

The AfCFTA Protocol on Investment: towards a new generation of investment policies in Africa

Statement by Ms. Angela Pretorius, Deputy Director, Ministry of Industrialization and Trade, Republic of Namibia

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Thank you for affording me this opportunity to address this event.

Namibia has signed the AfCFTA Agreement on 2 July 2018 and deposited the instrument of ratification on 1 February 2019. As a State party we are committed to the full implementation of the Agreement and we believe that the AfCFTA provides the potential for Namibia to increase its intra-African exports and enhance the country's export-led manufacturing and service capabilities. In return we also welcome the opportunity that the AfCFTA creates for investors from member states to do business in our country while we benefit from larger market access, improved competitiveness, employment creation and sustained economic growth and development.

With regard to the AfCFTA Protocol on Investment, we feel that Africa already has been for a couple of years on the forefront of developing investment policy processes that are innovative in nature and reform oriented. These include the Pan African Investment Code, as well as regional investment frameworks such as the COMESA Common Investment Area Agreement, the ECOWAS Investment Code and the SADC model Bilateral Investment Treaty. All these policies already created a strong sense of a Pan-African direction and "made in" Africa approaches on many issues. The AfCFTA Secretariat, including a team of experts, were indeed very conscious to build the initial draft Protocol on Investment on the already available intra African frameworks, as well as borrowing from the principles of UNCTAD's Investment Policy Framework for Sustainable Development. Bringing these instruments together would ease harmonisation of approaches across the continent. We believe that as a result, African negotiators could reach consensus on the majority of the issues within the Protocol with just a few challenging articles remaining that required additional deliberations. However, in the end,

State parties did find some common ground and an agreeable compromise could be reached on the main Protocol, with only the annex outstanding.

In Namibia, we do not find it difficult to embrace the adoption of new reform oriented approaches of the Protocol on Investment, since our revised draft policy framework for investment is already aligned with the SADC Model Bilateral Investment Treaty Template, which was one of the guiding policy documents for the Protocol. Provisions such as performance requirements for investors, safeguarding the host country's right to regulate, as well as ensuring that investments contribute to sustainable economic development and growth have been included in our draft policy. The Protocol on Investment should therefore help to foster coherence and harmonisation between policy and legal instruments amongst member states, encourage national reforms, whilst ensuring adherence to international best practices. Furthermore, the Protocol on Investment also intends to replace all existing intra-Africa BITs and rather ensure that state parties conform to just one single legal instrument, which aims to achieve the overall objective of the AU Agenda 2062: The Africa We Want. However, the challenge remains with the existing BITs, not only intra Africa but also those that State Parties have concluded with third parties, the majority being part of the so-called old generation treaties. With the conclusion of the Protocol on Investment, State Parties need to take action to terminate those treaties and have third party treaties replaced with BITs that follow the key innovative features of the Protocol. In this instant, the Protocol can serve as a principle guiding document for State Parties to modernise their treaty templates when negotiating with third parties. As a country, we are more than happy to subscribe to only one multilateral legal investment instrument, since Namibia already decided a number of years ago not to pursue the negotiations or signing of BITs anymore.

While we recognise the potential of the AfCFTA Agreement, Namibia is also aware that the potential benefits will not come automatically and that adapting to the Agreement can also entail adjustment risks and challenges, particularly for countries with less competitive and limited industrial bases. As much as we support the direction that the Protocol on Investment follows, Namibia's challenge lies with the productive integration, that includes limited manufacturing capabilities and export market diversification, an underdeveloped services sector, as well as the need to improve the ease of doing business. To this end, Namibia has developed a National Strategy for the implementation

of the AfCFTA, including an Action Plan. Both instruments are created to guide and drive pathways for the country to take full advantage of potential opportunities and at the same time design mitigating measures for existing challenges. In fact, one of the Strategy's specific objectives seeks to attract investment in strategic sectors with the potential to add value at home and promote Namibian participation and integration in regional and continental value chains. The strategy provides for interventions such as undertaking targeted round tables on investment and regional value chain development, accelerating the establishment of special economic zones, as well as the reform of labour and immigration policies to improve access to required skills from abroad and to facilitate knowledge transfer.

Furthermore, significant efforts are being employed by the Government and through public-private partnership to address some of the constraints. With regard to investment these include:

- An implementation plan to attract private sector investment into the green and blue economy, also targeting African export markets;
- A competitive investment incentive regime to facilitate domestic investment, as well as FDI attraction and retention;
- An Integrated National Financing Framework road map is being executed to lower the cost of capital in Namibia; and
- The Namibia Investment Promotion and Development Board, which is our national IPA, has strengthened the investment promotion and facilitation strategy, including reviewing policy measures and reforms in order to improve the country's competitiveness and ease of doing business.

It is important to mention, that the development of the National Strategy has benefited from consultations with and feedback from a broad range of public and private stakeholders. It has also relied on previous consultative reports underpinning Namibian industrial, trade and investment policies and strategies, as well as regional strategies, such as SADC.

In conclusion, I would like to state that, we believe to accelerate the implementation of the Protocol on Investment, State Parties need to take responsibility and honour the

obligations made under the Protocol. Regional Economic organisations, can equally play a key role, through cooperating with the AfCFTA Secretariat and their member states, in adapting priorities related to the implementation of the AfCFTA and the Protocol specific. Of course we must not forget our development partners, such as the Team Europe initiative that provides technical assistance through their support Fund for RECs, AU member states and the private sector. The same applies to UNECA who aids member states with leveraging green investment opportunities in the framework of the AfCFTA. Last but not least, the AfCFTA Secretariat, together with the team of experts (including UNCTAD), that provided valuable guidance throughout the negotiations, should continue to play a supporting role and assist State Parties where necessary. Finally, we have to acknowledge that the Protocol on Investment is indeed very unique in nature and subsequently expectations are very high (all eyes on Africa), but Namibia trusts that with a combined effort, we are able to achieve what we envisioned for the AfCFTA and the continent at large.

I thank you.