

Update on the AfCFTA

2021 tralac Annual Conference

Session 1

22 July 2021



Sweden
Sverige



Published by

giz Deutsche Gesellschaft
für Internationale
Zusammenarbeit (GIZ) GmbH

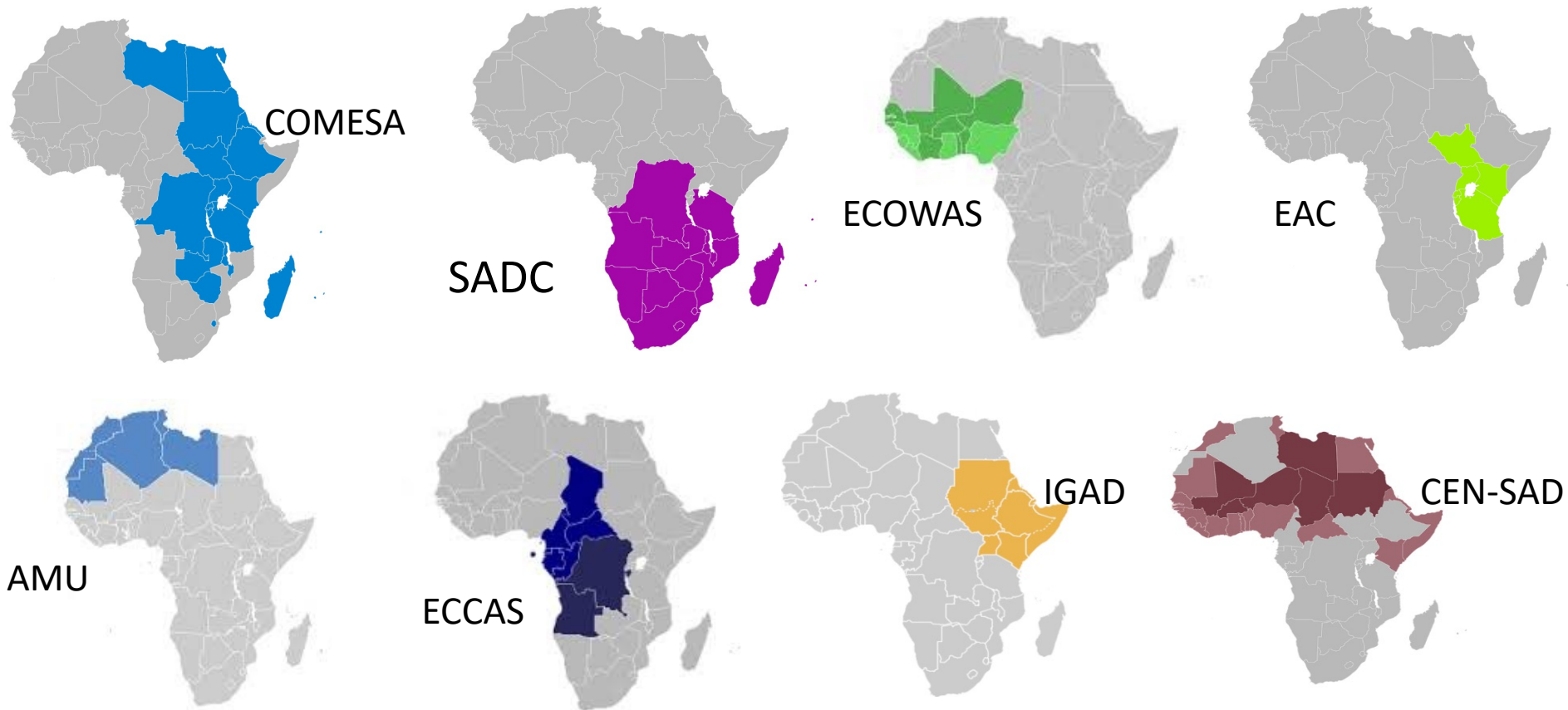
Overview

- What is the AfCFTA designed to deliver?
- When will AfCFTA Implementation begin?
- What will Implementation look like?
Domestic Steps necessary
- What about Dispute Settlement?
- What longer-term Benefits?

What is the AfCFTA designed to deliver?

- A continent-wide process for liberalizing trade in goods and certain services
- Will happen in terms of legal commitments
- Obligations implemented by the AfCFTA **State Parties**. (37) Accession later.
- But this is an **FTA**
- And it is **Member-driven**
- It preserves the *acquis*
- It is a *single undertaking* & no reservations permitted
- Implementation to happen incrementally
- AfCFTA Institutions are Inter-governmental Platforms....
- With a permanent Secretariat
- And several ad hoc technical bodies

RECs (and their trading regimes) will continue to exist



Note: AMU, ECCAS, IGAD and CEN-SAD do not have FTAs
Other trade and integration arrangements exist
(eg SACU)

When will AfCFTA Implementation begin?

- AfCFTA negotiations began in 2015
- AfCFTA Agreement entered into force on 30 May 2019
-but no preferential trade based on this arrangement yet
- The outstanding matters: Tariff schedules, Rules of Origin & conditions for trade in 5 priority services sectors
- These are complex and sensitive issues
- Many States at very different levels of economic development must agree (consensus) to open markets to foreign competition
- Indications are that the outstanding negotiations should be completed before the end of this year

Legal Architecture of the AfCFTA

Agreement establishing the AfCFTA

Phase 1

Protocol on
Trade in
Goods

Protocol on
Trade in
Services

Protocol on Rules
and Procedures
on the Settlement
of Disputes

Annexes

- Schedules of Specific Commitments
- MFN Exemptions
- Air Transport Services
- List of Priority Services
- Framework Document on Regulatory Cooperation

Phase 2

Protocol on
Investment

Protocol on
Competition
Policy

Protocol on Intellectual Property
Rights

Annexes

- Working Procedures of the Panel
- Expert Review
- Code of Conduct for Arbitrators and Panellists

Phase 3

Protocol on
Ecommerce

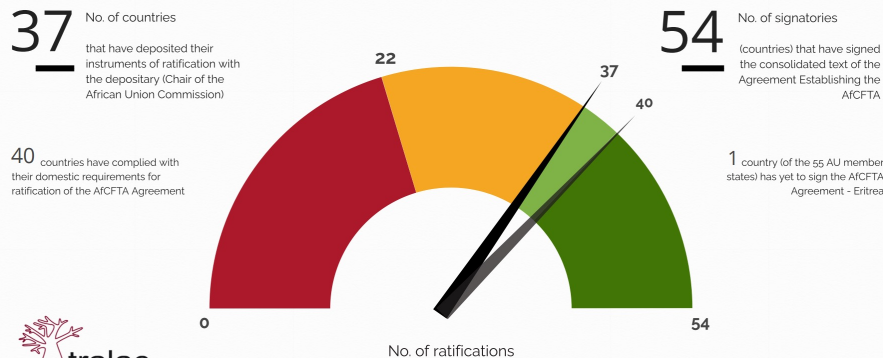
Protocol on Women,
Youth and SMEs

Annexes

- Schedules of Tariff Concessions
 - Rules of Origin
 - Customs cooperation and mutual administrative assistance
 - Trade Facilitation
 - Non-tariff barriers
 - Technical Barriers to Trade
 - Sanitary and Phytosanitary Measures
 - Transit
 - Trade Remedies
- Guidelines for implementation of Trade Remedies

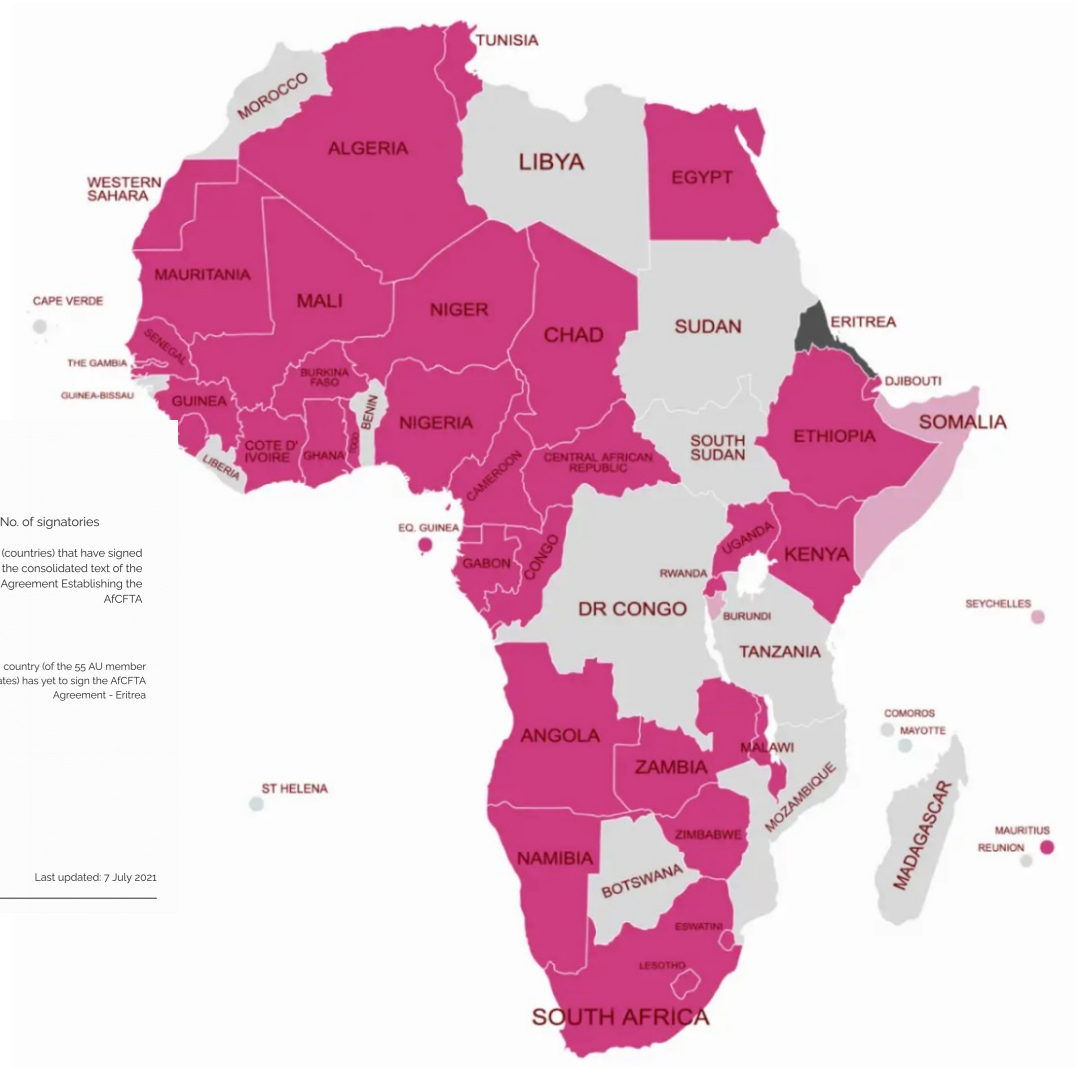
Update on AfCFTA (as at 07 July 2021)

AfCFTA Ratification Barometer



© tralac, 2021

Last updated: 7 July 2021



Phase 1 negotiations update – trade in goods and services

Tariffs and Rules of Origin

Modalities for tariff negotiations

- 90% of tariff **lines** liberalised over 5years (LDCs have 10 years)
- 7% tariff lines may be designated sensitive products - liberalised over 10 years (LDCs have 13)
- 3% tariff lines may be **excluded**

Sensitive and excluded products

Criteria for products **designated** sensitive or excluded - *food security, national security, fiscal revenue, livelihood and industrialization* (Decision in 2019)

Trade in Services negotiations

5 Priority services sectors (financial, communication, transport, tourism business services)

- Specific commitments for priority sectors
- Frameworks for regulatory cooperation

Rules of origin

Rules that determine the national origin of a product (confirming that substantial transformation of inputs has taken place in the country of origin)

Rules of origin for the following products are still to be finalised:

- Edible oils; Sugar; Dairy Products (Buttermilk/cheese)
- Prepared or Preserved Fish
- Textiles and
- Auto-motive sector

For agricultural products: wholly obtained rule

For industrial products: value addition rules, change of tariff heading rules, product specific/specific processing rules

Annex 2: Protocol on Trade in Goods

Negotiations: Phase 2 and Phase 3

Phase 2 negotiations: Protocols on Investment, Competition Policy and Intellectual Property Rights (State Parties have agreed to **cooperate** in these areas)

Intellectual Property Rights: Regional cooperation initiative - ARIPO and OAPI regional initiatives



ARIPO in Africa



Phase 3 negotiations: E-commerce

AfCFTA Agreement provides that additional legal instruments may be concluded – e.g. Women and Youth and SMEs

What will Implementation look like?

- No sudden burst of new trade in goods and services
- Presently trading under MFN and the existing REC FTAs and in customs unions
- Tariff reductions will happen in phases.
- Ninety percent of **tariff lines** (not total trade) will be liberalised over 5 years. Least Developed Countries (LDCs) have 10 years to implement their tariff cuts. Each State Party shall apply preferential tariffs to imports from other State Parties in accordance with its own Schedule of Tariff Concessions. Rules of Origin must be met to benefit from the new preferences.
- Article 4 AfCFTA Agreement: *“The State Parties shall **progressively** eliminate tariffs and NTBs; **progressively** liberalise trade in services; **cooperate** on investment, intellectual property rights and competition policy; **cooperate** on all trade-related areas; **cooperate** on customs matters and the implementation of trade facilitation measures; establish a mechanism for the settlement of disputes; establish and maintain an **institutional framework** for implementation....*

Domestic Steps necessary

- Domestic follow-up action and reforms within the State Parties
- National tariff books (& those of customs unions) updated
- New procedures for issuing certificates of origin and for new customs and border procedures must be put in place
- Trade in services the required national regulatory regimes must be provided. This requires legislative reforms
- For Trade Remedies & Safeguards dedicated regimes required
- Improved Trade Facilitation needs a comprehensive Plan ...
-RECs and state Parties to contribute

RECs remain part of the “new” Reality

- RECs will continue to function as before: *“State Parties that are members of other regional economic communities, regional trading arrangements and custom unions, which have attained among themselves higher levels of regional integration than under this agreement, **shall** maintain such higher levels among themselves.”* (Art 19(2))
- Different streams of preferential trade regimes on the African continent. Whereas many African States presently trade with each other under the higher MFN rates of the WTO or under a *General Tariff*, all the AU Members will in future be able to reap the benefits of preferential trade, if they so choose.
- These preferences will be in either the REC FTAs to which they already belong, or in new AfCFTA regime. There could be preferential trade for the whole African continent, as per the agreed rules.
- Extent of benefits will depend on flexibility in the Rules of Origin, a matter still being negotiated.
- RECs will continue to advance their own regional integration agendas. *“State Parties that are members of other RECs, which have attained among themselves higher levels of elimination of customs duties and trade barriers than those provided for in this Protocol, shall maintain, **and where possible improve upon**, those higher levels of trade liberalisation among themselves.”* Art 8(2) Goods Protocol.

Will the Scope of the AfCFTA widen?

- AfCFTA is designed to become more comprehensive.....
- ...albeit via an incremental & member-driven approach.
- During Phase II Protocols for **cooperation** re competition, investment & intellectual property rights will be negotiated.
- Followed by Phase III: Protocols on E-Commerce & for Women, Youth & SMEs
- Art 23 foresees “*other instruments within the scope of this Agreement deemed necessary*”.
- Will these be part of the *single undertaking*?
- This will require further **negotiations**
- Who will be involved? Consensus-driven via 55 states possible?
- Any *plurilaterals*?
- Could REC advances spur on AfCFTA improvements?

Will there be deeper continental Integration?

- There are indications to this effect.....
- ...but the AfCFTA does not contain a plan of action for continental integration.
- Art 3 refers to “*successive rounds of negotiations*” in order to create a liberalised continental market for goods and services.
- Re movement of capital, natural persons and investments, the aims are more modest: the AfCFTA “*will build on the initiatives and developments in the State Parties and the RECs*”.
- A continental *customs union* (the benefits of which are questioned by many) is a matter for “*a later stage*”.
- AfCFTA Preamble (not binding) is cognisant of the *objectives and principles enunciated in the Abuja Treaty*.

What about Trade with third Parties?

- Art 4 Goods Protocol: *Nothing in this Protocol shall prevent a State Party from concluding or maintaining preferential trade arrangements with Third Parties, 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 confirms that the AfCFTA is an FTA.
- In FTA's the State Parties retain policy space over use of import tariff for domestic industrialization purposes & re trade relations with third parties.
- A *third party* defined as any State that is not a party to the AfCFTA Agreement.

How does the Private Sector fit into this Picture?

- Private parties (firms, legal or natural persons) not parties to this Agreement
- But their decisions on investment and new commerce across borders will be vital for the success of the AfCFTA.
- The increase in overlapping memberships could hamper matters.
- One of the general objectives of the AfCFTA is to “*resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes*”.
- Firms/investors increasingly focussed on domestic remedies, due process & transparency.
- The Investment Protocol will tell us more.....

What about Dispute Settlement?

- Do not expect fireworks
- Dispute Settlement Protocol copies the WTO model
- There will be Panels & an Appellate Body
- Only State Parties have standing
- We may see domestic disputes
- Trade Remedies & Safeguards are justiciable --- reforms required
- Especially to implement Safeguard measures
- REC Courts (where in existence) will continue
- Private Parties can litigate in REC Courts
- Could AfCFTA developments spill over into their jurisdiction?
- What does “preservation of the *acquis*” mean?

What longer-term Benefits?

- Most immediate benefits about a **better trading environment**.
- Trade facilitation, the removal of NTBs & modernized customs procedures (for which there are dedicated Annexes) should be prioritized.
- AfCFTA is a **member-driven** arrangement, initiatives by Secretariat vital.
- Note Art 13: *The Secretariat shall be a functionally autonomous institutional body within the African Union system with an independent legal personality*
- If properly implemented the AfCFTA could usher in much needed reforms.
- New challenges to be met: COVID-19 & Climate change.
- AfCFTA reaffirms “*the right of State Parties to regulate within their territories*”to achieve policy objectives.
- The other ingredients (infrastructure, industrialization & keeping the momentum) are also crucial.