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Updates on COMESA Developments

The 20th Summit of the Heads of State or Government ("Authority") of the Common Market for Eastern and Southern Africa ("COMESA") was held between 18th and 19th July 2018.

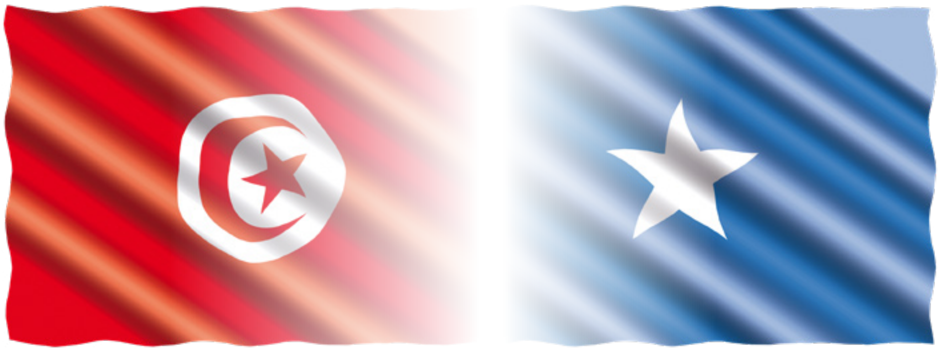
The Authority adopted various reports and Agreements including, inter alia, the report of the 38th Meeting of the COMESA Council of Ministers, the Agreement on admission of Tunisia and Somalia into COMESA and the report of the 7th Meeting of the Tripartite Sectoral Ministerial Committee on Trade.

Admission of Somalia and Tunisia into COMESA

The Authority adopted the Agreement on admission of Tunisia and Somalia into COMESA bringing the number of COMESA Member States to 21. Somalia was previously a full Member of the Preferential Trade Area for Eastern and Southern Africa (PTA), which later transitioned to COMESA. However, Somalia failed to negotiate transition to become a member of COMESA due to lack of a government following a long civil war that ensued in 1991 after the over throwing of the then president Siad Barre.

Both Tunisia and Somalia applied to be admitted into COMESA in 2016 with Tunisia`s first application for a COMESA observer status in 2005 having been unsuccessful. Tunisia and Somalia have been admitted as Member States of COMESA having fulfilled terms and conditions of accession to the COMESA treaty in accordance with Article 1 of the COMESA Treaty.

Article 1(4) of the Treaty provides that *the Authority may admit a State which is an immediate neighbour of a Member State as a Member State of COMESA, upon fulfilling such conditions as may be determined by the Authority.*



Somalia and Tunisia will become full members of COMESA upon signing and depositing of the instruments of accession with COMESA. Article 194 of the Treaty provides that *the Treaty shall enter into force in relation to an acceding State on the date its instrument of accession shall be deposited.* Tunisia and Somalia will be bound by the provisions of the Treaty and will be required to deposit the instrument of acceptance of the terms of admission with the Secretary General together with an instrument of accession within 6 months after the date of admission to attain full membership.

COMESA launched a Free Trade Area ("FTA") in 2000 with a view to fully eliminating tariff and non-tariff barriers on cross border trade amongst the Members. Currently, 16 countries have joined the COMESA FTA namely Burundi, Comoros, Djibouti, Libya, Kenya, Egypt, Madagascar, Malawi, Mauritius, Rwanda, Sudan, Swaziland, Uganda, Zambia, Zimbabwe and the Democratic Republic Congo. Swaziland is exempted from joining the COMESA FTA owing to its membership in the Southern Africa Customs Union (SACU) while Ethiopia and Eritrea have made considerable steps towards joining the FTA. Members of the COMESA FTA apply 0% import duty on goods originating from the Member States in accordance with the COMESA Rules of Origin.

Member States of COMESA who have not joined the COMESA FTA apply reduced import duty rates on goods from other Member States on a reciprocal basis. Ethiopia for instance applies an import duty rate reduced by 10% on goods originating from COMESA.

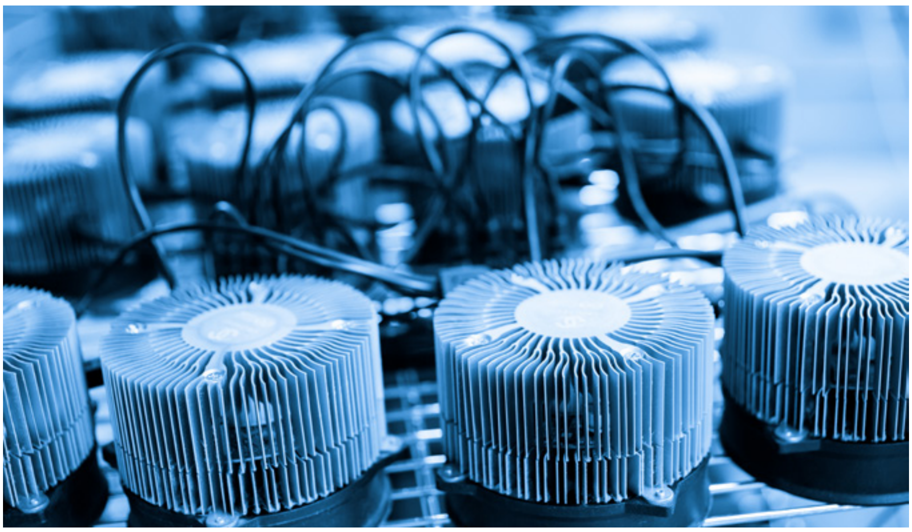
The inclusion of Somalia and Tunisia will increase the population of COMESA to 516 million people and this is expected to further boost intra-Africa trade providing members with a wider market to sell their goods and services. However, it should be noted that import duty on goods originating from Tunisia and Somalia will only be reduced to 0% when they join the COMESA FTA.

Digital Free Trade Area ("DGFTA")

COMESA has embarked on a program to use ICT to improve efficiency in cross-border trade between Member States by further minimising physical barriers. In this regard, COMESA is rolling out the DGFTA which incorporates e-trade, e-logistics , e-legislation and Electronic Certificate Of Origin ("e-CoO").

E-Trade provides an online platform for COMESA region traders to trade online; E-logistics uses ICT as a tool to improve the commercial activity of transporting goods to customers; and E-legislation looks at the readiness of legislation in countries for them to carry out e-transactions and e-payments.

COMESA is in the process of implementing an e-CoO which will replace the current hard-copy version. The e-CoO is a web-based system that will be accessible to users through a web browser. However, some functionalities will only be available to registered users. The system will allow users to apply for registration as exporters; apply for CoO; print CoO; allow importing country verification of e-CoO processing, amongst other functions. The e-CoO will have the same legal effect as the hard copy CoO. The Authority has encouraged Members who are ready to implement the e-CoO to do so on a pilot basis. The DFTA is expected to facilitate cross-border trade between the Member States by reducing the volume of paper work and time involved in clearing goods through the various Customs authorities within the Community. The use of e-CoO, in particular will minimise delays related to confirmation of the authenticity of physical CoOs by Customs authorities.



Application of safeguards for the Kenya sugar industry

The Authority endorsed the Council`s decision extending the sugar safeguard measures granted to Kenya for a further 2 years effective February 2019 when the current safeguard expires.

In addition, the Authority formed a sub-committee made up of sugar exporting Member States, Kenya representatives and the COMESA Secretariat to monitor and assess the implementation of the safeguards to ensure it benefits the Member States.

The safeguards are granted to Kenya pursuant to Article 61 of the COMESA Treaty which allows a Member State to take necessary safeguard measures in the event of serious disturbances occurring in the economy of a Member State and upon approval by the Council. The sugar safeguard measures allow Kenya to import limited quantities of sugar originating from COMESA countries without applying preferential rates.

The Kenyan sugar industry has been ailing over the last couple of years and the total production capacity has been inadequate to meet local demand. The safeguard measures limit imports from COMESA countries to protect local industries from cheap imports. In return, Kenya is expected to take corrective measures to promote recovery of the sugar industry. One of the measures has been to privatise the Government owned companies but Kenya has been slow to actualise this with only Mumias Sugar Company being the only privatised company. The Privatisation Commission had targeted to privatise 5 additional sugar companies (including Chemelil, Miwani, Muhoroni, Nzoia and Sony sugar companies) by August 2018 but this has been delayed by negotiations between the National and County Governments. The extension of the safeguard measures by the Council is a welcome move expected to provide the Kenyan Government with additional time to revive the sugar industry. Kenya has been slow in taking the corrective measures prompting COMESA to form a sub-committee to monitor and assess the implementation of the safeguards. It remains to be seen whether the Government will take the required measures to revive the sugar industry considering the COMESA safeguards have been extended for a period of more than 10 years.

The Tripartite Free Trade Area (TFTA) developments

The Member/Partner States of the East African Community (EAC), COMESA and the Southern African Development Community (SADC) agreed to negotiate a TFTA in 2008 to facilitate trade by reducing/eliminating tariff and non-tariff barriers amongst themselves. The TFTA is made up of 26 countries of the 3 Regional Economic Communities (REC) with 22 of them already participating in their respective FTAs.

Libya is the last country to sign the TFTA bringing the number of countries who have signed to 22 out of the 26 who are expected to sign. Currently, countries which have signed the TFTA Agreement include Angola, Burundi, Comoros, Democratic Republic of Congo (DRC), Djibouti, Egypt, Kenya, State of Libya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Tanzania, Uganda, South Africa, Swaziland, Zambia, Zimbabwe and Botswana.

The TFTA will come into force upon ratification of the TFTA Agreement by 14 Members. Currently only Kenya, Uganda and Egypt have ratified the TFTA. The Tripartite Sectoral Ministerial Committee has lamented at the slow pace of ratification and challenged the political leadership of the Member States to take up the matter to accomplish the objectives of the TFTA. The slow pace in the conclusion of the TFTA has been attributed to lack of political will; absence of an institutional arrangement in the form of a dedicated Secretariat with a clear mandate of coordinating Tripartite negotiations.

With the recent launch of the Africa Continental Free Trade Area (AfCTA), conclusion of the TFTA negotiations is fundamentally important due to the significance of the TFTA as a building block for the TFTA. The AfCTA is largely based on TFTA and the speedy conclusion of the TFTA will be instrumental in the negotiations of the AfCTA.

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