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Creating One African Market

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

STATUS OF THE AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA)

A. INTRODUCTION

1. Your Excellences will recall that during the 12th Extraordinary Session of the Assembly, held on 7th July, 2019 Niamey, Niger, I provided an update on the African Continental Free Trade Area (AfCFTA) process. It is my honour to provide you with my new report which covers the period of six months from July up to December 2019.

B. DEVELOPMENTS DURING THE PERIOD JULY 2019 TO DECEMBER 2019

2. Your Excellences, allow me to update you on where we are in our journey to create one African Market through the African Continental Free Trade Area.

3. During the period under review, the inaugural meeting of the Council of Ministers was held in Addis Ababa from 24th to 25th October 2019. Article 11 of the AfCFTA Agreement mandates the AfCFTA Council of Ministers to have authority on the implementation and enforcement of the AfCFTA Agreement. As directed by Your Excellencies, the inaugural meeting of the AfCFTA Council of Ministers was in line with Summit Decision **EX/Assembly/au/DEC.1(XII)** in which the Assembly instructed the interim AfCFTA Secretariat to organise the meeting before 31st October 2019.

4. In addition to the meeting of the AfCFTA Council of Ministers, a meeting of the African Union Ministers of Trade (AMOT) was also held in December, 2019. As Your Excellencies are aware, the AMOT remains the principal organ which you established to handle negotiations under the AfCFTA assisted by the Chief Negotiators, Technical Working Groups and other expert bodies.

5. The substantive reports of the AfCFTA Council of Ministers and AMOT will be availed to Your Excellencies through the African Union Executive Council and the Permanent Representatives Committee. I will in this report highlight the most pertinent issues.

6. My update will cover developments in the following areas:

- i. Schedules of Tariff Concessions
- ii. Trade in Services
- iii. Rules of Origin
- iv. The G-6 Reservations
- v. Status of Signature and Ratification of the AfCFTA Agreement
- vi. Preparedness for the Start of Trading Under the AfCFTA on 1st July 2020
- vii. Phase II Issues and Beyond
- viii. Commemoration of Africa Integration Day and popularization of the AfCFTA Vision
- ix. Developments in the Operationalization of the AfCFTA Secretariat

- x. Mobilizing the African Private Sector, Regional Economic Communities and other Stakeholders for Effective Implementation of the AfCFTA Agreement
- xi. Delegation of certain powers to the AfCFTA Council of Ministers
- xii. Building and Sustaining Momentum for Full, Timely and Effective Implementation of the AfCFTA Agreement
- xiii. Suggested Position on Requests Observer Status by States that are not Member States of the African Union
- xiv. Conclusions and Recommendations

Schedules of Tariff Concessions

7. You will recall Your Excellencies that during the 12th Extraordinary Session of the Assembly, held from 7th July 2019 in Niamey, Niger, the Assembly decided that that the final Schedules of Tariff Concessions on Trade in Goods were to be submitted to this current session.

8. In preparation for this, the AUC conducted capacity building activities to assist Member States and Regional Economic Communities (RECs) to prepare for their tariff offers.

9. As at 31st December 2019, the following eleven countries had submitted their tariff offers of 90%: Egypt; Equatorial Guinea; Cameroon; Central African Republic; Chad; Republic of Congo; Gabon; Malawi; Mauritius; Sao Tome; and Seychelles.

10. I am informed that a number of countries and Regional Economic Communities are still working on their tariff offers and are at an advanced stage.

11. During the 10th meeting of AMOT which was held in Accra, Ghana in December 2019, it became clear that countries and Customs Unions needed more time to finalise the outstanding work on tariff offers and other issues, which will be detailed in this report. AMOT therefore directed that as from February to May 2020 the AUC organises a series of technical meetings of AfCFTA negotiating institutions in order for Member States to finalize the outstanding work. Their recommendation, Your Excellencies, would be to have an Extra-Ordinary session of the Assembly in May 2020 to consider the offers and other preparatory work for the start of trading.

12. My earnest request to Your Excellencies is that you instruct your respective Ministers responsible for trade to ensure finalization of all tasks on this issue before May, 2020.

Trade in Services

13. Your Excellencies, the road map for finalization of work on Trade in Services has been aligned as per our directive. In their meeting held in Niamey, Niger in July last year, the African Ministers of Trade reaffirmed that the Schedules of Specific Commitments of the Priority Sectors be finalized by January 2020. Furthermore, the Ministers agreed that

the remaining Services Sectors and the Regulatory Cooperation Frameworks be finalized by June 2020. Member States, therefore, undertook to submit their initial offers for trade in services at the latest as agreed by 31st January 2020.

14. In view of the growing importance of trade in services throughout the world, I am looking forward for update on the state of play in as far as work on Trade in Services is concerned.

15. The deadline of June, 2020 for remaining Services Sectors and the Regulatory Cooperation Frameworks must be upheld.

16. I would like to point out that a perception has been created that we have given more focus on issues of trade in goods than trade in services in the AfCFTA Phase I negotiations. This perception must be destroyed. **Accordingly, I recommend to Your Excellencies that we instruct the AfCFTA Council of Ministers to ensure that finalization of all outstanding work in the areas of trade in goods and trade in services goes hand in hand and that the start of trading under the AfCFTA on 1st July, 2020 comprises both trade in goods and trade in services.**

Rules of Origin

17. I have been briefed that during the past six months not much progress has been made in finalizing the outstanding work on Rules of Origin. This was mainly due challenges associated with inadequate funding availed to the interim AfCFTA Secretariat and Support Unit. The shortage of funding also affected other activities on Trade in Services and the kick starting of Phase II Negotiations. There is engagement with the relevant African Union policy structures in order to ensure that funding is secured for the finalization of this work.

18. It must also be noted that some countries and African Customs Unions have observed that they will need the rules of origin completed before finalising the tariff offers. As reported to the last Assembly, the outstanding work on Rules of Origin pertains to fisheries; edible oils; sugar; leather; textiles and apparel; machines and machinery; and the automotive industry.

19. **The completed work would also be submitted for your consideration during the extra-ordinary session of the Assembly which is proposed to take place in May 2020. Accordingly, I recommend to Your Excellency that we instruct Ministers responsible for Trade to ensure that all work is completed before the suggested Extra Ordinary Summit of May, 2020.**

G-6 Reservations

20. Your Excellencies will recall that during my last update, I advised that there are now six (6) countries whose position is that the adopted modalities are too ambitious for them on account of their structural constraints and have hence sought some preferential

treatment. The G-6 countries now comprises: Ethiopia, Madagascar, Malawi, Sudan, Zambia and Zimbabwe. These countries have requested for a level of ambition of 85% instead of the 90% agreed to by the rest of the AfCFTA negotiating membership.

21. In my previous reports, I have also informed this august body that at an informal meeting held in Lusaka, Zambia in September 2018, the African Union Commission and the United Nations Economic Commission for Africa organised a meeting of AfCFTA Chief Negotiators to find a way forward to advance the negotiations on the modalities on trade in goods that would take account of the particular vulnerabilities of G.6 countries. At that meeting the G.6 countries agreed on the level of liberalisation of 90% to be implemented over 15 years. However, two Member States (Malawi and Sudan) undertook to liberalise up to 85% in the first 10 years and reach 90% by the 15th year after entry into force of the AfCFTA Agreement.

22. Your Excellencies, the decision adopted by this Assembly at its 12th Extraordinary Session held in July 2019 in Niamey, the Assembly was as follows:

“decides to further discuss the submission of the G6 Countries (Ethiopia, Madagascar, Malawi, Sudan, Zambia and Zimbabwe) to undertake liberalization of the 90% of total tariff lines over a period of fifteen (15) years, subject to reciprocity, with the view to reach consensus and to report to the upcoming session of the Assembly of the AU in February 2020”.

23. During the last meeting of the African Ministers of Trade (AMOT), some Member States observed that it was necessary to discuss the matter at that level and before presenting it to the Heads of State and Government. However, some countries noted that this was a Summit matter and thus not a subject of discussion at AMOT. In the ensuing deliberations, some Member States also requested that the African Union Office of Legal Counsel provide a written legal interpretation of the above Decision. Other Member States also observed note that despite raising concerns on the modalities in 2017 when the modalities were concluded, all the countries involved have signed the AfCFTA Agreement and some of them have even ratified it.

24. AMOT took note of the divergent views of Member States on this matter and requested that this be brought here again for discussion and agreement on the way forward.

25. I recommend to Your Excellencies, that we fully discuss this matter and make a final decision on it based on the legal opinions.

Status of Signature and Ratification of the AfCFTA Agreement

26. Regarding the status of signatures, I wish to advise that Eritrea is the only country which is yet to sign. The African Union Commission is engaging with the government of Eritrea, and we hope that our sister country will soon join the fold. One encouraging factor

is that the Delegation of Eritrea made a statement during the 2019 Niamey Extraordinary Summit affirming the commitment of the Republic of Eritrea to sign the AfCFTA Agreement as soon as possible.

27. I accordingly recommend to Your Excellencies that the African Union Commission finalizes engagement with the Government of Eritrea before the end of April, 2020.

28. After my report to Your Excellencies in July 2019, in Niamey, Niger, I am glad to advise that Mauritius submitted her instrument of ratification and became the 28th AfCFTA State Party. The status of ratifications as at 13th January, 2020 is as follows:

1. Burkina Faso	8. Ethiopia	15. Niger	22. Sao Tome and Principe
2. Chad	9. Eswatini	16. Mali	23. Senegal
3. Congo	10. Kenya	17. Mauritania	24. Sierra Leone
4. Cote D'Ivoire	11. Gabon	18. Mauritius	25. South Africa
5. Djibouti	12. Ghana	19. Uganda	26. The Gambia
6. Egypt	13. Guinea	20. Rwanda	27. Togo
7. Equatorial Guinea	14. Namibia	21. Saharawi Republic	28. Zimbabwe

29. This development is very encouraging since more than half of the African Union Member States have now submitted their instruments of ratification. I am informed that a number of Member States are at various stages of complying with their constitutional requirements in order to deposit instruments of ratification of the AfCFTA Agreement. I wish to encourage those that are concerned to speed up the ratification processes so that we all move together as a continent in implementing the AfCFTA Agreement.

30. Against this background, I also recommend to Your Excellencies that all African Union Member States sign and ratify the Agreement Establishing the African Continental Free Trade before the start of trading under this Agreement on 1st July, 2020.

31. In making this recommendation, I also wish to bring to the attention of Your Excellencies that the AfCFTA Council of Ministers has promoted a spirit of inclusiveness and universality of AfCFTA membership by taking two key decisions. The first one is that all African Union Member States will fully participate in meetings of the AfCFTA Council of Ministers until after the start of trading on 1st July, 2020. It will only be after that, that both the terms and conditions of the participation of African Union Member States, who by that time, would still not be State Parties to the AfCFTA Agreement will be considered. The second decision was that competition for appointment in the AfCFTA Secretariat at all levels should be open to all nationals of the African Union Member States.

Preparedness for the Start of Trading Under the AfCFTA on 1st July 2020

32. Your Excellencies. I am glad to report that a number of Member States have conducted activities to prepare stakeholders at national level to start trading on 1st July 2020.

33. However, there is need for our Governments to ensure that sensitization of AfCFTA stakeholders is enhanced at national levels. There are outstanding issues which have a direct impact on stakeholders and the private sector, and it is crucial that at national levels, we each take concerted steps to engage with the private sector and prepare them for trading. I will be coming back to this important issue in the later part of my report.

34. Amongst the activities which must still be undertaken at national levels are: aligning national laws to the AfCFTA Agreement; the need to ensure that the required documents to enable trade under the AfCFTA are produced, distributed and brought to the attention of stakeholders like the producers, importers, exporters, freight and forwarding companies and customs administrations; and, automation of customs and trade processes which would be a foundation for interconnectivity of Customs Administrations and other stakeholders on the continent;

35. In addition to these national level preparatory activities, it is of vital importance that each one of us strengthens national institutions earmarked for implementation of the AfCFTA Agreement. That strengthening may go beyond the sector Ministries responsible for trade because the African Continental Free Trade Area is developmental in character and will, in this respect be implemented across sectors.

36. Your Excellencies may also recall that we decided in Nouakchott, Mauritania in July 2018 that all of us formulate national AfCFTA Implementation Strategies as well as set up National AfCFTA Committees where no similar structures exist. These structures are targeted to draw the participation of stakeholders from among others: the executive and legislative wings of government; private sector; labour; youth; women; civil society; academia and small-scale cross border traders. I urge all of us to implement this Nouakchott Decision.

37. As part of national level preparations, I recommend the following to Your Excellencies:

- (a) The Interim AfCFTA Secretariat produces and distributes to all African Union Member States before the end of February, 2020, a template for use by all African Union Member States for submitting reports to the AfCFTA Interim Secretariat on the state of national level preparations, especially those highlighted in preceding paragraphs;**
- (b) On the basis of the template, all African Union Member States submit reports by end on March, 2020 to the Interim AfCFTA Secretariat on their status of preparations for the start of trading under the AfCFTA.**

A summary report from all submissions will be part of my report to Your Excellencies at our May, 2020 Extraordinary Summit;

- (c) **The Interim AfCFTA Secretariat puts in place before the end of April, 2020, systems for monitoring trade flows in the AfCFTA as well as capturing trade statistics.**

Phase II Negotiations and Beyond

38. Your Excellencies, as the Phase I negotiating issues draw to a close, it is anticipated that Phase II negotiations on Investment, Competition Policy, and Intellectual Property Rights commence shortly after this Extra-Ordinary Summit. The AUC is in the process of facilitating the establishment of the Technical Working Groups which will give key inputs in the negotiations.

39. The AMOT has in this respect guided that the African Union Commission convenes a meeting of the Negotiating Forum immediately after the 2020 Summit to consider the Terms of References of the Technical Working Groups. As our negotiators embark on this work, they must be mindful of the deadline of December 2020 for the conclusion of Phase II negotiations. **This target should be upheld and this should be captured in our Decisions to be adopted after consideration of my report.**

40. **Your Excellencies, as the world moves towards the digital era, e-commerce will increasingly feature in intra-African trade. In this respect, I recommend that we give a mandate to the African Union Commission to mobilize resources during 2020 for capacity building in the negotiation of e-commerce legal instruments at the levels of the African Continental Free Trade Area and the World Trade Organization. I further recommend that we make a formal decision during this Summit that we should have Phase III Negotiations focused on an AfCFTA Protocol on e-Commerce immediately after conclusion of Phase II Negotiations.**

41. **As we move towards an AfCFTA Protocol on e-Commerce, I would also like to recommend to Your Excellencies that we critically review approaches that are being made to us by bilateral partners to enter into bilateral e-commerce legal instruments with them. This recommendation is being made to ensure that we are able to negotiate and implement an AfCFTA Protocol on e-Commerce where Africa has full authority on all aspects of e-Commerce such as data and products being traded under e-commerce.**

42. It is also important to point out that bilateral e-commerce agreements with third parties can both disrupt Africa's industrialization drive, which is the productive base of the African Continental Free Trade Area as well as undermine the emergence and development of African e-commerce platforms at national, regional and continental levels. **In this connection, I recommend to Your Excellencies that we promote the emergence of African owned e-commerce platforms at national, regional and**

continental levels as part of our preparations for the negotiation of an AfCFTA Protocol on e-Commerce.

Commemoration of Africa Integration Day and Popularization of the AfCFTA Vision

43. Your Excellencies would recall that through Decision Ext/Assembly/AU/Dec.1(XII), we agreed to have the 7 July of each year to be designated as “*Africa Integration Day*” without it being a public holiday in order to commemorate the operationalisation of the AfCFTA Agreement.

44. Your Excellencies would also recall that through the Niamey Declaration (Ext/Assembly/AU/ Decl.1(XII)) of the 12th Extraordinary Session of the Assembly of 7 July 2019, Niamey, Niger, we invited Africans on the Continent and in the Diaspora to come up with commemorative activities to solemnly observe and celebrate the achievements of AfCFTA in the preceding year; fully aware that the destiny of the AfCFTA is in our hands.

45. In order to ensure that the commemoration of Africa Integration Day, which shall also serve as a reminder and reaffirmation of our commitment to continue the journey of establishing the African Economic Community as outlined in the Treaty Establishing the African Economic Community (Abuja Treaty) of 1991, the African Union Commission has developed some guidelines which also include outlines of sample commemorative activities. These are contained in a Draft Decision conveyed by the Council of Ministers for Your consideration. **I recommend Your Excellencies adopt the draft Decision and Guidelines.**

46. I would like to call upon us to seize the opportunity of the Africa Integration Day to popularize and democratize our vision of an AfCFTA that is a disruptor of the status-quo. We are creating an AfCFTA that has the potential to remove the historical legacy of the balkanization of Africa and, in the process, create the conditions for the realization of Africa’s structural transformation through intra-African trade. This transformation would greatly benefit our countries and our people. Because the successful implementation of the AfCFTA Agreement requires a change of mindset, it is incumbent upon us as leaders to drive this process. This can be done through the regular issuance of statements on the AfCFTA, the convening of stakeholders and grassroots activities such as seminars at national, regional and continental levels; panel discussions and symposia involving the African private sector, African women entrepreneurs; African youth, in particular the student community, and research institutions. For example, it is estimated that if one of us here were to make a statement on the AfCFTA each week, our people would receive statements on the AfCFTA all year round, considering that one year has 52 weeks. **In this I would like to recommend that all Heads of State and Government of the African Union make regular statements on how their countries are implementing the Agreement Establishing the African Continental Free Trade Area.**

Developments in the Operationalization of the AfCFTA Secretariat

47. Your Excellencies, one of the issues which the AfCFTA Council of Ministers has been seized up with is the operationalization of the AfCFTA Secretariat.

48. The major issues have been the drawing up of an organizational structure and budget of the AfCFTA Secretariat that will be based in Accra, Ghana and the recruitment of some of the senior executive positions of the AfCFTA Secretariat and its operation in Accra.

49. The overall organizational structure and the budget of the AfCFTA Secretariat is work in progress and is yet to be finalised. This is because the AfCFTA Council of Ministers agreed that other positions in the structure would be considered later after a thorough review of the draft organizational structure and consultations in the national capitals. The AfCFTA Council of Ministers also agreed that that the structure of the AfCFTA Secretariat should grow organically, driven by the provisions of the AfCFTA Agreement, the evolving strategies and work plans as well as the capacity for Member States to pay. In addition, the AfCFTA Council of Ministers decided that the personnel budget of the AfCFTA Secretariat should be funded by African Union Member States in order to safeguard Africa's independence on matters of multilateral trade.

50. The second meeting of the AfCFTA Council of Ministers decided to authorise the African Union Commission as interim Secretariat to start the process of recruiting the Secretary General and three directors. The advertisements were agreed upon to run for a period of two months. The Chairperson of the AUC was also authorised to appoint a panel to facilitate the appointment of Secretary General and the three directors. The panel will comprise:

- The Bureau of the AfCFTA Council of Ministers;
- The African Union Commission, Trade & Industry Commissioner;
- A senior African trade official with experience on international trade matters
- The President of the African Export Import Bank;
- The Executive Secretary of UNECA; and
- A senior representative from the Host country

51. The Selection Panel will be forwarding its recommendations on the appointment of the AfCFTA Secretary General to this Assembly, along with their recommendations on the grade of the position of the Secretary General.

52. I would like at this stage like to draw the attention of this Assembly that one of the Decisions we made in Niamey, Niger at our Extraordinary Session of 7th July, 2019 was that the permanent AfCFTA Secretariat must be operational by 31st March, 2020. I am advised that the AfCFTA Council of Ministers decided to meet this target, hence their recommendation for appointment of the AfCFTA Secretary General and three directors while awaiting completion of the overall structure. The position of the AfCFTA Council of Ministers was contested by the African Union Office of Legal Counsel. I must hasten to commend the AfCFTA Council of Ministers for using stretch imagination to think beyond

what is customary and attempt to meet our target. It is now up to us to decide on how we move in the face of conflict between legality and necessity. Let me stress that conflict will always come as we move towards institutional reform of the African Union. There will always be pressures tying us to the past as well as those pushing to break free of the past that undermines progress. My message to Your Excellencies is that reform, among other things means renewal, efficiency, productivity and mindset change. To achieve these requires the courage to challenge the status quo. The status quo is the bureaucracy that, left unchecked can ensure slow but certain death of the reform process itself. In this respect, reform requires strong determination to break with existing systems, rules, regulations and practices that hinder progress, and where necessary, replace them with those that create substantive value and prosperity for Africa in line with the African Union Agenda 2063-The Africa We Want. Like I said earlier, it is up to us as Heads of State and Government to decide whether or not we want to establish an AfCFTA Secretariat with the speed of reform or the bureaucracy of status quo and slowness. If we choose bureaucracy, we should be ready to deliver a still-born AfCFTA Secretariat.

53. At this stage, let me state that the President of Ghana, His Excellency Nana Adda Dankwa Addo invited the Chairperson of the African Union Commission His Excellency Moussa Faki Mahamat to Accra, Ghana to find ways and means of fast tracking the implementation of the Summit Decision on the operationalization of the permanent AfCFTA Secretariat by 31st March, 2020. In that meeting, the Government of Ghana committed to meet costs related to the installation of the AfCFTA Secretariat, including those related to the recruitment of the Secretary General and three directors. Furthermore, it was decided to start with the recruitment of the Secretary General and the advertisement was placed on the African Union Website on 19th December, 2019 to run for one month.

Mobilizing the African Private Sector, Regional Economic Communities and other Stakeholders for Effective Implementation of the AfCFTA Agreement

54. Your Excellencies, Afro-Champions Initiative has come up with a Trillion Dollar Framework aimed at financing of the programmes and projects of the African Continental Free Trade Area between now and 2030. The Framework will use both private sector investments and public-private partnerships. The Afro-Champion Initiative have requested that they present the draft Framework to us during this Summit. **I recommend that we hear them out and empower them to work with our Ministers, especially those responsible trade, finance, industry and development planning in the implementation of the Trillion Dollar Framework.**

55. Your Excellencies will also recall that after our Extraordinary Summit in Niamey, Niger held in July last year, we instructed the AfCFTA Interim Secretariat and Regional Economic Communities to formulate a Framework of Collaboration among the AfCFTA Secretariat, African Union Commission and Regional Economic Communities. I am briefed that there has been no progress in the implementation of our Decision. Accordingly, **I recommend to Your Excellencies that we direct the Interim AfCFTA Secretariat and Regional Economic Communities to develop this Framework**

before the start of trading and give us a substantive progress report on the matter at our May, 2020 Extraordinary Summit.

56. The African Import and Export Bank is a stakeholder helping us to ensure that mutually beneficial outcomes are promoted when rolling out, operating and sustaining an active and efficient AfCFTA Market. It is in this context that the African Ministers of Trade at their second meeting held in Accra, Ghana in December 2019 noted and decided on the following on the proposed AfCFTA Adjustment Facility:

'The meeting took note of the report made by the STO on the status of utilisation of AfCFTA adjustment facilities put in place by Afreximbank. The report observed that the Afreximbank has availed US\$ 1 billion line of credit to all African Union Member States to be used to meet adjustment costs. In addition, the Bank has availed US\$ 2.5 billion fto the African private sector that may require funds to scale up operations in the AfCFTA. In addition, there was need for the NF for start work to develop the AfCFTA long-term adjustment facility on the basis of the feasibility study and building on the seed capital provided by the Afreximbank through the two lines of credit referred to above.

57. Accordingly, AMOT decided that:

- (i) *More detailed and comprehensive information on the terms and conditions of the AfCFTA adjustment facilities be provided by the Afreximbank; and*
- (ii) *Work on development of AfCFTA long term adjustment facilities be undertaken by Negotiation Forum on the basis of the feasibility study and building on the seed capital provided by Afreximbank'.*

58. In view of the strategic importance of this matter in ensuring speedy and effective implementation of the AfCFTA Agreement, I recommend to Your Excellencies that we instruct our Ministers of Trade and Finance to conclude this work during the course of this year in partnership with Afreximbank and bring to us draft statutes and resource mobilization strategy at our February, 2021 Summit.

Delegation of certain powers to the AfCFTA Council of Ministers

59. Your Excellencies, Article 10 of the AfCFTA Agreement empowers us to provide oversight and strategic guidance on the AfCFTA. With the huge backlog of work in preparations for the start of trading under the AfCFTA, there will be several issues that would require swift decisions and actions for us to be able to meet the deadline of 1st July, 2020. It is a deadline we should not fail to meet in order to uphold our reputation and integrity in the eyes of Africans and the world at large.

60. In order to preempt some of the challenges that may surface along the way as we approach 1st July, 2020, **I would like to recommend to Your Excellencies that we mandate the AfCFTA Council of Ministers to make decisions on all matters**

pertaining to the implementation of the AfCFTA and the operationalization of its structures and report to the Assembly for endorsement.

61. With such a mandate, the AfCFTA Council of Ministers would be able to fully play its role and report back to the Assembly for oversight. In the language of reform, this approach will introduce novelty, creativity and value addition and in the process, enhance the effectiveness and efficiency of the AfCFTA institutions. We would in this way be avoiding paralysis in decision making that could be caused by the fact that we have one Summit per year. Granted, I am recommending for an Extraordinary Summit for May 2020 but there will be several other issues to be dealt with after the launch of the start of trading on 1st July, 2020 that will require immediate policy decisions if we are to create an active and efficient AfCFTA market. This suggested mandate would also be in line with the practice of several international trade organizations, such as the World Trade organization, where the Conference of Ministers is responsible in overseeing the functioning of the entire organization, including the appointment of the Director General.

62. The good thing with this approach is that decisions taken by the Council of Ministers will still be reported to the Assembly for oversight. In addition, and most importantly, key issues such as the interpretation of the Agreement, the budget and organizational structure of the AfCFTA, as well as any matter expressly entrusted to the Summit by the Agreement, would still continue to rest exclusively with the Assembly.

63. One immediate instance where such a mandate would prove to be necessary would be the operationalization of the AfCFTA Secretariat and the appointment of the Secretary General and directors of the AfCFTA. The AfCFTA Council of Ministers would, therefore, be able to conclude this process and simply report to the next Summit, unless consensus is not reached among Ministers during the selection processes.

Building and Sustaining Momentum for Full, Timely and Effective Implementation of the AfCFTA Agreement

64. Your Excellencies, our people expect an African Continental Free Trade Area that substantively and effectively delivers on its promise. We have raised high expectations for ordinary Africans to be able to have cheaper and high quality products under the African Continental Free Trade Area. We must fulfill these expectations. Accordingly, **I am recommending to Your Excellencies that the Interim AfCFTA Secretariat develops as part of its hand over package to the permanent AfCFTA secretariat, a strategy paper on sustaining the momentum for full, timely and effective implementation of the AfCFTA Agreement. This strategy document should be part of my report to the May, 2020 Extraordinary Summit.**

65. As part of the need to sustain momentum in the implementation of the Agreement Establishing the African Continental Free Trade Area, Your Excellencies, will agree with me that this would immediately require the presence and participation of all Member State in all AfCFTA meetings so that we do not face the problem of a lack of quorums. These meetings could be for negotiations or meetings of AfCFTA implementation structures

envisaged under the Agreement. The number of these meetings is expected to increase as preparations for the start of trading under the AfCFTA intensify; and beyond, once trading under the AfCFTA starts on 1st July 2020 and begins to grow.

66. Let me, for emphasis point out that there have been some challenges recently in securing the quorum necessary to hold some AfCFTA meetings. This is largely due to the absence of sponsorship provided by the African Union Commission or from some development cooperation partners. I was briefed that some of the recent meetings were transformed into consultative meetings due to lack of quorums. This is not good for momentum and delivery of tangible results to the people of Africa.

67. In order to sustain the momentum in the AfCFTA negotiations and implementation process, **I would like to recommend to Your Excellencies that all Member States allocate the necessary and adequate resources to ensure that our respective governments are fully represented in the various meetings of the AfCFTA with no delays due to lack of quorums.** In doing so, we will assume full ownership of the AfCFTA process.

68. **I also recommend to Your Excellencies that we instruct the Interim AfCFTA Secretariat to work closely with Member States, the Secretariats of the Regional Economic Communities and other relevant intergovernmental organizations active in this area on the continent, in order to enhance planning and coordination of activities and meetings and minimize the potential conflicts of dates and other overlaps.**

69. Another issue of momentum building and sustenance is the need for Your Excellencies to talk about the AfCFTA in your policy pronouncements and engagements with the media which I talked about earlier in the section on commemoration of Africa Integration Day. Regular pronouncements on the AfCFTA also send a message to the investment community about the commitment of the country to the AfCFTA. As we develop this market which will bring with it large economies of scale and scope, decisions to locate in our countries by the investors will to a great extent be dependent on our perceived commitment to the purposes and principles of the AfCFTA. In this respect, **I would also recommend to Your Excellencies that in our engagements with interlocutors, we should also market the AfCFTA as an attractive and growing investment destination.**

Suggested Position on Requests for Observer Status by States that are not Member States of the African Union

70. Your Excellencies, approaches have been received from states that are not Member States of the African Union seeking observer status in policy organ meetings of the African Continental Free Trade. The AfCFTA Agreement has no provision for such status. In this respect, **I recommend to Your Excellencies that we should not accept requests for observer status from states that are not Member States of the African**

Union. As mentioned, earlier, we expect all African Union Member States to eventually be State Parties to AfCFTA Agreement.

Third Party Agreements

71. At this point, I would like to address the issue of Third Party Agreements under the AfCFTA. These are Agreements between an AfCFTA State Party and a State that is not a Party to the Agreement. The AU Commission as the interim AfCFTA Secretariat has been monitoring the developments in this areas and there are indications that some of the AfCFTA State Parties, which are also members of Customs Union in their region, are heading toward that direction; and that is a matter of concern.

72. Your Excellencies will recall that Para 1 of Article 18 of the AfCFTA Agreement on Continental Preferences states 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 favorable than those given to Third Parties”*.

73. Your Excellencies will further recall that although Article 4 (2) of the Protocol on Trade in Goods on the Most-Favoured-Nation Treatment stipulates that: *“Nothing in this Protocol shall prevent a State Party from concluding or maintaining preferential trade arrangements with Third Parties”*, it also clearly stresses that: *“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.”* This provisions is word for word similar to Article 4 (2) of the AfCFTA Protocol on Trade in Services.

74. Article 17 (1) of the AfCFTA Agreement on notification obliges AfCFTA State Parties to notify among others *“...any other commitments under an international agreement relating to any trade matter covered by this Agreement adopted after the entry into force of this Agreement ...”*

75. Your Excellencies, In addition, to the AfCFTA Agreement and its Protocols, Our last two Summits have also considered the issue of Third Party Agreements: during the 31st Ordinary Session of our Summit held on 1-2 July 2018 in Nouakchott, Mauritania, We collectively agreed through Decision Assembly/AU/Dec.692 (XXXI), to: *“Further commit to engage external partners as one block speaking with one voice and URGES Member States to abstain from entering into bilateral trading arrangements until the entry into force of the Agreement establishing the AfCFTA.”*

76. This Decision was further clarified during our 32nd Ordinary Summit in February 2019 here in Addis Ababa, Ethiopia, when we decided through Decision Assembly/AU/Dec.714(XXXII), 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.”*

77. Now, Your Excellencies will recall that the AfCFTA was negotiated by all 55 AU Member States as a stepping stone toward the establishment of the African Economic Community envisaged under the Abuja Treaty of 1991. In doing so, we will put an end to a fragmented Continent with small and uncompetitive domestic market imposed upon Africa during the Berlin Conference. We will be able to create one African market, which is critical for achieving Africa's economic independence.

78. Your Excellencies will agree with me that Third Party Agreements, in particular the ones negotiated after the entry into force of the AfCFTA do help Africa in its objective engaging external partners as one block speaking with one voice. Similarly, they are very unlikely to us achieve our vision of creating one African market; if anything, Third Parties Agreements are very likely to keep us where We were yesterday (that is a fragmented Continent) and distract us from where we want to be tomorrow, which One Common African Market.

79. Whilst the decision on the issue of Third Parties Agreements ultimately rest with each and every State Party, I would like to urge Your Excellencies to be guided on this matter by the relevant provisions of the AfCFTA Agreement and by the previous Decisions of this August Body on the need not to "*undermine the African Union Vision of creating one African Market.*"

C. CONCLUSION AND RECOMMENDATIONS

80. I am sure, Your Excellencies will agree with me that we have made significant progress in bringing to life the African Continental Free Trade Area. The crucial task ahead of us now is to make it work and deliver tangible benefits to ordinary Africans. Against this background, I submit the following recommendations for consideration by Your Excellencies:

80.1 Trade in Goods and Services

- (a) Member States finalize their tariff offer of 90% and submit their offers to the extra-ordinary Summit in May 2020;
- (b) Member States commit not to increase tariffs on trade in goods during the transitional period;
- (c) The deadline of June, 2020 for the remaining Services Sectors and the Regulatory Cooperation Frameworks must be upheld.
- (d) Instruct the AfCFTA Council of Ministers to ensure that finalization of all outstanding work in the areas of trade in goods and trade in services goes hand in hand and that the start of trading under the AfCFTA on 1st July, 2020 comprises both trade in goods and trade in services.

80.2 Rules of Origin

Completed work on Rules of Origin must be submitted to the Assembly during its extra-ordinary session to take place in May 2020.

80.3 G-6 Reservations

Based on the legal opinions, this Summit must make a final decision.

80.4 Status of Signature and Ratification of the AfCFTA Agreement

- (a) The African Union Commission finalizes engagement with the Government of Eritrea before the end of April, 2020.
- (b) All African Union Member States sign and ratify the Agreement Establishing the African Continental Free Trade before the start of trading under this Agreement on 1st July, 2020.

80.5 Preparedness for the Start of Trading Under the AfCFTA on 1st July 2020

- (a) The Interim AfCFTA Secretariat produce and distribute to all African Union Member States before the end of February, 2020, a template for use by all African Union Member States for submitting reports to the AfCFTA Interim Secretariat on the state of national level preparations, especially those highlighted in preceding paragraphs;
- (b) On the basis of the template, all African Union Member States submit reports by end on March, 2020 to the Interim AfCFTA secretariat on their status of preparations for the start of trading under the AfCFTA. A summary report from all submissions will be part of my report to Your Excellencies at our May, 2020 Extraordinary Summit.
- (c) The Interim AfCFTA secretariat puts in place before the end of April, 2020, systems for monitoring trade flows in the AfCFTA as well as capturing trade statistics.

80.6 Phase II Negotiations and Beyond

- (a) The deadline of December 2020 for the conclusion of these phase II negotiations should be upheld;
- (b) Mandate the African Union Commission to mobilize resources during 2020 for capacity building in the negotiation of e-commerce legal instruments at the levels of the African Continental Free Trade Area and the World Trade Organization.
- (c) Decide to have Phase III Negotiations focused on an AfCFTA Protocol on E-Commerce immediately after conclusion of Phase II Negotiations.
- (d) Member States to critically review approaches that are being made to them by bilateral partners to enter into bilateral e-Commerce legal instruments with them in order to ensure that Africa is able to negotiate and implement an AfCFTA Protocol on e-Commerce where Africa has full

authority on all aspects of e-commerce such as data and products being traded under e-commerce.

- (e) Member States promote the emergence of African owned e-Commerce platforms at national, regional and continental levels as part of our preparations for the negotiation of an AfCFTA Protocol on e-Commerce.

80.7 Commemoration of Africa Integration Day and Popularization of the AfCFTA Vision

- (a) Member States are called upon to come up with commemorative activities to solemnly observe and celebrate the achievements of AfCFTA in the preceding year in line with the guidelines developed by the Interim AfCFTA Secretariat.
- (b) Heads of State and Government of the African Union make regular statements on how their countries are implementing the Agreement Establishing the African Continental Free Trade Area.
- (c) Adopt draft Decision and Guidelines on Commemoration of African Integration Day.

80.8 Developments in the Operationalization of the AfCFTA Secretariat

Summit upholds its July 2019 Niamey Decision to have the permanent Secretariat start operating by 31st March, 2020.

80.9 Mobilizing the African Private Sector and Regional Economic Communities for Effective Implementation of the AfCFTA Agreement

- (a) Mandate the Afro-Champions Initiative to work with African Ministers, especially those responsible trade, finance, industry and development planning in the implementation of the Trillion Dollar Framework.
- (b) Direct the Interim AfCFTA Secretariat and Regional Economic Communities to develop the Framework of Collaboration before the start of trading and submit a substantive progress report on the matter at our May, 2020 Extraordinary Summit.
- (c) Instruct Ministers of Trade and Finance in partnership with Afreximbank to conclude work on the AfCFTA Adjustment Facility during the course of 2020 and bring to the February, 2021 Summit, draft statutes and resource mobilization strategy for its consideration.

80.10 Delegation of certain powers to the AfCFTA Council of Ministers

Mandates the AfCFTA Council of Ministers to make decisions on all matters pertaining to the implementation of the AfCFTA and the operationalization of its structures and report to the Assembly for endorsement.

80.11 Building Momentum for Full, Timely and Effective Implementation of the AfCFTA Agreement

- (a) The Interim AfCFTA Secretariat develops, as part of its hand over package to the permanent AfCFTA Secretariat, a strategy paper on sustaining the momentum for full, timely and effective implementation of the AfCFTA Agreement which will be part of my report to the May, 2020 Extraordinary Summit;
- (b) Member States allocate adequate resources to ensure that they are fully represented in the various meetings of the AfCFTA with no delays due to lack of quorums.
- (c) Instruct the Interim AfCFTA Secretariat to work closely with Member States, the Secretariats of the Regional Economic Communities and other relevant intergovernmental organizations active in this area on the continent, in order to enhance planning and coordination of activities and meetings and minimize the potential conflicts of dates and other overlaps.
- (d) African Union Heads of State and Government market the AfCFTA as an attractive and growing investment destination in their engagements with business leaders.

80.12 Suggested Position on Requests for Observer Status by States that are not Member States of the African Union

The AfCFTA shall not accept requests for observer status from States that are not Member States of the African Union.

80.13 Third Parties Agreements

Instruct the Interim AfCFTA Secretariat to:

- (a) Continue to monitor developments concerning Third Party Agreements involving AfCFTA State Parties and report to the AU Summit;
- (b) Develop Reporting Guidelines and Templates for notification of Third Party Agreements in line with relevant provisions of the AfCFTA Agreement;
- (c) Include a Section on Third Party Agreements in the future Framework of Collaboration between the AfCFTA Secretariat, the AU Commission and the Regional Economic Communities; and
- (d) Submit to the next Council of Ministers of AfCFTA for consideration and adoption, the Reporting Guidelines and Templates for notification of Third Party Agreements and the Framework of Collaboration between the AfCFTA Secretariat, the AU Commission and the Regional Economic Communities.

80.14 May, 2020 Extraordinary Summit

An extra-ordinary session of the Assembly be held in May 2020 to consider the tariff offers, specific commitments in trade in services, rules of origin and assess state of preparedness to start trading under the AfCFTA on 1st July, 2020. The Extraordinary Summit will also determine the how the start of trading will be officially rolled out.

2020-02-10

Report of H.E. Mahamadou Issoufou, President of the Republic of Niger and Leader of the African Continental Free Trade Area (AfCFTA)

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