documentation;
2. **TAKES NOTE WITH APPRECIATION** of the Report of H.E. Mr. Issoufou Mahamadou, the Leader and Champion of the AfCFTA and former President of the Republic of Niger, and **ADOPTS** the recommendations thereof on the progress achieved since the start of trading under the AfCFTA on 1 January 2021;
3. **ALSO TAKES NOTE** of the Report of the 8th Meeting of the Council of Ministers Responsible for Trade held in Accra – Ghana on xxx on xxx 2022
4. **FURTHER TAKES NOTE** of the Report of the 40th Session of the Executive Council, held in Addis Ababa – Ethiopia on 2 – 3 February 2022, and the recommendations contained therein;
5. **COMMENDS** the role of all State Parties, non-State Parties, Customs Unions, the Council of Ministers Responsible for Trade, other AfCFTA Implementing Institutions, the African Union Commission (AUC), Regional Economic Communities (RECs), African Development Bank (AfDB), the African Export Import Bank (Afreximbank) and the other African Union Cooperating Partners, on the significant progress made towards conclusion of the remainder of all outstanding issues in the negotiations and the start of commercially meaningful trading under the AfCFTA;

Signatures and Ratifications

6. **CONGRATULATES** Burundi, Seychelles and xxx for having recently deposited their instruments of ratification of the Agreement Establishing the AfCFTA with the Chairperson of the African Union Commission, thus increasing the number of State Parties to thirty-nine (39);
7. **REITERATES** its congratulations to the thirty nine (39) State Parties who deposited their instruments of ratification of the AfCFTA Agreement with the Chairperson of the Commission, namely: Angola, Burkina Faso, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Congo, Djibouti, Egypt, Eswatini, Ethiopia, Equatorial Guinea, Gabon, The Gambia, Ghana, Guinea, Kenya, Lesotho, Mali, Mauritania, Mauritius, Namibia, Niger, Nigeria, Rwanda, Saharawi Arab Democratic Republic, Sao Tome and Principe, Senegal, Sierra Leone, South Africa, Togo, Tunisia, Uganda and Zimbabwe;

8. **URGES** Cabo Verde, Democratic Republic of Congo, and the United Republic of Tanzania, who have ratified the *Agreement Establishing the AfCFTA* through their domestic legislative processes, to take the additional step of depositing their instruments of ratification of the Agreement with the Chairperson of the African Union Commission;
9. **CALLS UPON** the remainder of the non-State Parties, namely Benin; Botswana; Comoros; Libya; Liberia; Madagascar; Morocco; Mozambique; Somalia; Sudan; and South Sudan, which have not yet ratified the Agreement to do so as soon as possible and qualify as State Parties, in order to increase the size of the market and the volume of trade under the AfCFTA before xxx;
10. **COMMENDS** members of the four (4) Regional Economic Communities (RECs) that have submitted offers collectively as part of Customs Unions, and **URGES** their constituent members that are yet to ratify and deposit their respective instruments of ratification of the Agreement Establishing the AfCFTA to take urgent steps necessary to do so before xxx.

Protocol on Trade in Goods

11. **WELCOMES** the submissions of the 43 tariff offers by:
 - a. Economic and Monetary Community of Central Africa (CEMAC) Member States: Cameroon, Chad, the Central African Republic, Equatorial Guinea, Gabon, and the Republic of the Congo;
 - b. East African Community (EAC) Member States: Burundi, Kenya, Rwanda, South Sudan, United Republic of Tanzania and Uganda;
 - c. Economic Community of West African States (ECOWAS) Member States plus Mauritania: Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo, plus Mauritania;
 - d. Southern African Customs Union (SACU) Member States; Botswana, Eswatini, Lesotho, Namibia, and South Africa; and
 - e. Individual Country Submissions: Democratic Republic of Congo, Egypt, Madagascar, Malawi, Mauritius, Morocco, Sao Tome, Seychelles, Zambia and Zimbabwe.
12. **CONGRATULATES** the AfCFTA Council of Ministers and the AfCFTA Secretariat for the transmission of all the 29² technically verified tariff offers that

² CEMAC: Cameroon, Chad, the Central African Republic, Equatorial Guinea, Gabon, and the Republic of Congo;

ECOWAS plus Mauritania: Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo + Mauritania;

are compliant with the Modalities for Tariff Liberalisation under the AfCFTA, and **DIRECTS** the 29 Member States to fast track the domestication processes in order to start commercially meaningful trading under the AfCFTA regime;

13. **ENDORSES** the Ministerial Directive on the Application of the Provisional Schedules of Tariff Concession in order to ensure the provisional application of the tariff offers across the 29 Member States, pending the conclusion of all outstanding issues on the Schedules of Tariff Concession
14. **DECIDES** that subsequent tariff Schedules submitted by the State Parties must specify a schedule of tariff cuts that meets the annual tariff reduction schedule in order to achieve zero-rated duties on 90% of tariffs lines with the time frames set out in the Modalities and subject to reciprocity;
15. **ALSO DECIDES** that the AfCFTA dismantling of tariffs should be annual tariff cuts based on the date of start of trading on 1 January 2021, and **DIRECTS** that future submissions and accessions should, reciprocally, apply tariff reductions following the current stage of liberalisation as set in the Modalities;
16. **FURTHER DIRECTS** the AfCFTA Secretariat to facilitate negotiations of the remaining 10% of the tariff lines [Sensitive Products (7%) and Excluded Products (3% not exceeding 10% of the total value of trade)], and **REQUESTS** the AfCFTA Council of Ministers to submit the final Schedules of Tariff Concessions as required by the AfCFTA Agreement by xxx.
17. **DIRECTS** the Council of Ministers, the AfCFTA Secretariat, State Parties and Customs Authorities to annually develop AfCFTA Electronic Tariff book identifying the annual tariff reduction by State Parties;
18. **ALSO DIRECTS** the AfCFTA Secretariat to assist the State Parties in migrating to the HS 2022 and transpose their Schedules of Tariff Concessions to HS 2022
19. **URGES** the State Parties to fast track the publication of the trade procedures, documents and put in place necessary trade infrastructure that is needed for effective trading;
20. **COMMENDS** the AfCFTA Secretariat on the progress made on trade facilitation on the Abidjan – Lagos Corridor, and **ENDORSES** corridor approach to trade facilitation interventions towards the implementation of the AfCFTA;
21. **DIRECTS** the AfCFTA Secretariat to continue the capacity building for Customs Officers to implement the AfCFTA Agreement, and ensure its sustainability;
22. **TAKES NOTE** of the progress made in the Rules of Origin negotiations with 87.8% of agreed tariff lines, and **DIRECTS** the AfCFTA Council of Ministers and

the AfCFTA Secretariat to facilitate the publication of the agreed Rules of Origin, pending the conclusion of all outstanding issues under negotiations;

23. **ENDORSES** the Guidelines for the Provisional Application of Rules of Origin for the remaining outstanding tariff lines in accordance with existing trade regimes or Regional Economic Communities, pending the adoption of all outstanding issues in the Rules of Origin negotiations, in line with Article 42(3) of Annex 2 of the Protocol on Trade in Goods
24. **DIRECTS** the Council of Ministers and the AfCFTA Secretariat to adopt the agreed Rules of Origin to HS 2022 nomenclature;
25. **ADOPTS** the Libreville Declaration on Special Economic Zones in line with Article 23 of the Agreement Establishing the AfCFTA and **COMMENDS** the AfCFTA Secretariat and the Government of the Republic of Gabon for successfully hosting the AfCFTA Forum on Special Economic Zones.
26. **DECIDES** that the Regulations on Special Economic Zones (SEZs) and the Guidelines on Infant Industries be provisionally implemented once adopted by the AfCFTA Council of Ministers, pending the final adoption by the Assembly in accordance with Article 11 of the Agreement;

Protocol on Trade in Services

27. **WELCOMES** the submissions of services offers by 43 Member States: Benin, Burkina Faso, Burundi, Cabo Verde, Comoros, Cote d'Ivoire, Democratic Republic of Congo, Egypt, Eswatini, The Gambia, Ghana, Guinea, Guinea Bissau, Kenya, Lesotho, Liberia, Madagascar, Mali, Mauritania, Mauritius, Namibia, Niger, Nigeria, Rwanda, Senegal, São Tome and Principe, Seychelles, Sierra Leone, South Africa, South Sudan, Tanzania, Togo, Uganda and Zambia;
28. **TAKES NOTE** of the establishment of the Committee on Trade in Services and its five (5) Sub-Committees, namely: Sub-Committee on Specific Commitments; Sub-Committee on Regulatory Frameworks; Sub-Committee on Mutual Recognition of Professional Qualifications; Sub-Committee on Trade in Services-related Issues, including Payments and Settlement Platform; Online Services Negotiations Portal; Investment; E-Commerce; Innovation; Trade in Services Statistics; and Sub-Committee on AfCFTA Trade in Services Rules;
29. **COMMENDS** the Council of Ministers on the progress made in the negotiations on the Movement of Natural Persons (Mode 4) under Trade in Services and the adoption of the Technical Note on the Common Categories of Natural Persons and **DIRECTS** the Council of Ministers to facilitate the movement of business people in the Continent.
30. **ENDORSES** the Ministerial Directive on the Application of the Provisional Schedules of Specific Commitments in order to ensure the provisional application of the schedules of specific commitments on a provisional basis

across the xxx State Parties, pending the conclusion of negotiations in all service sectors;

31. **DIRECTS** the Council of Ministers to commence negotiations in the remaining services sectors by March 2022 and to conclude the negotiations by June 2023.
32. **APPROVES** the Guiding Principles for Negotiating Regulatory Frameworks as contained in Elements For Negotiating Sectoral And Cross-Cutting Regulatory Frameworks Under The AfCFTA Protocol on Trade In Services;
33. **DIRECTS** the Council of Ministers to fast track the completion of all outstanding issues in the 5 priority services sectors as it relates to the development of Regulatory Frameworks by December 2022

Permanent Structure of the AfCFTA Secretariat

34. **TAKES NOTE** of the recommendation of Decision EX.CL/Dec.1126(XXXIX) of the Executive Council of October 2021 on the Phase II Structure (265 positions) of the AfCFTA Secretariat for a 4-year phased period, merit-based and transparent approach for recruitment of the positions in the structure, which should be open to all African Union Member States;
35. **WELCOMES** the transfer of the coordination Unit of the AfCFTA from the Commission to the AfCFTA Secretariat and **DIRECTS** the staff to undertake staff skills and competency audit to determine whether they meet the requirements of the AfCFTA approved structure;
36. **WELCOMES** the appointments to the 4 Director positions under the Phase I Structure, and **COMMENDS** the AfCFTA Council of Ministers for ensuring merit, gender and geographic balance.

Dispute Settlement Mechanism

37. **REITERATES** the role of the Dispute Settlement Mechanism of the AfCFTA as a central element for providing certainty and predictability in the resolution of disputes on the rights and obligations of State Parties and in clarifying the provisions of the Agreement Establishing the AfCFTA;
38. **NOTES** the progress made by the Dispute Settlement Body in operationalising the Protocol on Rules and Procedures on the Settlement of Disputes, including the establishment of a permanent Roster of Panellists and the Appellate Body as a standing tribunal of final instance; and
39. **DIRECTS** the AfCFTA Secretariat to ensure that the appropriate budget provision is made available to enable the Dispute Settlement Mechanism to remain transparent, accountable, fair, predictable and independent in resolving disputes consistently with the provisions of the Agreement Establishing the AfCFTA.

Phase II Negotiations

40. **COMMENDS** the Council of Ministers for the establishment of the Committees, namely, Investment, Competition Policy, Intellectual Property Rights (IPR), Digital Trade, and Women and Youth in Trade, and the relevant modalities for negotiating and **DIRECTS** the Council of Ministers, the AfCFTA Secretariat and other relevant stakeholders to fast track the conclusion of the all Protocols on Phase II issues by December 2022;
41. **WELCOMES** the progress made in the Committee on Competition Policy regarding the sequencing of work and capacity building needs, including the development of Guidelines for development of the Protocol on Competition Policy, and **DIRECTS** the Council of Ministers, the AfCFTA Secretariat, the Commissioners of Competition Authorities in the various State Parties and other stakeholders to develop Protocol that will lead to the creation of an AfCFTA Competition Commission
42. **RECALLS** its earlier commitments to broaden inclusiveness in the operation of the AfCFTA through interventions that support women, young Africans, small and medium sized Enterprises as well as integrating small informal traders by implementing simplified trade regime, and **DECIDES** to include the Protocol on Women and Youth in Trade in the scope of the AfCFTA Agreement

Collaboration with Strategic Partners

43. **APPRECIATES** the financial and technical support provided by the African Development Bank, Afreximbank and other partners in the implementation of the AfCFTA and the remainder of the AfCFTA negotiations.
44. **WELCOMES** the AfCFTA Strategy for Private Sector Engagement and **DIRECTS** the AfCFTA Secretary-General to intensify collaboration between the AfCFTA Secretariat and the private sector

AfCFTA Implementation Tools

(i) AfCFTA Adjustment Fund

45. **COMMENDS** the AfCFTA Council of Ministers, the AfCFTA Secretariat and Afreximbank for the progress made in the establishment of the AfCFTA Adjustment Fund to address near-term disruptions as tariff revenues are reduced, industrial sectors are disordered, businesses and supply chains are reorganised to comply with the AfCFTA Agreement.
46. **DIRECTS** the AfCFTA Secretariat and the Afreximbank to operationalize the AfCFTA Adjustment Fund and avail the facility to State Parties.

(ii) Pan-African Payments and Settlement System (PAPSS)

47. **COMMENDS** the AfCFTA Council of Ministers, the AfCFTA Secretariat and Afreximbank for the progress made in the operationalization of the Pan-African Payments and Settlement System (PAPSS), including the successful launch of the operational phase of PAPSS and the pilot and execution of transactions in the West African Monetary Zone (WAMZ), and **DIRECTS** the AfCFTA Secretariat and the Afreximbank to deploy the System to cover the entire continent and finalize the regulatory frameworks;

(iii) AfCFTA Automotive Fund

COMMENDS the the AfCFTA Council of Ministers, the AfCFTA Secretariat and Afreximbank for mobilising a facility of US\$ 1 billion for the development of the automotive sector, to support industrialisation in Africa.

Trade and Industrial Development Council

48. **COMMENDS** the AfCFTA Council of Ministers for the establishment of the AfCFTA Trade and Industrial Development Council in line with the Article 3(g) of the Agreement Establishing the AfCFTA and **DIRECTS** the AfCFTA Secretariat to work in collaboration with the African Union Commission, for the development of regional value chains.

Extraordinary (Special) Summit

49. **RECOGNISING** the critical importance of the role of the Assembly in advancing progress in the implementation of the AfCFTA and in the remainder of the AfCFTA negotiations, **APPROVES** the recommendations of the Council of Ministers Responsible for Trade to convene annual Extraordinary (Special) Summits, dedicated to the AfCFTA;
50. **WELCOMES and ENDORSES** the offer by the xxx to host the next Special Summit on the AfCFTA;

**ANNEX TO THE DECISION ON THE ADOPTION OF ADDITIONAL PROVISIONS
TO ANNEX 2 (RULES OF ORIGIN) OF THE PROTOCOL ON TRADE IN
GOODS**

List and language of additional provisions:

1. Absorption Principle

The value of the non-originating Materials used by the Producer in the production of a Product shall not include, for purposes of calculating the value of the product, the value of non-originating Materials used to produce originating Materials that are subsequently used in the production of the Product.

2. Accounting Segregation

Where originating and non-originating fungible Materials are used in the production of Products, the following methods shall be adopted in determining whether the Materials used are originating:

- a) physical separation of the Materials; or
- b) an inventory management method recognized in the Generally Accepted Accounting Principles of the exporting State Party, provided that the inventory management method selected is used for at least one (1) fiscal year.”

3. Tolerance Rule

1. Notwithstanding the provisions of Article 6, non-originating Materials which, according to the conditions set out in Appendix IV to this Annex shall not be used in the Manufacture of a given Product, may, nevertheless be used, provided that:
 - b) Their total value does not exceed 15 per cent of the Ex-works Price of the final Product;
 - c) The percentage given in paragraphs (a) of this paragraph shall not exceed any of the percentages for the maximum content of non-originating Materials as outlined in the Product Specific Rules laid out in Appendix IV.
1. Paragraph 1 of this Article shall not apply to Products falling within Chapters 50 through 63.
2. The tolerance in this Article shall be applied subject to the provisions of Article 7.

4. Additional introductory note for Appendix IV to Annex 2 (Rules of Origin) on the Change in Tariff Sub-Heading (CTSH)

Pursuant to paragraph 2 of Article 6 of the Annex, in this Appendix the Change

of Tariff Sub-Heading (CTSH) shall apply as follows:

- i. The non-originating materials used must be classified under a sub-heading other than that of the final product.
- ii. Sub-headings may appear in the same heading or in different headings.

5. Definition of the terms "their vessels" and "their factory ships" (Article 5.2)

The definition of the terms "their vessels" and "their factory ships" in paragraph 1(h) and 1(i) shall apply only to vessels, leased vessels, bare boat and factory ships that are registered in a State Party in accordance with the national laws of a State Party and carry the flag of the State Party and, in addition, shall meet one of the following conditions:

- (a) at least, 50 per centum of the officers of the vessel or factory ship are nationals of the State Party or State Parties; or
- (b) at least, 40 per centum of the crew of the vessel or factory ship are nationals of the State Party or State Parties; with a temporary 5-year exception for Island State Parties during which at least 30 per centum of the crew of the vessel or factory ship are nationals of the State Party or State Parties; or
- (c) at least, 50 per centum of the equity holding in respect of the vessel or factory ship are held by nationals of the State Party or State Parties or institutions, agency, enterprise or corporation of the government of the State Party or State Parties.

Notwithstanding Article 41 of this Annex, the Island States, shall apply a 40% threshold for crew after 5 years. Subsequently, an assessment will be undertaken by the Council of Ministers with the view of an eventual increase of the requirement laid down under paragraph 2(b) for all State Parties from 40 per centum to 50 per centum after due consultation. The assessment guidelines are developed by the structures under this Agreement to frame the assessment process for approval by the Council of Ministers. The assessment guidelines, including amongst others the scope, specific assessment criteria, designation of the assessors, timelines, responsibilities, are agreed upon by the Council of Ministers.

6. Definition of *Value Added*

Value Added means the difference between the ex-works price of a finished Product and the Customs Value of the Material imported from outside the State Parties and used in the Production.

7. FOB as basis of calculation of VNOM

FOB shall be the basis of the calculation of the Value of Non-originating materials (VNOM).

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