MINISTRY OF TRADE, INDUSTRY AND COOPERATIVES

BRIEF ON THE NEGOTIATIONS FOR THE ESTABLISHMENT OF THE AFRICAN CONTINENTAL FREE TRADE AREA

1.0 BACKGROUND

1.1 Uganda is signatory to the Treaty Establishing the African Economic Community (the Abuja Treaty), adopted and signed in 1991. The objectives of this Treaty are, among others, to:

a. promote economic, social and cultural development and the integration of African economies in order to increase economic self-reliance;
b. promote an endogenous and self-sustained development;
c. liberalize trade through the abolition, among Member States, of Customs Duties levied on imports and exports;
d. abolish among Member States, of Non-Tariff Barriers in order to establish a free trade area at the level of each regional economic community

1.2 In July 2000 Uganda signed the Constitutive Act of the African Union. The objective of the Constitutive Act is to promote sustainable development at the economic, social and cultural levels as well as the integration of the African economies, and to coordinate and harmonize the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union.

1.3 During the 18th Ordinary Session of Assembly of the African Union (Addis Ababa, Ethiopia, 23-30 January 2012), the Summit adopted a “Decision on boosting intra-African trade and fast tracking the Continental Free Trade Area”.

1,4 The January 2012, Summit also endorsed the Action Plan on Boosting Intra Africa Trade (BIAT) which identifies seven clusters; trade policy, trade facilitation, productive capacity, trade related infrastructure, trade finance, trade information and factor market integration.

1.5 In June 2015, at the 25th Summit of AU held in Johannesburg, the Assembly of African Heads of State and Government adopted the Roadmap and Guiding Principles for the Negotiations. The Summit launched the negotiations for the establishment of the African Continental Free Trade Area (AfCFTA) to be completed by an indicative date of 2017.

2. The African Continental Free Trade Area

2.1 The AfCFTA involves the 55 Member States of Africa, and be the world's largest free-trade area, by number of countries. It establishes a single market of 1.2 billion people , with a combined Gross Domestic Product $3.4 trillion.

2.2 In the case of Uganda and indeed most African countries, large markets support more trade in goods, services and assets produced by job-creating enterprises, generate income and create jobs. The AfCFTA will contribute to meeting public policy objectives and national aspirations in NDPII and Vision 2040. Large open markets support the exploitation of economic gains along the value chain, lead to specialisation and efficiency.

2.3 The AfCFTA is one of the vehicles to catalyse the development of African countries. Few countries in history, if any, have achieved significant economic development without trade. In order to develop, African countries will need to trade more, both with one another and with the rest of the world. By breaking down trade barriers between African countries, the AfCFTA would significantly boost trade on the continent.

2.4 Africa is the continent with the largest arable land, 874 million hectares of which only 274 million hectares is under cultivation, while 600 million is idle or underutilised. In addition, there are large reserve of strategic minerals, abundant aquatic resources, and the youngest population, 60%- 70% of the population. However, Africa, is the continent with the lowest level of development (35 of the world's poorest countries are in Africa); Africa is the least industrialised, and has the highest rates of unemployment between 50%-80% youth unemployment.

2.5 African nations need this to boost trade as an engine for economic growth and development. Currently, trade among African Nations accounts for just over 14 percent of their total trade, a considerably lower figure than trade within many of the world's more developed regions, including Europe and North America — both of which have intraregional trade rates at over 60 percent. The intra-Asian trade is about 50%, while Intra- Latin American trade is about 45%

2.6 For Uganda, our objectives in African economic integration is driven by the need for expanded markets for our growing economic operations; attracting cross-border investment; creating employment opportunities for our young populations domestically through expansion in production of goods and services that will be demanded by the expanded markets; improving the interstate infrastructure interconnectivity to enable us harness our productive capacities; enhancing peace and security in the continent through engaging people in gainful economic activities.

2.7 What we have achieved in trade in the EAC and in COMESA following our regional economic integration policy, is a testimony to the success of our regional integration policy. As a result of this policy, our exports to the region have grown significantly from less than $100 million in 1993 to a high of $1.49 billion in 2012 before reducing to $1.23 billion in 2016.

The reduction is attributed to a number of factors including the instability in South Sudan and the Eastern DRC and climate change that occasionally affects agricultural production.

2. 8 Uganda's imports from the EAC and COMESA increased from $97 million in 1993 to a high of $760.2 million in 2012. This reduced to $609.8 million in 2016.

2.9 It is in the EAC and COMESA regions where we have recorded a positive trade balance since 2007. Our trade balance was $383.9 million in 2007, rising to $806.8 million in 2008. It reduced to $792.8 million in 2012 and to $615.7 million in 2016.

2.10 With the integration of the African continent, Uganda stands to benefit from expanded trade, to increase production capacity and creation of employment. We are immediately targeting livestock products notably dairy and beef, coffee, tea, iron and steel, among others. Services will include education, tourism, business services and infrastructure services. The key focus markets are West Africa in particular Nigeria, Ghana and Cameroon. In north Africa we are targeting Morocco, Algeria and Tunisia. The others in the COMESA we will continue to nurture using the regional instruments.

3. The Legal Instruments of the AfCFTA

3.1 Thus far the following instruments have been negotiated, considered and approved by the African Union Ministers of Trade during their meeting in Kigali 8th- 9th March 2018.

a. Agreement Establishing the African Continental Free Trade Area
b. Protocol on Trade in Goods and related annexes
c. Protocol on Trade in Services
d. Protocol on Rules and Procedures for the Settlement of Disputes

The instruments are to be legally aligned by the Extra-Ordinary Meeting of the Specialised Technical Committee of Justice and Legal Affairs, before submission to the Extra-Ordinary Meeting of Executive Council, which will in turn consider them and recommend to the Assembly for consideration, adoption and signature on 21st March 2018 as per their decision during the 30th Assembly Meeting of January 2018

4. Synopsis of the AfCFTA Legal instruments

a. Agreement Establishing the African Continental Free Trade Area

This is the Framework instrument that sets up the African Continental Free Trade Area. As such it sets out a broad agenda for trade in goods, trade in services and rules and procedures for the settlement of disputes and, for the negotiation in the second phase, of Intellectual Property, Investment and Competition Policy.

The Agreement is structured as follows:

i) **Definitions** *(of key phrases used in the Agreement)*

ii) **Establishment, Objectives, Principles and Scope** *(the set-up, what it sets out to do, the key pillars and what it covers)*. The objectives are divided into the general objectives and the specific objectives. The general objectives set-out the ultimate aim of Agreement, which is the establishment of a single market for goods, services, movement of persons and capital. The specific objectives outline what should be done to achieve the ultimate objective.

The Agreement covers the trade in goods, trade in services and dispute settlement and, for the negotiation in the second phase, Intellectual Property, Investment and Competition Policy.

iii) **Administration and Organisation** *(implementation framework, decision making and financing)*. This part sets up the institutional structure for implementation and these are;

- The Assembly;
- The Council of African Ministers responsible for Trade or Council of Ministers;
- Committee of Senior Trade Officials and;
- Secretariat.

iv) **Transparency** *(to ensure notification of applicable laws, rules and regulations)*. This part sets obligations on members to publish and to notify all laws, regulations, rules and any other commitments in international agreements that could have a bearing in the implementation of the Agreement.

v) **Continental Preferences** *(how we should treat each other's products and services)*. The Agreement puts an obligation on the signatories to extend, in their trade, preferential treatment on a reciprocal basis. The preferential treatment is to be equal to that extended to third parties.

However, if members are in customs unions or have prior trade arrangements with a higher level of preference, such preferences may only be extended on a reciprocal basis and upon negotiations.

vi) **Dispute Settlement** *(rules and criteria to settle trade conflicts when they arise)*. This establishes a dispute settlement mechanism-rules procedures, and administration of the protocol on dispute settlement. In this respect the details of this are embedded in the Protocol on Rules and Procedures on the Settlement of Disputes

vii) **Final Provisions** *(signature, ratification, depository, entry into force, amendment, withdrawal)*. After signature and ratification, the instrument is to be deposited with the Chairperson of the AU Commission. It comes into force 30 days after the 22nd Member has deposited their instrument of ratification. This is in accordance with the AU procedures.

It is the Agreement establishing the African Continental Free Trade Area that is expected to be signed by the Heads of State and Government.

THE KIGALI DECLARATION LAUNCHING THE AFRICAN CONTINENTAL FREE TRADE AREA

However, there are countries that may not sign on account of domestic processes. For this reason, the Kigali Declaration Launching the African Continental Free Trade Area has been proposed, for the signature of all Heads of State and Government,

It is to be noted that the EAC, COMESA and SADC support the declaration as a political statement but also as a practical issue for countries whose legal processes do not allow them to sign international agreements before approval by their national assemblies.

b. Protocol on Trade in Goods and related annexes

This is the instrument that prescribes the modus operandi for the trade in goods. It has a preamble and ten parts, and is to be backed by a number of annexes.

The ten parts of the Protocol are the following:

i. **Definitions, objectives and scope** *(what is to be achieved and what is covered by the protocol)*. In this section the Protocol on trade in Goods defines the key terms and phrases. It sets out the scope which is essentially the trade regime that will govern the trade in goods; and the objective of which, is boosting intra-African trade.

ii. **Non Discrimination** *(equal treatment as between domestic products and imported products from the AfCFTA State Parties)*. The Protocol, in this section, put obligations on parties to extend to the trade of each other equal treatment as between one party and another. It also puts obligations to parties to extend equal treatment as between products from trading partners and domestic products. This, however, will not affect the government procurement that we are implementing under BUBU.

iii. **Liberalisation of Trade** *(elimination of tariffs, non-tariff barriers, export taxes and quantitative restrictions)*. In this section, the parties agree to the progressive liberalisation of trade through the elimination of tariffs, charges of equivalent effect. The domestic taxes are not subject to elimination. Furthermore, the parties agree to eliminate quantitative restrictions and non-tariff barriers

iv. **Customs cooperation, trade facilitation and transit** *(for the easier movement of goods)*. This section outlines areas in which measures are detailed out for purposes of easier movement of goods across the continent. For each of these areas, namely customs, transit and trade facilitation, a separate annex has been developed.

v. **Trade remedies** *(to address disadvantages that may be faced by domestic producers in the face of subsidies, dumping by trade partners in the AfCFTA)*. Trade remedies are measures that governments can invoke whenever domestic producers are faced with unfair trade practices such as dumping or application of subsidies by trading partners on those products that are being supplied. These measures can also be invoked when domestic producers are in a vulnerable state and yet face a surge in imports of similar products.

This section introduces the trade remedies for which a separate annex has been developed.

vi. **Product standards and regulations**- in this section the parties agree to have measures on standards and regulations. There are two annexes detailing the measures and these are on Technical Barriers to Trade (TBT) and on Sanitary and Phyto-Sanitary measures (SPS)

vii. **Complementary policies** *(such as protection of infant industries and establishment of special economic zones)*. The parties, in this section, have agreed to support the establishment of Special Economic Zones (SEZ) and to the protection of infant industries, for which guidelines are to be developed.

viii. **Exceptions** *(for the protection of specific national interest and for security reasons)*. In this section, the parties agree to enforce measures for exceptional areas such as security, protection of human, animal and plant life and health, exhaustible natural resources, precious minerals.

In addition, the agreement permits parties to take measures to address critical balance of payments situations.

ix. **Institutional provisions** *(for the implementation of the protocol)*. The Protocol proposes to establish a Committee for Trade in Goods to facilitate the operation thereof.

x. **Technical assistance and capacity building**- the Protocol provides for the cooperation with RECs and the development partners for technical assistance and capacity building.

It is to be backed by nine annexes, which are:

1. Tariff Concessions
2. Rules of Origin
3. Customs Cooperation
4. Trade Facilitation
5. Non-Tariff Barriers
6. Technical Barriers to Trade
7. Sanitary and Phyto-Sanitary Measures
8. Trade Remedies
9. Transit Trade and Transit Facilitation

All the annexes have been completed except 1) and 2) above. These are in the built-in agenda (work in progress)

c. Protocol on Trade in Services

This is the code that will define the regime for trade in services within the African Continental Free Trade Area. It has seven parts and these are:

i. **Definitions** (of the key terms and phrases used in the Protocol).
ii. **Scope of application** covers the trade in services in the four modes of supply namely;
    a. *cross border supply* (when a consumer is receiving a service in their own country but supplied by a provider in another country such as in business process outsourcing or architectural designs or consultancy services);

b. *consumption abroad* (a consumer moves to another country to consume the service such as in tourism or in education or medical treatment);
c. *commercial presence* (a company sets up a branch in another country to supply the service such as banks, insurance companies, telecommunication companies) and;
d. *movement of natural persons* (when a citizen of a country moves to another country to supply a service, such as doctors or teachers or nurses who move to serve in other countries).

As is the norm with international practice the Protocol excludes services that are rendered in exercise of governmental authority, which are not of a commercial nature and are not in competition.

Furthermore, it excludes air traffic rights as these are dealt with under the Yamoussoukro Decision of 1999 on liberalising air transport market in Africa.

iii. **Objectives.** In this section the Protocol broadly aims at establishing a free market for trade in services and specifically to promote competitiveness of services, progressively liberalise trade in services, among others.

iv. **General obligations and disciplines.** The Protocol puts obligations on parties to extend to the services trade and suppliers same treatment as from one party to another with some exceptions granted.

All parties are under obligation to publish and to notify any measures whether at the national level or arising out of obligations at regional or international agreements to which they are members, with the exception of confidential information.

The Protocols allow the parties to regulate trade in services at the domestic level provided this is done in a non-discriminatory manner.

The Protocol allows for mutual recognition of standards, certifications and criteria for authorisations.

It allows for the monitoring, with a view to controlling, anti-competitive business practices of monopolies

The Protocol provides for the adoption, by parties of measures to safeguard critical or serious balance of payments experienced by a party.

As in the Protocol on Trade in Goods the Protocol on Trade in services provides for general and security exceptions.

v. **Progressive liberalisation**

In this section the parties agree to liberalise trade in services in a progressive manner, i.e. in phases, through successive rounds of negotiations. This kind of approach gives the parties flexibility to select sectors and to determine the commitments that they will enter into in liberalising trade in services.

Parties have agreed to extend to each other market access and, subject to the schedule of commitments, not to maintain limitations.

As in the case on the Protocol on Trade in Goods the parties have agreed on the principle of national treatment where all services and services suppliers will be treated as national. However, this will be subject to schedules and any conditions such as are in our PPDA Act.

vi. **Institutional provisions**

The parties have agreed to a Committee for Trade in Services that will carry-out functions as assigned by the Council of Ministers, for the implementation of the Protocol**.**

In case of disputes the provisions of the Protocol on Rules and Procedures for the Settlement of Disputes will apply.

The parties have agreed to technical assistance and capacity building for which they will individually and collectively mobilise resources.

vii. **Final provisions**

This part relates to annexes that may be developed such as the schedules of specific commitments, which, are to be developed following negotiations.

d. Protocol on Rules and Procedures on the Settlement of Disputes

This Protocol sets out the procedures for the settlement of disputes that arise out of the implementation of the Agreement establishing the African Continental Free Trade Area. This is to ensure that disputes are settled transparently and with fairness so that parties may exercise their rights and meet their obligations in accordance with the provisions of the Agreement, the Protocols, Annexes and Appendices.

The Protocol sets out the procedures and process for the settlement of disputes. Any dispute should start with consultation among the parties to a dispute, failing which good offices, conciliation and mediation is used. If the dispute is not resolved, then a panel is constituted. If, after the panel report, a party to a dispute is not satisfied with the ruling then they can appeal. An appellate body will then re-examine the issues raised in the appeal.

The Protocol provides for compensation and /or suspension of concessions.

A Dispute Settlement Body is to administer the Protocol.

5. Post signature work programme at the national level

This is a landmark Agreement for the African Continent as it opens up opportunities for trade, and cross border investment. For Uganda it is an opportunity to gain preferential market access to countries in West Africa and also North Africa. As indicated above the target products are livestock products such as dairy, beef, poultry products, grains such as rice and beans, coffee, and tea, steel products.

In terms of preparing to take advantage of expanded market opportunities we will carry out the following:

Stakeholder consultations, in particular for producers, processors and exporters, for the sectors mentioned above.

Bilateral engagements, with the target markets such as Democratic Republic of Congo (DRC), Nigeria, Ghana, Cameroon, Morocco, Algeria and Tunisia