

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

Addis Ababa, ETHIOPIA P. O. Box 3243 Telephone +251115- 517700 Fax : +251115-517844
Website : www.au.int

TI23637

**ASSEMBLY OF THE UNION
Thirty-Second Ordinary Session
10 – 11 February 2019
Addis Ababa, ETHIOPIA**

Assembly/AU/4(XXXII)
Original: English

**REPORT ON THE AFRICAN CONTINENTAL FREE TRADE AREA
(AfCFTA),
BY H.E. MAHAMADOU ISSOUFOU, PRESIDENT OF THE
REPUBLIC OF NIGER AND LEADER ON AFCFTA**

REPORT ON THE STATUS OF THE AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA) NEGOTIATIONS

INTRODUCTION

1. Your Excellencies, you will recall that in my previous report to this Assembly I provided an update of the AfCFTA process during the Summit in Nouakchott in July 2018. The report I present today will have three (3) parts. The first part is on the activities undertaken under the oversight of African Union Ministers of Trade since the July 2018 Summit. The second part is on emerging developments affecting the AfCFTA implementation while the third part is on conclusion and summary of recommendations.

PART ONE

DEVELOPMENTS MADE UNDER THE PURVIEW OF THE AFRICAN UNION MINISTERS OF TRADE DURING THE PERIOD JULY 2018 TO JANUARY 2019

2. I wish to start my report by reiterating my gratitude to our Ministers responsible for Trade, Senior Trade Officials, Chief Negotiators, the Continental Task Force, Technical Working Groups and the African Union Commission ably led by H.E. Moussa Faki Mahamat for the sterling work done to get us to where we are right now.

3. You will recall, Your Excellencies, that at the 31st Ordinary Summit held in Nouakchott, Mauritania, in July 2018 you adopted nine (9) Annexes to the Protocol on Trade in Goods and three (3) Annexes to the Protocol on Rules and Procedures on the Settlement of Disputes.

4. Further Your Excellencies, in your decision of the 31st Ordinary Summit that was held in Nouakchott, Mauritania, in July 2018, you adopted the five priority service sectors of Transport, Communication, Finance, Tourism and Business services for the first phase of liberalization of all services sectors in Member States. Article 28 of the Protocol on Trade in Services provides that Member States may develop Annexes on Schedules of Specific Commitments; MFN Exemption(s); Air Transport Services; List of Priority Sectors; and Framework on Regulatory Cooperation. This will form part of Phase 1 implementation processes.

5. Let me now outline what has been accomplished so far.

6. The First one is the Conclusion of Modalities for Tariff Liberalization with regard to Sensitive Products and Exclusion List.

7. Your Excellencies, you will recall that during our 31st Ordinary Session in Nouakchott, we endorsed the recommendations of African Union Ministers of Trade to undertake national and regional consultations on the sensitive products and exclusion list. We also requested them to come up with a conclusive recommendation on this

matter for consideration by this Assembly. In this regard, consultations have been undertaken at all levels to inform our decision on this matter. These consultations were at national, regional and continental levels.

8. As a result, our Ministers of Trade concluded the following:

- a) Adoption of the Template on Tariff Liberalization which will be used by Member States in preparing the AfCFTA Schedules of Tariff Concessions;
- b) Agreement on the designation of Sensitive Products and Exclusion List on the basis of the following criteria: food security, national security, fiscal revenue, livelihood and industrialization;
- c) Agreement on the percentage for Sensitive Products which will not exceed 7% of total tariff lines and the Exclusion List which will not exceed 3% of total tariff lines. The application of these percentages will be subjected to double qualification and anti-concentration clauses where the excluded products shall not exceed 10% of total import value from other State Parties. In other words, products to be excluded from liberalization will represent no more than 3 percent of tariff lines accounting for no more than 10 percent of the value of imports from other African countries. This was done with a view to ensuring that we have a commercially viable AfCFTA market supplied by a large number and wide variety of products from our respective countries;
- d) Agreement on a transitional period of 5 years or less that may be used for countries which require this flexibility before the start of liberalization of Sensitive Products. This means that during this period, tariffs applicable to sensitive products may be maintained as long as they are eliminated by the end of the phase-down period provided for under the adopted modalities. Your Excellencies may recall that sensitive products will be liberalized over 10 years for developing countries and 13 for the least developed countries (LDCs).

9. Your Excellencies are called upon to endorse these recommendations from our hard working Ministers.

10. Let me now brief Your Excellencies with regard to the Guidelines for development of Schedules of Specific Commitments and Regulatory Frameworks for Trade in Services.

11. I am sure Your Excellencies will agree with me that the achievements in tariff liberalization allow us to move forward to the next stage of developing and finalizing the Schedules of Tariff Concessions in line with the adopted modalities. Our Ministers of Trade have considered and approved the Guidelines for Development of Schedules of Specific Commitments and Regulatory Cooperation Framework for Trade in Services.

These Guidelines will pave the way for Member States to submit their Initial Offers for liberalization in the Priority Service Sectors.

12. I recommend that Your Excellencies adopt these Guidelines as recommended by our Ministers of Trade. This will enable our Officials and Ministers to start work on this issue and table it before us in January 2020 for our consideration.

13. I will at this stage bring out the outstanding work on AfCFTA Negotiations and the new Roadmap for finalization of AfCFTA Negotiations. This has been prepared by our Ministers.

14. Your Excellencies, at our March 2018 Extraordinary Summit in Kigali, you requested the Commission to facilitate the conclusion of the outstanding issues in Phase 1, which is also known as the Built-In Agenda. We also agreed to continue to support Phase 2 of the negotiations on Investment, Competition Policy and Intellectual Property Rights which are to be undertaken under the AfCFTA institutional framework which was adopted by our Assembly in June 2015. Preparatory work has already begun in this area and our Ministers have recommended the establishment of three separate technical working groups on Investment, Competition Policy and Intellectual Property Rights (IPRs). In addition to this, the African Union Commission was requested by our Ministers to prepare terms of reference for these technical working groups by April 2019.

15. Your Excellencies, you will recall that we had set a deadline of January 2020 for conclusion of Phase 2 negotiations. Our Ministers have been advised by Chief Negotiators that given the amount of work involved, the Assembly be requested to consider and approve a new deadline of June 2020. I call on Your Excellencies to approve this recommendation.

16. Let me now update Your Excellencies on the other outstanding issues.

17. A lot of work has been done on Rules of Origin and negotiations have a few remaining issues that will be concluded by June 2019.

18. Your Excellencies, you will recall that when the negotiations for the Modalities started, seven (7) of our Member States: Djibouti, Ethiopia, Madagascar, Malawi, Sudan, Zambia and Zimbabwe, requested a level of ambition of 85% instead of the 90% agreed to by the rest. Your Excellencies then tasked me to engage with these countries with the aim of finding common ground on this matter. I had the opportunity to go to Djibouti where I met His Excellency Mr Ismail Omar Guelleh on the matter. Following our discussions, Djibouti has since agreed to the 90% level of ambition. At our Summit in Nouakchott, Mauritania I was not able to have a meeting with my colleagues from the other six Member States as only the President of Madagascar, His Excellency Hery Rajaonarimampianina was available. Since then the Chief Negotiators of the six remaining countries met in Lusaka, Zambia in September 2018 and came up with a common proposal as a way forward. At this meeting they agreed to the level of

liberalization of 90% to be implemented over 15 years. However, two Member States (Malawi and Sudan) undertook to liberalize up to 85% in the first 10 years and reach 90% by the 15th year after entry into force of the Agreement. At this session I plan to engage with the Heads of State of the concerned countries to finalize this matter and I appeal to all of them to make themselves available for these consultations.

19. In line with these outstanding issues, our Ministers of Trade have agreed on a new Roadmap to conclude the outstanding issues of Phase 1 and the Conclusion of Phase II Negotiations. This Roadmap in Annex II of this report is tabled before Your Excellencies for adoption.

PART TWO

EMERGING DEVELOPMENTS AFFECTING THE AfCFTA IMPLEMENTATION

20. The first issue I will bring under this section to Your Excellencies is the status of ratification of the AfCFTA Agreement.

21. Your Excellencies, Article 23 of the Agreement Establishing the African Continental Free Trade Area states that the Agreement shall come into force 30 days after twenty two countries have deposited their instruments of ratification with the Chairperson of the African Union Commission. As at 31st December 2018, the following nine countries; listed in alphabetical order, had deposited their instruments of ratification: Chad, Cote d'Ivoire, Kingdom of eSwatini, Ghana, Guinea, Kenya, Niger, Rwanda and Uganda. In addition to this, we have been officially informed that National Assemblies of five of our countries have approved ratifications of the AfCFTA Agreement. These are; in alphabetical order: Congo, Mali, Namibia, Sierra Leone and South Africa. The Heads of State of these five countries and any others that are ready to do so will deposit their instruments of ratification during this Summit.

22. The Commission is closely monitoring ratification processes in other Member States. At least twelve are very active in their various National Assemblies and this is very encouraging. With this state of play, it is possible to have the 22nd instrument of ratification before we commemorate the first anniversary of the AfCFTA on 21st March 2019.

23. I would like to inform Your Excellencies that it takes five (5) years on average for an African Union legal instrument to be ratified. Let us make the AfCFTA Agreement an exception by having it ratified within one year. In this way we shall convey to our citizens and the rest of the world that we are fully committed to this process. This performance will also build on the outstanding record of forty four (44) signatures that we obtained in Kigali on the first day the instrument was opened for signature. We started on a high note, let us continue in this spirit of high performance.

24. I, therefore, urge all Your Excellencies to fully commit to ratification of this historic Agreement. We are committed to creating One African Market and this will be realized when each and every one of us signs and ratifies the AfCFTA Agreement.

25. Your Excellencies are also aware that six of our Member States are yet to sign this Agreement. Two of these Member States will require technical assistance from the African Union Commission to assist them to prepare for the signature of this Agreement and this is being provided. One of the six Member States will sign during this Assembly. The other three are finalizing national level consultations and will sign as soon as possible. The African Union Commission has strongly advised the six countries that have not signed to do so before the entry into force of this Agreement so that all of us are founding State Parties to the AfCFTA. Beyond status, the African Union Commission has advised member states that failure to sign or ratify by the time the AfCFTA Agreement enters into force brings with it the risks losing ground as destinations of investments in addition to becoming targeted destinations of smuggled goods.

26. I would also like to bring out the issue of Free Trade Agreements with Third Parties. Your Excellencies will recall that in Nouakchott we committed “*to engage external partners as one block speaking with one voice and urged Member States to abstain from entering into bilateral trading arrangements until after the entry into force of the Agreement establishing the AfCFTA*”. This decision will no longer apply after the entry into force of the Agreement because Article 18 of the AfCFTA Agreement on Continental Preferences will take care of the issue. This article provides that “*following the entry into force of this Agreement, State Parties shall, when implementing this Agreement, accord each other, on a reciprocal basis, preferences that are no less favourable than those given to Third Parties*”. Article 4 of the Protocol on Trade in Goods builds on the above and states that “*nothing in this Protocol shall prevent a State Party from concluding or maintaining preferential trade arrangements with Third Parties, provided that such trade arrangements do not impede or frustrate the objectives of this Protocol, and that any advantage, concession or privilege granted to a Third Party under such arrangements is extended to other State Parties on a reciprocal basis*”.

27. Your Excellencies, you will also recall that the second aspiration of Agenda 2063 states as follows: “*an integrated continent, politically united and based on the ideals of Pan-Africanism and the vision of Africa’s Renaissance*”. This builds on the vision of the African Union and Agenda 2063 which states the following: “*An integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in the global arena*”. From all these quotations, the message is very clear. Africa must unite and has committed to being united in order to be strong in the international system. This unity is based on promoting continental integration and the AfCFTA is the foundation. Against this background, our efforts to establish the AfCFTA will produce results if we remain united, speak with one voice and consolidate our integration.

28. I therefore call on Your Excellencies to recommit to the vision of creating one African Market. In this respect, our Member States wishing to enter in Agreements with Third Parties have the obligation to inform us as well as assure us that such efforts will not undermine our vision of creating one African Market. I recommend that this forms part of our decision on the AfCFTA during this Summit.

29. At this stage, I would like to propose some ideas on moving us towards African Internal Market.

30. Your Excellencies, the AfCFTA is being complemented with the Single African Air Transport Market, the Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment in addition to the Phase 2 Protocols on Investment, Competition Policy and Intellectual Property Rights earlier referred to.

31. Furthermore, the Abuja Treaty commits us to establish the Continental Customs Union by 2019. The same Treaty commits us to establish the African Economic Community thirty four (34) years from its entry into force. This should be by 2028 since Abuja Treaty came into force in 1994. Five years before the establishment of the African Economic Community, the African Common Market (Internal Market) must be established. This should be in 2023. In order to have credibility in the decisions that we make, we have no choice but to move towards the African Internal Market. In this regard, I would recommend that we recommit ourselves to have an African Common Market by 2023 and instruct our Ministers of Trade to develop a strategy towards the realization of this goal by November 2019 for our consideration in January 2020. This work on the African Internal Market will set a substantive basis for the review of the AfCFTA Agreement in 2024.

32. Your Excellencies, initiatives are underway to finalise the work on hosting the AfCFTA Secretariat. The African Union Commission has sent Note Verbales to Member States giving a deadline of the 20th March 2019 to submit the offers. Thereafter, an assessment mission would be sent to all the Member States bidding to host the AfCFTA Secretariat. The report of the assessment mission, with recommendations would be availed to us in the July 2019 Summit. This means that a day before the Coordination Summit we will need to have an Extraordinary Session of the Assembly to agree on the recommendations regarding the hosting of the AfCFTA Secretariat in accordance with Article 13 of the Agreement. In view of the Summit decision to make the July Summits focus on coordination issues with Regional Economic Communities, I call on Your Excellencies to exceptionally agree on an Extra-Ordinary Summit in July 2019, a day before the Coordination Summit. This will also make it possible for the full membership of our Union to celebrate the first Anniversary of the Signing of the AfCFTA and also formally launch the operational phase of the African Internal Market.

33. Your Excellencies will be happy to note that the AfCFTA has already started to produce results even before it enters its operational phase. The first result produced is the successful hosting of the Intra-African Trade Fair held in Cairo, Egypt from 11th to 17th December 2018. The Fair attracted 1,086 exhibitors above the target of 1,000. Business to business transactions during the Fair were above US\$30 billion. This again was beyond the target of US\$25 billion. Exhibitors and buyers spoken to during the Fair expressed satisfaction with its organization and outcome. Many also pledged to participate in the next edition to be held in Kigali, Rwanda, in 2020. I wish to congratulate, on your behalf and on my behalf, the People and Government of Arab

Republic of Egypt, the African Import and Export Bank and the African Union Commission for successfully hosting this event. In the same vein, I wish to congratulate, on your behalf and on my behalf, the People and Government of Rwanda for winning the bid to host the next edition.

34. With this strong performance, it has been agreed that countries wishing to host the Intra-African Trade Fair will be decided upon well ahead of time to give them enough time to prepare adequately. In this respect, countries will be invited during 2019 to make bids for hosting in 2022 and 2024 editions of the Intra-African Trade Fair.

35. I call on all of us to fully support the Intra-African Trade Fair because it is a very critical platform for investment and trade. When investment and trade expand across our countries, this will lay a strong base for generating decent jobs for our youth.

36. This leads me to the important issue of leveraging trade to create employment opportunities. In this respect a Continental Platform on e-Commerce has been established by the African Union Commission in partnership with a member of the African Diaspora. Through this continental platform, we target that our youth will create 600,000 small and medium enterprises in four years (2019 – 2023). Assuming each small and medium enterprise produces five (5) jobs, this means that we shall have 3 million jobs created out of this platform alone. This will complement other efforts like those of the Tony Elumelu Foundation which trains 1,000 young African entrepreneurs annually. In addition to this, African manufacturers are working towards coming up with a continental association to enable them develop regional value and supply chains and through them, joint ventures to enable them produce to the scale of the AfCFTA market. When our manufacturers start producing to the scale of this market, they will also contribute to increased investments and creation of additional jobs. In order to de-risk the market and ensure that traders are paid on time and in full, the African Export and Import Bank is assisting the African Union in establishing a digital payment and settlement platform which should start operating in 2019.

37. At this stage, I would like to remind Your Excellencies that during our last Session in Nouakchott, Mauritania, I promised to host the July 2019 Summit in Niamey, Niger and we mandated the Commission to organize a Civil Society Forum and a Private Sector Forum preceding that Summit in order to enhance stakeholder engagement on the implementation of the AfCFTA. I invite you all to this Summit.

PART THREE

CONCLUSION AND SUMMARY RECOMMENDATIONS

38. Your Excellencies, the AfCFTA baby is eleven months old, healthy and growing. We need to ensure that the baby continues to grow. The decisions that we make are very critical in this regard. The Ministers of Trade and I have made very ambitious recommendations to ensure that the AfCFTA baby grows. And when that is achieved, our voice and leverage will also grow. In this way, we would be better placed to

negotiate mutually beneficial partnerships with the rest of the world. We should now strive to conclude the negotiations and move to the implementation phase to sustain the growth momentum of the AfCFTA baby.

39. Before concluding, I recommend to Your Excellencies that we commend our Ministers of Trade, Senior Trade Officials, Chief Negotiators, Technical Working Groups, the Continental Task Force, our Strategic Partners and the African Union Commission for their hard work.

40. Your Excellencies, as I conclude my report, I register my belief that we have now reached a critical point in the journey of realizing the vision of Creating One African Market. We are about to enter the operational phase of this journey. This will be challenging. However, with the record established so far, I believe we are ready to meet any challenge, no matter how complex it might be. As the popular saying goes: 'where there is a will, there is a way'. Our will to continue this journey is strong and unshakable.

41. Let me now offer a summary of my recommendations:

42. Your Excellencies, the following recommendations are tabled before us by Ministers of Trade for adoption:

- (i) The Template on Tariff Liberalization which will be used by Member States in preparing the AfCFTA Schedules of Tariff Concessions;
- (ii) The designation of Sensitive Products and Exclusion List on the basis of the following criteria: food security, national security, fiscal revenue, livelihood and industrialization;
- (iii) The percentage for Sensitive Products to be 7% of total tariff lines and the Exclusion List not to exceed 3% of total tariff lines;
- (iv) The application of these percentages to be subjected to double qualification and anti-concentration clauses where the excluded products shall not exceed 10% of total import value from other State Parties. In other words, products to be excluded from liberalization will represent no more than 3 percent of tariff lines accounting for no more than 10 percent of the value of imports from other African countries;
- (v) A transitional period of 5 years or less to be used for countries which require this flexibility before the start of liberalization of Sensitive Products. This means that during this period, tariffs applicable to sensitive products may be maintained as long as they are eliminated by the end of the phase-down period provided for under the adopted modalities (10 years for developing countries and 13 for the least developed countries);

- (vi) The Guidelines for Development of Schedules of Specific Commitments and Regulatory Cooperation Framework for Trade in Services; and
- (vii) The new Roadmap for finalization of AfCFTA Negotiations with a new deadline of June 2020.

43. In addition, we should decide that Member States wishing to enter into partnerships with Third Parties should inform us in writing as well as assure us that those efforts will not undermine our vision of Creating One African Market.

44. Further, this Assembly should request African Union Ministers of Trade to develop a Strategy towards realization of an African Common Market by 2023 and complete this exercise by November 2019 for our consideration in January 2020.

45. We should also decide to exceptionally hold an Extra-Ordinary Summit in July 2019, a day before the Coordination Summit. This will make it possible for the full membership of our Union to decide on the hosting of the AfCFTA Secretariat, celebrate the first Anniversary of the Signing of the AfCFTA ; and, formally launch the operational phase of the African Continental Free Trade Area Market.

46. We should also congratulate the People and Government of Arab Republic of Egypt, the African Import and Export Bank and the African Union Commission for successfully hosting the First Intra-African Trade Fair. In the same vein, we should congratulate the People and Government of Rwanda for winning the bid to host the next edition of the Intra-African Trade Fair in 2020.

47. I invite Your Excellencies to deliberate on the contents of my report.



Creating One African Market

**Assembly/AU/4(XXXII)
Annex 1**

**AfCFTA Negotiations: Road Map for Finalization of Outstanding Work
on Phase 1 and Conclusion of Phase II**

1. Introduction

At the 12th Meeting of AfCFTA Negotiating Forum that took place in Lusaka, Zambia from 12 to 15 September 2018, Chief Negotiators noted that time was fast running out, and cognisant of the recent decisions of AMOT when they met in Dakar, Senegal, as well as the Assembly decisions in Nouakchott, Mauritania, they discussed the outstanding work to be done.

With respect to Phase 1 issues the Meeting noted the following outstanding work:

- a) Conclusion of outstanding issues on modalities for tariff liberalisation as this paves the way for the development of schedules of tariff concessions;
- b) Conclusion of the appendices to Annex 2 on Rules of Origin by the TWG on RoO by the deadline of December 2018;
- c) Consideration of the legally scrubbed Trade Remedies Guidelines by NF;
- d) Development of the AfCFTA NTB reporting, monitoring and elimination mechanism in line with the provisions of Annex 5 on Non-Tariff Barriers;
- e) Development of Guidelines for Infant Industries;
- f) Development of Regulations for Special Economic Arrangements/Zones.

They also identified the following outstanding issues to be addressed under Trade in Services:

- a) to develop the guidelines for negotiating the schedules of specific commitments;
- b) to develop the schedules of specific commitments;
- c) to develop regulatory frameworks in all services sectors;
- d) to carry out regulatory assessments;
- e) to organise a signalling conference for the private sector; and
- f) to provide technical assistance to Member States in the area of services.

In view of the above outstanding work, the NF noted that the timeframe will probably not allow for the finalization of schedules of tariff concessions and schedules of specific commitments by the deadline of January 2019. They requested the AUC to propose a roadmap for finalization of the outstanding work on trade in goods and trade

in services to be considered at its next meeting (NF 13). The NF also agreed to consider the three reports of the latest meetings of the TWG on Rules of Origin at the start of its next meeting and provide the necessary guidance for the continuation of the TWG's work. The following roadmap is proposed in line with the outstanding work identified above.

2. Road Map for Finalization of Outstanding Work on AfCFTA Phase I Negotiations

Areas	Outstanding Issues	Activities	Responsible	Timeframe
1- Trade Remedies	Guidelines on implementation of Trade Remedies within the AfCFTA	Consideration of legally scrubbed guidelines on implementation of Trade Remedies within the AfCFTA and cross reference with the Annex on Trade Remedies	TWG on Trade Remedies	March 2019
2- Infant Industries (Article 24 of the Protocol on Trade in Goods)	Development of Guidelines for Infant Industries	Consideration of Guidelines for Infant Industries	Council of Ministers	March 2019
3- Rules of Origin	Appendix IV on Hybrid Rules	Consider the Reports (6 th – 10 th) of TWG on RoO	AfCFTA NF	November – December 2018
		Drafting hybrid rules in Appendix IV to Annex 2 on the Rules of Origin	TWG on RoO	December 2018 – March 2019
		To review the Bracketed AfCFTA Rules of Origin	TWG on RoO	December 2018 – March 2019
		To review Outstanding Issues in the Annex: <ul style="list-style-type: none"> • Value Added; • Vessels and Factory Ships • Additional Provisions in Annex 2; and • Additional Definitions • Special Economic Arrangements/Zones 	TWG on RoO	December 2018 – May 2019
		Drafting of additional definitions in Annex 2 on Rules of Origin	TWG on RoO	December 2018 – March 2019
		Drafting Regulations for Goods produced under Special Economic Arrangements/Zones	TWG on RoO	December 2018 – March 2019
		Drafting of additional provisions in Annex 2 on Rules of Origin on value tolerance, absorption principle and accounting segregation/GAAP	TWG on RoO	December 2018 – March 2019
		Drafting AfCFTA Rules of Origin	TWG on RoO	February– March

Areas	Outstanding Issues	Activities	Responsible	Timeframe
		Manuals/Guidelines		2019
	Adoption of all outstanding issues on Rules of Origin	Consideration of all outstanding issues on Rules of Origin by AfCFTA NF and finalization of Appendix IV to Annex 2 on the Rules of Origin	AfCFTA NF	May 2019
4- Tariff Liberalization	Conclusion of Outstanding issues on Modalities for Tariff Liberalisation	Designation of percentages for sensitive products and exclusion list	AfCFTA NF	November/ December 2018
		Develop a template for scheduling of tariff concessions	AfCFTA NF	November/ December 2018
		Submission of National or Customs Union/Territories tariff schedules (or tariff books)	Member States	February/March 2019
	Capacity Building and Technical Assistance	Submission of Requests for Capacity Building and Technical Assistance	Member States	November/ December 2018
		Technical Assistance to migrate to HS 2017	AUC	February/March 2019
		Organize one or two workshops to assist Member States to migrate to HS 2017	AUC	February/March 2019
		Submission of Official Trade Data to the AUC at national tariff level	Member States	March/April 2019
		Simulations to assess impact of tariff liberalization as per agreed modalities	AUC and Partners	April – June 2019
		Develop password protected website for interactions and where Member States will upload the following information: a) Trade data by tariff line b) Initial offers	AUC	April – June 2019
	Annex 1 on Schedules of Tariff Concessions	Organize initial meetings for requests and offers based on the permutations (i.e. EAC and ECOWAS or SACU and ECOWAS)	AUC	April – July 2019
	Review and assessment of offers	Member States	September 2019	

Areas	Outstanding Issues	Activities	Responsible	Timeframe
		Consolidation and conversion of offers for quality check and provide factual summaries of initial offers	AUC	November 2019
	Finalization of legal aspects	Approval of Schedules of tariff concessions	Member States	December 2019
5- NTBs	Development of a mechanism for identifying, reporting, resolving, monitoring and elimination of Non-tariff barriers	Undertake a study to develop proposals for an AfCFTA mechanism for identifying, reporting, resolving, monitoring and elimination of Non-tariff barriers	AUC	January – March 2019
		Meeting of the NTB/TBT TWG to consider proposals for a mechanism for identifying, reporting, resolving, monitoring and elimination of Non-tariff barriers	Member States	April 2019
6- Services liberalization	Schedules of Specific Commitments	Adoption of Guidelines for Negotiation of schedules of specific commitments	AfCFTA NF	November/ December 2018
		Submission of requests for Capacity Building and Technical Assistance	Member States	January– February 2019
		Training of Member States on development of requests and offers;	AUC, RECs and Partners,	January – June 2019
		National Consultations with regulatory bodies and Non-state actors to develop initial offers and requests and obtain Ministerial and Parliamentary approval to submit initial offers	Member States	
	Signaling Conference on Trade in Services	Organize a Signaling Conference for Private Sector on Trade in Services	AUC	March 2019
		Provide Member States with information on schedules of specific commitments of the RECs	AUC and RECs	April 2019
		Submission of initial offers and requests	Member States	May – June 2019
	Consolidation of offers for quality	AUC	July 2019	

Areas	Outstanding Issues	Activities	Responsible	Timeframe
		check and provide factual summaries of initial offers and requests		
		Translation of initial offers and requests into AU languages and circulation to Member States/State Parties	AUC	August–September 2019
		Negotiations of requests and offers in dedicated sessions	Member States and RECs	October–December 2019
		National and Regional consultations towards development of revised offers	Member States and RECs	January 2020
		Submission of Revised Offers	Member States	February- March 2020
		Translation and circulation of Revised Offers	AUC	April 2020
		Negotiations of Revised Offers and request for improvements	Member States	May – June 2020
		National and Regional consultations towards development of final offers	Member States	July– August 2020
		Submission of final offers	Member States	September 2020
		Translation and circulation of final offers to Member States	AUC	October- November 2020
		Negotiations to finalize offers	Member States/RECs	December 2020 – February 2021
		Technical Validation of offers	Member States/WTO/RECs/UN CTAD	March – May 2021
		Legal Scrubbing	AUC/Member States/RECs/OLC	June–September 2021
		Adoption of Schedules of Specific Commitments	Adoption of Schedules of Specific Commitments	Assembly
7- Development of Regulatory Cooperation Framework	Development of Regulatory Cooperation Frameworks in all services sectors	Undertake sectoral regulatory assessment/situational analysis	AUC, Member States	January – June 2019
		National consultations with regulators and private sector	Member States	July-September 2019
		Identification, submission, translation and discussion of	Member States	October–December 2019

Areas	Outstanding Issues	Activities	Responsible	Timeframe
		trade-related regulatory measures (2 meetings)		
		Sectoral working groups (with private sector) for detailed technical discussions (1 year)	AUC, Member States	January-December 2020
		Technical approval of Regulatory Frameworks at TiS Plenary (1-2 meetings)	AUC, Member States	January – March 2021
	Adoption of the Regulatory Frameworks at NF/AMOT	Adoption of Regulatory Frameworks by NF/AMOT (1-2 meetings)	Member States	April - June 2021
Phase II Negotiations	Conclusion of Legal Instruments on Investment, Intellectual Property Rights and Competition Policy	Development of the Draft Texts of the Protocols on Investment, Intellectual Property Rights and Competition Policy	AfCFTA Continental Task Force	December 2018 – January 2019
		Organize workshops on Phase II issues and presentations of the Draft Texts of the Protocols on Investment, Intellectual Property Rights and Competition Policy	AUC	February 2019
		Conduct Negotiations on Investment, Intellectual Property Rights and Competition Policy	AfCFTA Negotiating Institutions	March – September 2019
	Adoption of the Legal Instruments on Investment, Intellectual Property Rights and Competition Policy	Consideration of the Legal Instruments on Investment, Intellectual Property Rights and Competition Policy	AMOT	October 2019
		Legal Scrubbing of the Legal Instruments on Investment, Intellectual Property Rights and Competition Policy	STC on Justice and Legal Affairs	December 2019
		Adoption of the Legal Instruments on Investment, Intellectual Property Rights and Competition Policy	Summit	June 2020



Creating One African Market

**DRAFT GUIDELINES FOR SERVICES NEGOTIATIONS UNDER THE AFCFTA
PROTOCOL ON TRADE IN SERVICES**

TABLE OF CONTENTS

I. CONTEXT AND BACKGROUND.....	1
II. OBJECTIVE	1
III. NEGOTIATING PRINCIPLES	1
IV. SCOPE	2
V. APPROACH AND PROCEDURES	2
(a) Schedules of Specific Commitments	2
(b) Transparency of process	3
(c) The roadmap up to the end of the negotiations	3
VI. SCHEDULES OF SPECIFIC COMMITMENTS	3
(a) Positive approach.....	3
(b) Starting point	3
(c) Reciprocity.....	4
(d) Horizontal commitments.....	4
(e) Sector specific commitments.....	4
(f) Format and Template	6
VII. REGULATORY COOPERATION FRAMEWORKS.....	7
(a) Objective	7
(b) Scope	7
(c) Basis for Development of Regulatory Cooperation Framework.....	8
VIII. CONDUCT OF NEGOTIATIONS.....	8
(a) Committee on Trade in Services	8
(b) Negotiations at REC level.....	8
(c) Finalisation of negotiations	9
(d) Implementation of commitments.....	9
IX. ROLE OF AFCFTA SECRETARIAT	9
X. STAKEHOLDER CONSULTATION	9

I. CONTEXT AND BACKGROUND

1. The African Continental Free Trade Area (AfCFTA) Protocol on Trade in Services (hereinafter referred to as “the Protocol”) provides the foundation to negotiate, as part of its annexes, schedules of specific commitments and regulatory cooperation framework for services sectors.
2. In doing so, these guidelines shall outline the procedures and approaches in developing and negotiating the schedules of specific commitment as well as the regulatory frameworks.
3. Member States recognise that market access and national treatment commitments may not, by themselves, allow AU service suppliers to operate effectively in other AU markets.
4. Member States agree that regulatory cooperation frameworks may facilitate common regulatory principles intended to boost intra-African trade.
5. It shall build on the *acquis* and improve upon the progress that has been made in trade liberalization and integration programmes of the RECs.
6. Negotiations will, where appropriate, take account of sectoral policy and regulatory framework initiatives where binding on all AU Member States.
7. Each Member State may regulate and introduce new regulations on services and services suppliers within its territory in order to meet national policy objectives, in so far as such regulations do not impair any rights and obligations arising under the AfCFTA Protocol on Trade in Services.

II. OBJECTIVE

8. The objective of these negotiating guidelines is to set out the procedures and approaches for the negotiation of specific commitments, regulatory cooperation frameworks and sectoral disciplines provided for in the Protocol on Trade in Services.

III. NEGOTIATING PRINCIPLES

9. The negotiations shall take place within the principles of the Agreement Establishing the AfCFTA.

IV. SCOPE

10. There shall be no *a priori* exclusion of any service sector or mode of supply.

The first round of negotiations shall cover the five services sectors, namely: business services, communication services, financial services, tourism and travel related services, and transport services. Subsequent negotiations will cover all other services sectors.

11. Based on the principles of variable geometry and reciprocity as set out in the agreed modalities, those Member States that wish to liberalise more sectors than the five priority sectors are free to do so.

V. APPROACH AND PROCEDURES

(a) Schedules of Specific Commitments

12. The method of negotiation of specific commitments shall be the request-offer approach.
13. Member States shall exchange offers and requests on the basis of which schedules of specific commitments will be developed by Member States.

i) Offers

14. Each Member State shall make an initial offer to all other Member States, following which other Member States may request improvements in the sectoral coverage of commitments and/or in the level of liberalization commitments offered.
15. A Member State may make an offer in response to requests or on its own initiative.
16. Offers are conditional and may be modified, extended, reduced or withdrawn, in whole or in part, at any time prior to the conclusion of the round of negotiations.

ii) Requests

17. A Member State may make a request:
- a) To another Member State,
 - b) To a group of Member States, or
 - c) To all other Member States.

18. A request may seek:
- a) Elimination or reduction of restrictions or limitations in sectors or sub-sectors in which a Member State has undertaken commitments;
 - b) Commitments in new sectors or sub-sectors;
 - c) The scheduling of sectors or sub-sectors that a Member State has autonomously liberalised.

(b) Transparency of process

19. Negotiations shall be transparent and open to all Member States in all negotiating processes.
20. Where such negotiations are conducted bilaterally, the Member States shall, through AfCFTA Secretariat, notify the outcome of such negotiations to all other Member States.

(c) The roadmap up to the end of the negotiations

21. The requests and offers shall be made and negotiated in line with the timeframe indicated in the roadmap developed with these guidelines.

VI. SCHEDULES OF SPECIFIC COMMITMENTS

(a) Positive approach

22. The positive list approach shall be used for the scheduling of commitments. Member States shall to the extent possible not maintain limitations or restrictions.

(b) Starting point

23. For the Member States that are WTO Members, the starting point for negotiations of trade in services would be GATS plus, based on reciprocity.
24. For those that are non-WTO Members, the starting point for negotiations of trade in services would be the autonomous liberalisation at the national level, based on reciprocity.
25. Each Member State would be required to commit to a minimum threshold of sectors, sub-sectors and sub-sub-sectors of the priority sectors, based on reciprocity. Such threshold should reflect the following:
- i) Substantial liberalisation of sectors/sub-sectors, on reciprocal basis; and

ii) Effective elimination of barriers to trade in services.

(c) Reciprocity

26. Negotiations shall be undertaken on a reciprocal basis.

(d) Horizontal commitments

27. A horizontal commitment applies to trade in services in all services sectors where commitments have been made unless otherwise specified. It is a measure which constitutes a limitation on market access or national treatment or of a situation in which there are no such limitations.

28. To indicate in a given sector that no restrictions whatsoever are imposed, a Member State must make clear in the horizontal section or in the relevant sectoral section that the horizontal restrictions do not apply in the sector in question.

29. Member States shall negotiate the definitions of different categories of service suppliers.

(e) Sector specific commitments

30. Where a Member State undertakes a commitment in a specific sector it should indicate for each mode of supply that it binds in that sector:

- a) what limitations, if any, it maintains on market access;
- b) what limitations, if any, it maintains on national treatment; and
- c) what additional commitments, if any, relating to measures affecting trade in services not subject to scheduling under Articles 19 and 20 of the Protocol, it may decide to undertake.

31. In accordance with Article 19 (Market Access) of the Protocol, limitations on full market access, if any, -shall include:

- a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

- c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
 - d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or a requirement of an economic needs test;
 - e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier of any other Member State may supply a service; and
 - f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.
32. Where a Member State opts to schedule numerical ceilings or economic needs tests, the entry should describe each measure concisely indicating the elements which make it inconsistent with Article 19. Numerical ceilings should be expressed in defined quantities in either absolute numbers or percentages. Entries relating to economic needs tests should indicate the main criteria on which the test is based, e.g. if the authority to establish a facility is based on a population criterion, the criterion should be described concisely.
33. In accordance with Article 20 (National Treatment) each Member State shall indicate for those sectors in which it is undertaking commitments whether it is granting national treatment or not.
34. Where it accords full national treatment in a given sector and mode of supply, a Member State commits to provide foreign services and service suppliers with conditions of competition no less favourable than those accorded to its own like services and service suppliers.
35. The national treatment standard does not require formally identical treatment of domestic and foreign suppliers.
36. Where a measure affecting trade in services modifies the conditions for competition in favour of services and service suppliers of the Member State compared to like services or service suppliers of any other Member State, such a measure shall be scheduled as a limitation on national treatment.

(f) Format and Template

37. The AfCFTA schedule will take a similar format to GATS schedules (horizontal and sector specific commitments). The format used below will consist of a table which contains the following main types of information:
- a) a clear description of the sector or sub-sector committed, including a reference to the United National Central Product Classification number;
 - b) limitations on market access (Article 19 of Protocol on Trade in Services);
 - c) limitations on national treatment (Article 20 of Protocol on Trade in Services); and
 - d) additional commitments other than market access and national treatment.
38. A Member State, which in its GATS schedule and for a given sector had made additional commitments with respect to measures affecting trade in services not subject to scheduling under GATS Articles XVI and XVII, shall leave these inscriptions in its AfCFTA schedule for information purposes. Such commitments can include, but are not limited to, undertakings with respect to qualifications, technical standards, licensing requirements or procedures, and other domestic regulations.

Table 1: Template for Schedules of Specific Commitments

Sector or Sub-Sector ¹	Limitations on Market Access	Limitations on National Treatment	Additional Commitments ²
I. HORIZONTAL COMMITMENTS			
ALL SECTORS INCLUDED IN THIS SCHEDULE	(1) (2) (3) (4)	(1) (2) (3) (4)	
II. SECTOR-SPECIFIC COMMITMENTS			
1. SECTOR			
Sector A (CPC 999)	(1) (2) (3) (4)	(1) (2) (3) (4)	

¹ Listed as per document GNS.MTN/W/120

² The additional commitments column is maintained to allow Member States to indicate which additional commitments they have already undertaken.

Key:

Mode of supply: 1. Cross-border supply; 2. Consumption abroad; 3. Commercial presence; 4. Presence of natural persons

39. The services sectors covered under the negotiations will be those sectors set out in GATS W/120 Services Sectoral Classification List (W/120)³ and those elaborated in the latest version of UN Central Product Classification (CPC)⁴.
40. It is understood that market access, national treatment and additional commitments apply only to the sectors or sub-sectors inscribed in the schedule. They do not imply a right for the supplier of a committed service to supply uncommitted services which are inputs to the committed service.
41. The scope of the four modes of supply listed in the schedules is defined in Article 1(p) (Definitions) of the Protocol. Where a service transaction requires in practical terms the use of more than one mode of supply, coverage of the transaction is only ensured when there are commitments in each relevant mode of supply.

VII. REGULATORY COOPERATION FRAMEWORKS**(a) Objective**

42. The general objective of the regulatory frameworks is to complement and facilitate implementation of market access, national treatment commitments in all service sectors, to be negotiated and agreed upon by Member States, with a view to boosting intra-African trade in services. This may promote predictability to African services and services suppliers.
43. Member States recognize that such regulatory cooperation frameworks shall guide the implementation of national laws, regulations and policies, while respecting Member States' right to introduce new regulations on services and services suppliers within its territory, in so far as such regulations do not impair any rights and obligations arising under this Protocol on Trade in Service.

(b) Scope

44. Member States agree that the scope of such regulatory cooperation frameworks shall be measures affecting trade in services, as provided for in Article 2 of the Protocol on Trade in Service.

³ Services Sectoral Classification List, Note by the WTO Secretariat, MTN.GNS/W/120.

⁴ UN CPC Provisional available at <http://unstats.un.org/unsd/cr/registry/regcst.asp?Cl=9&Lg=1>.

45. Member States shall negotiate sector specific obligations through the development of regulatory frameworks for each of the sectors, as necessary, taking account of the best practices and *acquis* from the RECs, as well as the negotiated agreement on sectors for regulatory cooperation. Starting from the five priority services sectors, regulatory frameworks shall be developed for each of the sectors as a whole, or for particular sub-sectors or groups of sub-sectors, as appropriate.

(c) Basis for Development of Regulatory Cooperation Framework

46. The starting point for the negotiation of regulatory frameworks shall be the assessment of the protocols and regulations established by the RECs complemented by regulations and protocols binding in the AU system.

VIII. CONDUCT OF NEGOTIATIONS

47. The requests and offers shall be sent directly to the Secretariat in accordance with the formal channels of communication. Upon receipt, the Secretariat shall transmit the request and offers to all Member States for their consideration and action.
48. The requests and offers shall form the basis for the negotiations.
49. The capacity needs of Member States with smaller delegations should be taken into account by scheduling negotiation meetings in sequence and not in parallel.

(a) Committee on Trade in Services

50. Member States shall undertake the negotiation of the schedules of specific commitments as well as regulatory cooperation frameworks in the Committee on Trade in Services (hereinafter referred to as “the CTS”).
51. Member States in the interim shall undertake the negotiation of the schedule of commitments as well as regulatory cooperation frameworks in accordance with the agreed upon Transitional Implementation Work Program developed by Member States pending the establishment of the CTS by the Council of Ministers.

(b) Negotiations at REC level

52. Where appropriate, the exchange of requests and offers may be carried out at sub-regional meetings convened under the auspices of a REC. If required and

deemed necessary by the CTS, the results/outcome of the scheduling of the offers flowing from the requests may be considered at a plenary meeting of the Member States involved in the negotiations.

(c) Finalisation of negotiations

53. The CTS shall coordinate the verification of final schedules of specific commitments of Member States and recommend them to the Council of African Ministers of Trade (AMOT) for adoption.

54. The schedules, once adopted by Council of Ministers of Trade, shall become an integral part of the Protocol, and shall constitute rights and obligations that shall enter into force in accordance with the Protocol on Trade in Services.

(d) Implementation of commitments

55. Member States shall take measures to implement commitments under the Protocol on Trade in Services and shall notify the Secretariat.

IX. ROLE OF AFCFTA SECRETARIAT

56. The AUC shall be the coordinating body for the AfCFTA NF and focal point for the depository of all negotiation documents and is responsible for preparing technical papers, draft working documents as well as circulation of relevant documents.

X. STAKEHOLDER CONSULTATION

57. The roadmap for the negotiations shall allow adequate time for Member States to conduct national consultations.

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

The Assembly,

1. **TAKES NOTE WITH APPRECIATION** of the Report of H.E. Mr. Issoufou Mahamadou, President of the Republic of Niger, the Leader of the African Continental Free Trade Area (AfCFTA), and the recommendations thereof on the progress achieved on the establishment of the AfCFTA;
2. **RECALLS** Decision Assembly/AU/Dec.647(XXIX) adopted in Addis Ababa, July 2017, which approved the modalities for trade in services negotiations as well as modalities for tariff negotiations with a level of ambition of 90% in line with the adopted Modalities and urged the Ministers of Trade to conclude negotiations on sensitive and exclusion lists;
3. **ENDORSES** the recommendations of African Union Ministers of Trade on:
 - (i) Template on Tariff Liberalization which will be used by Member States in preparing the AfCFTA Schedules of Tariff Concessions; and
 - (ii) The designation of Sensitive Products and Exclusion List on the basis of the following criteria: food security, national security, fiscal revenue, livelihood and industrialization;
4. **AGREES** that the percentage for Sensitive Products to be 7% of total tariff lines and the Exclusion List not to exceed 3% of total tariff lines and **FURTHER AGREES** that the application of these percentages be subjected to double qualification and anti-concentration clauses where the excluded products shall not exceed 10% of total import value from other State Parties. In other words, products to be excluded from liberalization will represent no more than 3 percent of tariff lines accounting for no more than 10 percent of the value of imports from other African countries;
5. **FURTHER ENDORSES** the recommendations of African Union Ministers of Trade that a transitional period of 5 years or less be used for countries which require this flexibility before the start of liberalization of Sensitive Products. This means that during this period, tariffs applicable to sensitive products may be maintained as long as they are eliminated by the end of the phase-down period provided for under the adopted modalities (10 years for developing countries and 13 for the least developed countries);
6. **ADOPTS** the Guidelines for Development of Schedules of Specific Commitments and Regulatory Cooperation Framework for Trade in Services and the new Roadmap for finalization of AfCFTA Negotiations with a new deadline of June 2020;

7. **FURTHER RECALLS** Assembly/AU/Draft/Dec.3 (XXXI) adopted in Nouakchott, July 2018 to engage external partners as one block speaking with one voice and **DECIDES** that Member States wishing to enter into partnerships with Third Parties should inform the Assembly with assurance that those efforts will not undermine the African Union Vision of creating one African Market;
8. **REQUESTS** the African Union Ministers of Trade to develop a Strategy towards realization of an African Common Market by 2023 and complete this exercise by November 2019 for consideration by the January 2020 Assembly;
9. **FURTHER DECIDES** to hold an Extra-Ordinary Summit in July 2019, a day before the Coordination Summit, in Niamey, Niger in order to make it possible for the full membership of African Union to decide on the hosting of the AfCFTA Secretariat, celebrate the first Anniversary of the Signing of the AfCFTA and formally launch the operational phase of the African Continental Free Trade Area Market;
10. **COMMENDS** the African Union Ministers of Trade (AMOT), the Senior Trade Officials, the Chief Negotiators, the Technical Working Groups (TWG), the Continental Task Force and the African Union Commission for their efforts to conclude outstanding issues on the AfCFTA Negotiations;
11. **WELCOMES** the signatures the Agreement Establishing the African Continental Free Trade Area and its Protocols by forty nine of our member states and **STRONGLY URGES** all other Member States who have not done so to sign the Agreement establishing the AfCFTA before the first anniversary;
12. **FURTHER WELCOMES** the deposit of instruments of ratification of the Agreement Establishing the African Continental Free Trade Area and its Protocols by and **EQUALLY URGES** other countries to ratify as soon as possible before the first anniversary;
13. **REQUESTS** the African Union Ministers responsible for Trade to:
 - i) submit the Schedules of Tariff Concessions, and Schedules of Specific Commitments on Trade in Services in line with agreed modalities to the July 2019 and January 2020 Sessions of the Assembly, respectively, for adoption; and
 - ii) conclude the negotiations on Investment, Competition Policy and Intellectual Property Rights, and submit the draft legal texts to the January 2021 Session of the Assembly for adoption through the Specialized Technical Committee on Justice and Legal Affairs.

14. **CONGRATULATES** the People and Government of Arab Republic of Egypt, the African Import and Export Bank and the African Union Commission for successfully hosting the First Intra-African Trade Fair.
15. **FURTHER CONGRATULATES** the People and Government of Rwanda for winning the bid to host the next edition of the Intra-African Trade Fair in 2020 **AND CALLS UPON** all member states to support the Government of Rwanda, African Export Import Bank and African Union Commission to ensure successful outcome of this edition as well .
16. **REQUESTS** the AfCFTA Leader, H.E. Mr. Issoufou Mahamadou, President of the Republic of Niger to submit a progress report on the AfCFTA to the July 2019 Summit.

2019-02-08

Report on the African Continental Free Trade Area (AfCFTA), by H.E. Mahamadou Issoufou, president of the Republic of Niger and leader on AFCFTA

African Union

<http://archives.au.int/handle/123456789/2756>

Downloaded from African Union Common Repository