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**EXECUTIVE COUNCIL
Thirty-Third Ordinary Session
25 – 29 June 2018
Nouakchott, MAURITANIA**

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**REPORT OF THE 3RD EXTRAORDINARY SPECIALIZED TECHNICAL
COMMITTEE ON JUSTICE AND LEGAL AFFAIRS
8 – 9 JUNE 2018, DAKAR, SENEGAL**

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**THIRD EXTRAORDINARY SESSION OF
THE SPECIALIZED TECHNICAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS
MINISTERIAL MEETING
8 – 9 JUNE 2018
DAKAR, SENEGAL**

Ext/STC/Legal/Min/Report(III)
Original: English

REPORT

REPORT

I. INTRODUCTION

1. In accordance with Decision Ext/Assembly/AU/Dec.1(X) adopted at the Tenth Extraordinary Summit of the Assembly of Heads of State and Government held in March 2018 in Kigali, Rwanda, the Assembly adopted the Agreement Establishing the African Continental Free Trade Area (AfCFTA), its Protocols on Trade in Goods, Services and the Rules and Procedures on the Settlement of Disputes and requested the AU Commission to convene an Extraordinary Session of the Specialized Technical Committee (STC) on Justice and Legal Affairs to consider the Draft Annexes to the Protocols to the AfCFTA Agreement for submission to the Thirty-first Ordinary Session of the Assembly in July 2018 in Nouakchott, Mauritania.
2. Pursuant to the above Assembly decision, the Commission convened the Third Extraordinary Session of the Specialized Technical Committee (STC) on Justice and Legal Affairs from 8 - 9 June 2018 in Dakar, Senegal to consider the Draft Annexes to the Protocols to the AfCFTA Agreement.
3. The Ministerial Session was preceded and prepared for by a Meeting of Government Legal Experts from 5 to 7 June 2018.
4. The Annexes have been considered by the Eleventh Meeting of the Negotiating Forum (25 – 30 May 2018) and the Sixth Meeting of the Senior Trade Officials (1 – 2 June 2018), which submitted the same for the consideration of the Sixth Meeting of the African Ministers of Trade (3 – 4 June 2018) before being recommended to the Third Extraordinary Session of the STC on Justice and Legal Affairs for consideration prior to submission to the Assembly through the Executive Council for adoption during the July 2018 Summit.
5. The STC on Justice and Legal Affairs comprises Ministers of Justice and Attorneys General or Keepers of the Seals, Ministers responsible for Human Rights, Constitutionalism and the Rule of Law or such other Ministers or authorities duly accredited by the Governments of Member States.

II. ATTENDANCE

6. The following forty-eight (48) Member States were in attendance:

Algeria, Angola, Botswana, Burkina Faso, Cameroon, Central Africa Republic, Chad, Comoros, Congo, Côte d'Ivoire, Djibouti, Egypt, Equatorial Guinea, Eswatini, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Rwanda, Sahrawi Arab Democratic Republic, São Tomé and Príncipe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, South Sudan, Sudan, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

III. OPENING OF THE MEETING

7. The following statements were delivered during the opening ceremony:

Statement by the Legal Counsel of the African Union Commission

8. Amb. Dr. Namira Negm, Legal Counsel of the African Union Commission, on behalf of the Chairperson of the Commission, H.E. Mr. Moussa Faki Mahamat, welcomed all the Honourable Ministers and Distinguished Delegates to the 3rd Extraordinary Session of the STC. She began by extending her gratitude to the Government and People of the Republic of Senegal for the excellent reception accorded in the beautiful city of Dakar. She also recognized the efforts of the Legal Experts of the negotiating parties and her team for the great work achieved over the past days to ensure that the Draft Annexes were ready for consideration by the STC.

9. The Legal Counsel noted that the Legal Experts from AU Member States, at their meeting which concluded on 7 June 2018 in Dakar, did a comprehensive analysis and revision of the compiled Annexes as reflected in the Texts circulated to the Ministers and Delegations for consideration, emphasising that only minor amendments were made. In this regard, she urged the Ministers to focus on the legal matters only, bearing in mind this text will be submitted to the Policy Organs in the Union in July 2018 for consideration and adoption.

10. Ambassador Negm also commended the leadership of Honourable Mokhele Moletsane, from Lesotho, which she recalled was efficient in Kigali and expressed confidence that the Meeting will be able to finalize the task ahead in the same manner under his leadership.

Statement by the Chairperson of the STC on Justice and Legal Affairs

11. The Chairperson of the STC, Hon. Mokhele Moletsane, Minister of Justice, Human Rights and Correctional Services from the Kingdom of Lesotho, began by thanking the Government and people of Senegal for the warm welcome and hospitality extended to the participants and for the excellent facilities availed to the meeting. He further expressed that it is his honour and privilege to chair this meeting of Ministers of Justice in such a short space of time following the meeting in Kigali, Rwanda.

12. He expressed his appreciation to the African Ministers of Trade, Negotiators and Legal Experts for making the work of this Ministerial Session easier and encouraged delegations to work enthusiastically and engage in robust deliberations with a view to extricating our Africa from the Abyss of abject poverty and place it on a new pedestal of hope for the future.

13. Hon. Moletsane concluded by echoing the words of the Legal Counsel that the Meeting of Legal Experts had already considered the Draft Annexes stringently in order to bring them in conformity with the required legal standards and therefore proposed their timely consideration and adoption by the Ministers for onward transmission to the 31st Ordinary Summit to be held in July 2018.

Statement by the Representative of the Government of the Republic of Senegal

14. H.E. Ismaïla Madior Fall, Keeper of the Seal and Minister of Justice of the Republic of Senegal, presented the Statement on behalf of the Government of Senegal. He began by thanking the Minister of Justice of Lesotho and the distinguished Ministers and Delegations of each Member State present. He highlighted the significance of this meeting following the adoption and signature of the AfCFTA Agreement and its Protocols in Kigali, Rwanda in March 2018.

15. He informed the meeting that the President of the Republic of Senegal, H.E. Macky Sall is pleased that Africa has demonstrated that it has resolutely decided to shoulder its responsibilities through the decision to establish the AfCFTA, for African integration.

16. He thanked the African Union leaders and staff for their hard work in facilitating the finalisation of the Annexes towards completion of the AfCFTA process and reiterated that the work of the STC is to review the Annexes which was already legally scrubbed by the meeting of Government Legal Experts immediately preceding this one.

17. H.E. Ismaïla Madior Fall officially declared the 3rd Extraordinary Session of the STC on Justice and Legal Affairs opened.

IV. CONSIDERATION AND ADOPTION OF DRAFT AGENDA AND PROGRAM OF WORK

18. The Chairperson of the Meeting presented the Draft Agenda for consideration as follows:

1. Opening Remarks;
2. Consideration and Adoption of the Draft Agenda;
3. Organization of Work;
4. Consideration of the Draft Report of the Meeting of Government Legal Experts;
5. Consideration of the Draft Annexes to the Protocol to the Agreement Establishing the African Continental Free Trade Area (AfCFTA) on Trade in Goods and on the Rules and Procedures on the Settlement of Disputes:
 - a) Protocol on Trade in Goods
 - i) Annex 1 on Schedule of Tariff Concessions
 - ii) Annex 2 on Rules of Origin

- iii) Annex 3 on Customs Cooperation and Mutual Administrative Assistance
- iv) Annex 4 on Trade Facilitation
- v) Annex 5 on Non-Tariff Barriers
- vi) Annex 6 on Technical Barriers to Trade
- vii) Annex 7 on Sanitary and Phytosanitary Measures
- viii) Annex 8 on Transit
- ix) Annex 9 on Trade Remedies

b) Protocol on Rules of Procedures on the Settlement of Disputes

- i) Annex 1 on the Working Procedures of the Panel
- ii) Annex 2 on Expert Review Groups
- iii) Annex 3 on the Code of Conduct for Arbitrators and Panelists

6. Any Other Business;

7. Adoption of the Draft legal instruments and the Draft Report; and

8. Closing Remarks.

19. The Meeting adopted the Agenda as presented, without any amendment.

V. CONSIDERATION OF THE DRAFT REPORT OF THE MEETING OF GOVERNMENT LEGAL EXPERTS

20. Ms. Kumba Jow Carayol, the Chairperson of the Meeting of Government Legal Experts, presented the report of the Meeting of Government Legal Experts that took place from 5 to 7 June 2018. She conveyed the apologies of the Minister of Justice of the Gambia who could not be present due to other engagements.

21. She reported that the Experts had considered and made the necessary amendments to the nine (9) Draft Annexes to the Protocol to the Agreement Establishing the African Continental Free Trade Area (AfCFTA) on Trade in Goods and the three (3) Draft Annexes to the Protocol on the Rules and Procedures on the Settlement of Disputes.

22. In conclusion, Ms. Carayol informed the Meeting that there were no contentious issues arising from the Meeting of Experts and requested the Ministers to consider and adopt the draft texts which have already undergone thorough legal scrubbing during the Legal Experts' Meeting.

VI. CONSIDERATION OF THE DRAFT ANNEXES

23. The Chairperson proposed and it was agreed by the Meeting that each Annex will be considered as a whole rather than Article-by-Article.

A. CONSIDERATION OF THE ANNEXES TO THE PROTOCOL ON TRADE IN GOODS

Consideration of Annex 1 on Schedules of Tariff Concessions

24. The Annex was adopted without amendment.

Consideration of Annex 2 on Rules of Origin

25. A delegation highlighted some minor editorial amendments to be made but which will be submitted to the Secretariat.

26. The Annex was accordingly adopted.

Consideration of Annex 3 on Customs Cooperation and Mutual Administrative Assistance

27. The Annex was adopted without amendment.

Consideration of Annex 4 on Trade Facilitation

28. The Annex was adopted without amendment.

Consideration of Annex 5 on Non-Tariff Barriers

29. There were no substantive amendments to this Article, however, the Legal Counsel clarified that the title of Article 6 will be amended to reflect the content.

30. The Annex was accordingly adopted.

Consideration of Annex 6 on Technical Barriers to Trade

31. The Annex was adopted without amendment.

Consideration of Annex 7 on Sanitary and Phytosanitary Measures

32. The Annex was adopted without amendment.

Consideration of Annex 8 on Transit

33. The Annex was adopted without amendment.

Consideration of Annex 9 on Trade Remedies

34. A delegation highlighted some minor amendments to be made but which will be submitted to the Secretariat.

35. The Annex was accordingly adopted.

B. CONSIDERATION OF THE ANNEXES TO THE PROTOCOL ON RULES OF PROCEDURES ON THE SETTLEMENT OF DISPUTES

Consideration of Annex 1 on Working Procedures of the Panel

36. The Annex was adopted without amendment.

Consideration of Annex 2 on Expert Review Groups

37. The Annex was adopted without amendment.

Consideration of Annex 3 on Code of Conduct for Arbitrators and Panelists

38. The Annex was adopted without amendment.

C. STATEMENTS BY MINISTERS AND HEADS OF DELEGATIONS

39. Following adoption of the Draft Annexes, the following statements were made by Ministers and Heads of Delegation:

40. The Ambassador of the Republic of Cameroon in Senegal conveyed the regrets of the Minister of Justice of Cameroon who could not be present at this STC, but wished the Meeting fruitful deliberations.

41. The Minister of Justice and Correctional Services of the Republic of South Africa expressed that he hoped that Africa will look into establishing a permanent dispute resolution mechanism given that as Africa becomes more integrated through this process, issues will inevitably arise.

42. The Minister of Justice of the Kingdom of Eswatini, informed the Meeting that his Country is in the final stages of ratification of the AfCFTA Agreement. He also requested that the AfCFTA Guidelines should be concluded as soon as possible and referred to the STC on Justice and Legal Affairs for scrubbing once considered by the AMOT Meeting.

43. The Legal Counsel informed the meeting that after finalisation and adoption of the Annexes by the Policy Organs of the AU, the authenticated text will be circulated to all Member States. She also briefed the meeting on the proposal by the Republic of Rwanda to consider the Treaty Establishing the African Medicines Agency during this Extraordinary Session, however, the Bureau of the STC decided that the item should instead be considered at the Ordinary Session of the STC scheduled to take place in October 2018 given the importance of the field of medicine.

VII. ANY OTHER BUSINESS

44. No issue was raised under this agenda item.

VIII. ADOPTION OF THE DRAFT LEGAL INSTRUMENTS AND THE DRAFT REPORT

45. The Meeting adopted the Draft Annexes to the Protocols on Trade in Goods and on the Rules and Procedures on the Settlement of Disputes to the Agreement Establishing the African Continental Free Trade Area (AfCFTA) as amended and recommended the same to the Executive Council for consideration at its Session in July 2018 which will be held in Nouakchott, Mauritania.

46. The meeting also adopted its Report subject to the incorporation of proposed amendments.

IX. CLOSING REMARKS

47. Amb. Dr. Namira Negm, Legal Counsel of the AU Commission, in her closing remarks congratulated the Ministers and the Legal Experts for the job well done and specifically thanked Hon. Mokhele Moletsane and Ms. Kumba Jow Carayol for directing the deliberations at the meeting of Ministers and Government Legal Experts, respectively. She expressed her appreciation for the Government of Senegal for hosting the meeting. She also thanked the members of her OLC team and other support staff for their hard work during the STC Session.

48. The Legal Counsel noted that Africa is moving forward in the right direction with the establishment of a Free Trade Area, the Single Air Market and more integration to come. She informed the meeting that forty-four (44) out of fifty-five (55) Member States of the African Union have already signed the AfCFTA Agreement and that Ghana, Kenya and Rwanda have already ratified. She also announced to the Meeting that the Republic of Niger became the 4th Country to ratify the AfCFTA Agreement having deposited the instruments of ratification with the Chairperson of the AU Commission, on 8 June 2018.

49. Hon. Mokhele Moletsane, Chairperson of the Meeting, expressed heartfelt joy at the conclusion of the work of the 3rd Session of the STC on Justice and Legal Affairs in Dakar. He thanked the Legal Counsel and her team as well as the Government Legal Experts for a job well done and specific vote of thanks to the Government and people of Senegal for their warm hospitality.

50. H.E. Ismaïla Madior Fall, Keeper of the Seals and Minister of Justice of the Republic of Senegal expressed gratitude and appreciation to the Meeting for choosing Senegal as the venue of the 3rd Extraordinary Session of the STC and for the kind words expressed by the various delegations. He expressed optimism for Africa's integration through the establishment of the AfCFTA and bade all farewell back to their respective destinations before officially declaring the 3rd Extraordinary Session of the STC on Justice and Legal Affairs, closed.

2018-06-29

Report of the 3rd Extraordinary Specialized Technical Committee on Justice and Legal Affairs 8 – 9 June 2018, Dakar, Senegal

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