

## Special Trade Brief

# The AfCFTA Secretariat's Guided Trade Initiative has been launched: How will it work and where does trade under AfCFTA rules now stand?

### Introduction

The AfCFTA Secretariat has launched the AfCFTA Guided Trade Initiative (GTI) in Accra on Friday, 7 October 2022. It held a ceremony to mark “*the commencement of trade under the [AfCFTA] Agreement.*”<sup>1</sup> This event took place at the margins of the 10th Meeting of the Council of Ministers of the AfCFTA, held from 7-8 October 2022.

This is an important development and the latest attempt to start some preferential trade in goods under the auspices of the AfCFTA. However, this is still an interim arrangement, with the potential to be expanded in order to learn lessons about the practical issues confronting the implementation of the AfCFTA as a comprehensive and final trade deal. The GTI is not the ultimate AfCFTA regime provided for in the AfCFTA founding Agreement, which entered into force on 30 May 2019.

The fact that the AfCFTA Agreement is in force, means that the State Parties (they presently count 44<sup>2</sup>) are under a legal obligation to complete the outstanding negotiations in order to have the full collection of AfCFTA legal instruments in place. For this to be the case, tariff schedules, rules of origin and specific commitments for the priority services sectors must still be agreed and be adopted. Once they have been adopted, Phase I of the AfCFTA negotiations will be done.

<sup>1</sup> [Press Release: The AfCFTA Guided Trade Initiative](#)

<sup>2</sup> Guinea Bissau became the 44<sup>th</sup> State Party when it deposited its instrument of ratification on 27 September 2022.



The negotiations to finalise the AfCFTA deal must continue while the GTI is being implemented. The ultimate objective behind the AfCFTA is to create, over time, “*a single market for goods, services, facilitated by movement of persons in order to deepen the economic integration of the African continent...*”.<sup>3</sup>

It is also necessary to recall what the AfCFTA is in terms of the applicable multilateral rules. Article XXIV (8) GATT defines a Free Trade Area (FTA) “*to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce... are eliminated on substantially all the trade between the constituent territories in products originating in such territories.*”

The AfCFTA also wants to liberalise trade in services on the continent. Article V GATS must be complied with eventually. This particular aspect (liberalising trade in services under the AfCFTA) should receive more emphasis.

In this Special Trade Report on the GTI, we look at some of the practical and legal aspects as they have been explained in an Information Note released by the AfCFTA Secretariat. The launch of the GTI is an important development, but the ongoing Phase I negotiations to conclude and adopt the outstanding AfCFTA legal instruments remain on the AfCFTA agenda.

It is necessary to recall the official definition of the AfCFTA Agreement<sup>4</sup>. It means “*this Agreement Establishing the African Continental Free Trade Area **and** its Protocols, Annexes and Appendices which shall form an integral part thereof*”.<sup>5</sup> (Emphasis added.) The AfCFTA is, in terms of its own philosophy, a **single undertaking**: “*The Protocols on Trade in Goods, Trade in Services, Investment, Intellectual Property Rights, Competition Policy, Rules and Procedures on the Settlement of Disputes and their associated Annexes and Appendices shall form part of the single undertaking, subject to entry into force.*”<sup>6</sup>

## What has been announced?

The AfCFTA has issued an **Information Note** under the title: *Towards the Commencement of Commercially meaningful Trade under the African Continental Free Trade Area (AfCFTA)*. It explains the background to the GTI and the nature of this initiative, how it will work, and its legal basis. The full text of the Information Note appears below.

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<sup>3</sup> [Agreement Establishing the AfCFTA: Consolidated agreed text](#)

<sup>4</sup> Art 3(a) AfCFTA Agreement.

<sup>5</sup> Art 1(b) AfCFTA Agreement.

<sup>6</sup> Art 8(2) AfCFTA Agreement.

## A. Background

1. The 7th Council of Ministers (COM) responsible for trade of the AfCFTA adopted the Ministerial Directive 1/2021 on the Application of **Provisional Schedules of Tariffs Concessions** (PSTC) on the 10th of October 2021. This Ministerial Directive provided a legal basis for the 29 countries that had submitted their tariff schedules in accordance with the agreed modalities to trade preferentially amongst themselves. The Ministerial Directive was adopted by the Assembly of Heads of State and Government in February 2022 paving the way for various activities and initiatives towards the start of commercially meaningful trade under the AfCFTA. During the 9th Meeting of the Council of Ministers held in July 2022, H.E the Secretary General of the AfCFTA, Mr. Wamkele Mene, announced the AfCFTA Secretariat Guided Trade Initiative (GTI).
2. The objective of the AfCFTA Secretariat Guided Trade Initiative is to start trading under the preferences of the AfCFTA Agreement among an interested group of States Parties that are certified as having met the minimum threshold for the start of commercial meaningful trade. The Initiative aims to:
  - a. Demonstrate the efficiency of the legal framework of the AfCFTA instruments;
  - b. Obtain feedback on the effectiveness of the legal and institutional national systems in the participating countries;
  - c. Test the readiness of the private sector to participate in trade under the AfCFTA; and
  - d. Identify possible future interventions to increase intra-African trade and maximise the benefits of the AfCFTA.
3. The initiative attracted the interest and participation of SEVEN State Parties – Cameroon, Egypt, Ghana, Kenya, Mauritius, Rwanda and Tanzania, representing the five regions of Africa.
4. The Committee on the AfCFTA Guided Trade Initiative has progressively coordinated and operationalised activities of the Initiative, ensuring that the various players from the public and private sectors are on board. The Committee (the AfCFTA Secretariat, Ghana National AfCFTA Coordination Office, interested State Parties; including the diplomatic missions, Ministries of Trade and Industry, Customs administrations, private sector; including logistics companies and the implementation partners), coordinated their activities towards the launch through weekly meetings complemented by Ad hoc Committees. The Committee has held nine meetings so far.

5. The AfCFTA Secretariat Guided Trade Initiative has been supported by AfroChampions and Afreximbank whose focus is SMMEs and the operationalisation of key instruments like the AfCFTA Hub, Pan African Payments and Settlement

The AfCFTA operational instruments<sup>7</sup> are the following: The [AfCFTA e-Tariff Book](#); [AfCFTA Hub](#); and the [AfCFTA NTMs Reporting Mechanism](#). The [Pan-African Payments & Settlement System \(PAPSS\)](#) and the [Adjustment Facility](#) are instrumental to the realisation of the AfCFTA agenda.

## B. Progress so Far

6. The Committee on the AfCFTA Guided Trade Initiative has coordinated the participation of national AfCFTA committees, identification of products to be traded under the initiative, organised logistics, identified and addressed customs-related challenges, thus creating an enabling environment for sustainable trade under the AfCFTA. The Committee has established four Sub-Committees:
  - a. The Sub-Committee on Customs and Logistics: to focus on the AfCFTA customs cooperation and trading documents.
  - b. The Sub-Committee on Non-Tariff Measures (NTMs): to examine and collect available NTMs applicable for goods covered under the AfCFTA GTI.
  - c. The Sub-Committee on Communications: charged with publicity, press engagement, planning and execution.
  - d. The Sub-Committee on Services: to consider the activities related to TiSs under the GTI; priority being given to financial and transportation services for the first phase of the GTI.
7. The Roadmap towards the launch of the Initiative was adopted and through its implementation the following milestones have been achieved:
  - a. Establishment/and fast-tracking establishment of the National AfCFTA implementation/ and Ad hoc Committees;
  - b. Connecting counterparts' *Ad Hoc* committees in State Parties;

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<sup>7</sup> Listed on <https://au-afcfta.org/operational-instruments/>

- c. Business to business connections including with manufacturers associations and chambers of commerce including the involvement of Export Promotion Agencies;
  - d. Active participation of customs, food and drug, certification, standard regulatory authorities etc., in the respective State Parties; and
  - e. Involvement of logistics, including shipping companies and various partners in the financial sector.
8. The products identified for the initiative are batteries, tea, coffee, ceramic tiles, processed meat products, corn starch, sugar, pasta, glucose syrup, dried fruits, and sisal fibre, amongst others. There are additional products en route to various State Parties in the next few months, that have been identified and confirmed to be ready for shipments under the AfCFTA.
  9. In line with the Ministerial Directive, Provisional Schedules of Tariff Concessions which have been received, including the 30 that were technically verified, more State Parties are expected to join the Initiative. Expanding the Guided Trade Initiative to include more State Parties, Tunisia has started engagements with the Secretariat in preparation of joining. Efforts to bring other State Parties on board are ongoing; considerable progress has been achieved in identifying existing trade and trade in the pipeline, signal proof that remarkable achievements of the initiative despite limited resources.
  10. The Guided Trade Initiative has proven that AfCFTA is truly operational and the gains should be safeguarded for future seamless implementation towards increased inter-regional and intra-Africa trade that would yield economic development for the betterment of the continent at large.

## Comments

- The first effort to kickstart trade in goods under the AfCFTA Agreement was a decision adopted on 5 December 2020 at an Extraordinary AU Summit in Johannesburg. Interim trade was supposed to begin on 1 January 2021. Trade under this proposal had to be conducted in terms of tariff offers that had been extended as part of the ongoing Phase I negotiations, provided rules of origin had been concluded for the relevant goods, and the offer of the partner country complied with the tariff negotiating modalities. It also required that domestic implementation processes had to be completed, participating countries had to be 'customs ready'. This 'interim AfCFTA trade arrangement' did not materialise.

- The Seventh Meeting of the Council of Ministers (COM) adopted the Directive 1 of 2021, which is now invoked as the legal basis for **provisional trade** under the AfCFTA to begin. This meeting of the COM of the AfCFTA was convened in Accra, Ghana on 10 October 2021. The overall objective of the meeting was to consider the Report of the 9th Meeting of the Senior Trade Officials. The Chairperson of that meeting (Minister Patel of South Africa) noted that *“since the start of trading in January 2021, no trading had taken place. Thus, to give effect to the extra-Ordinary Summit Decision of Heads of State and Governments of 5th December 2020, Ministers should endeavour to complete the outstanding matters.”*
- A Statement by the Champion of the AfCFTA, H.E Mahamadou Issoufou hinted at the reasons for the delays. *“The Champion noted the low level of participation of the Council of Ministers in their planned meetings which hampers decision-making. He encouraged the Council of Ministers to ensure the expectations of the Heads of State and Governments of the African Union are met and that the start of trading for the benefit of the African people commences as soon as possible.”* He then quoted his speech made in Kigali on the 21 March 2018 during the signing of the AfCFTA Agreement: *“The purpose for us is an Africa with a single market, speaking with one voice, in line with our vision of an integrated, prosperous and peaceful Africa, led by its own citizens and representing a dynamic force on the world stage”*.
- The Secretary-General presented proposals on the outstanding rules of origin that include automobiles and textiles. The proposals were aimed at allowing the CoM to reach consensus. He further presented the way forward in sustaining the momentum for complete, timely and effective implementation of the AfCFTA Agreement.
- The Council of Ministers amended and adopted the draft Ministerial Directive on the **Application of Provisional Schedules of Tariff Concessions**.<sup>8</sup>

### Why this Initiative?

The GTI allows for some initial preferential trade in goods to commence in a manner that will demonstrate the potential of the AfCFTA, albeit from a small base and for a limited number of products. This was a necessary initiative because it is taking much longer than expected to complete the AfCFTA negotiations. (These negotiations were launched in 2015.) By kickstarting trade in a *guided* manner, there will hopefully

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<sup>8</sup> The text of Directive 1 of 2021 is contained in the rather detailed Annex V to the Report of the 7<sup>th</sup> Meeting of the CoM of the AfCFTA. This meeting took place on 21 October 2021 in Accra, Ghana.

be additional participants and more involvement by the private sector. The demonstration effect could add more impetus to the negotiations. There will presumably be reports on the progress made and about the expansion of the list of goods eligible for preferential trade where commercially viable opportunities exist.

The Information Note of the Secretariat says that the GTI aims to achieve four objectives:

- Demonstrate the efficiency of the legal framework of the AfCFTA instruments
- Obtain feedback on the effectiveness of the legal and institutional national systems in the participating countries
- Test the readiness of the private sector to participate in trade under the AfCFTA and
- Identify possible future interventions to increase intra-African trade and maximise the benefits of the AfCFTA.

The products identified for the initiative are batteries, tea, coffee, ceramic tiles, processed meat products, corn starch, sugar, pasta, glucose syrup, dried fruits, and sisal fibre. From the initial announcements of trade deals, many seem to involve at this stage exports to Ghana. Uptake by the private sector will be important.

The very notion of a **guided trading process** is to be noted. In this instance commerce across borders had to be guided by the Secretariat in order to begin. Further guidance will be needed. The COM and the Committee of Senior Trade Officials will presumably monitor developments around the GTI.

The reason why the AfCFTA cannot yet be implemented as a done deal is that some of the legal instruments must still be adopted. It has proven very difficult to reach consensus among the 54 African countries involved in these negotiations, which began in 2015.<sup>9</sup> They are at different levels of economic development and have unique needs, and typically want to advance their national offensive and defensive interests. COVID-19 has also disrupted the negotiating process. And since the REC FTAs will remain in place,<sup>10</sup> tariff concessions will be designed in a manner that will focus on new preferential trade streams without disrupting intra-FTA regimes. The preservation of the *acquis* is one of the AfCFTA's foundational principles.<sup>11</sup>

Under the agreed modalities 90% of tariff lines must be liberalised within a reasonable period of time. Three percent of tariff lines may be excluded (each country makes its own choices for exclusions, subject to the agreed modalities and the criteria for exclusion) and for 7% of tariff lines liberalisation will take place over a

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<sup>9</sup> Eritrea does not participate in these negotiations.

<sup>10</sup> Art 19(2) AfCFTA Agreement and art 8(2) AfCFTA Protocol on Trade in Goods.

<sup>11</sup> Art 5(f) AfCFTA Agreement.

longer period. These negotiations are based on **reciprocity**. Officials calculate how their country will benefit from offers extended by others and they make (and refine) counteroffers. Countries that are members of customs unions (such as SACU and the EAC) must decide on joint offers first because they must protect the integrity of the common external tariff of their respective customs unions.

This does not mean that there is presently no trade among the State Parties. They trade with each other under preferential FTAs in the RECs to which they belong (and often they belong to more than one REC<sup>12</sup>), in terms of bilateral arrangements, and under WTO MFN rates or so-called general rates (applied by those that are not yet members of the WTO). Intra-African trade in goods is highly concentrated in SADC, SACU and the EAC and will not see immediate changes. And while we are on this point: It is not countries as such or their governments that trade. Private firms in particular countries are the importers, exporters, retailers, service providers and investors. They will make their own decisions about how to gain from the AfCFTA in terms of the commercial benefits to be had. An exporter from one country must find an importer in another country, conclude a contract, and then export the goods in question. The latter means customs officials in the country of destination must clear the goods in terms of all applicable requirements such as the payment of import duties and compliance with rules of origin and technical standards.

There are high expectations about what the AfCFTA regime will make possible. The private sector is keen to exploit new opportunities on the continent and the international community shares these high expectations. This has resulted in several decisions to start trade on an *ad hoc* basis. The first such decision was adopted on 5 December 2020 at an Extraordinary AU Summit in Johannesburg. Interim trade was supposed to begin on 1 January 2021 (trade to be conducted in terms of tariff offers that had been extended, provided rules of origin had been concluded for the relevant goods, and the offer of the partner country complied with the tariff negotiating modalities). It also required that domestic implementation processes had to be completed, participating countries had to be 'customs ready'. This 'interim AfCFTA trade arrangement' did not materialise.

### **What is the legal basis for the GTI?**

The GTI is an initiative of the Secretariat and is mandated by the CoM. It is based on a previously adopted Council of Ministers (COM) Directive listing the outstanding tasks before the AfCFTA will be a done deal.<sup>13</sup> Trade in goods under the GTI requires *ad hoc* **national measures** by the participating countries in order to take place. Some of these countries are in customs unions and must adopt collective tariff measures in order

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<sup>12</sup> Apparently only Mozambique, which is a member of SADC, does not belong to more than one REC.

<sup>13</sup> Art 11 of the AfCFTA Agreement provides for regulations, directives, and recommendations by the CoM.

to accommodate their common external tariff. (Rwanda and Kenya are Partner States of the East African Community and fall in this category.<sup>14</sup>) These national measures are primarily about ad hoc customs procedures applicable to cross-border trade in goods and will have to be promulgated for inclusion in the relevant tariff books. They are not about the implementation of the AfCFTA Agreement as such because this Agreement is not yet complete.

The AfCFTA Tariff Schedules cannot yet be implemented because they do not exist. This is why Directive 1/2021 provides for the application of *Provisional Schedules of Tariff Concessions*. The objective is to “*implement tariff concessions on a provisional basis to facilitate and operationalise the start of trading **within the African Continental Free Trade Area.***” (Emphasis added.)

The Directive also recalls that the State Parties of the AfCFTA are committed to establishing a continent-wide African free trade area through the progressive reduction and elimination of customs duties and non-tariff barriers on goods on the basis of the adopted **Modalities** on Tariff Negotiations to accomplish this objective. The Council of Ministers reiterated that the Modalities on Tariff Negotiations are an **integral part of the AfCFTA Agreement**.

### **How will the GTI work and how long will it last?**

The Information Note spells out how **national authorities** in the seven participating countries, the private sector and the **Committee on the AfCFTA Guided Trade Initiative** are cooperating in what seems to be an exercise to test the waters.<sup>15</sup> This Committee has established four Sub-Committees: The Sub-Committee on Customs and Logistics, to focus on the AfCFTA customs cooperation and trading documents; the Sub-Committee on Non-Tariff Measures (NTMs), to examine and collect available NTMs applicable for goods covered under the AfCFTA GTI; the Sub-Committee on Communications, charged with publicity, press engagement, planning and execution; and the Sub-Committee on Services, to consider the activities related to trade in services under the GTI, priority being given to financial and transportation services for the first phase of the GTI.

When will the GTI be a success story? It will not be a constructive development if the GTI becomes the new reality for continent-wide trade in goods in the rather fragmented manner in which it will function. The GTI will be a success if it demonstrates the benefits of private sector involvement and how technical challenges

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<sup>14</sup> The EAC Schedule of Tariff Concessions for the AfCFTA Category A products has been published in the East African Community Gazette ([Legal Notice No. EAC 321/2022](#)).

<sup>15</sup> The AfCFTA Secretariat Guided Trade Initiative has been supported by AfroChampions and Afreximbank whose focus is SMMEs and the operationalisation of key instruments like the AfCFTA Hub and the Pan African Payments and Settlement System.

at borders can be resolved. It can be a trial run for the real thing and make the implementation of the comprehensive AfCFTA a better prepared venture. The GTI should not become a long-term or permanent exercise; that would impact negatively on the push to complete the AfCFTA.

For preferential trade in goods to be conducted on a continent-wide basis, trade facilitation, customs cooperation and logistical support services will be vital. If the GTI really picks up, there will soon be a much bigger need to implement the other AfCFTA Annexes and Appendices too. And there will be issues around coordination of trade streams conducted under the rules of the Regional Economic Community (REC) FTAs.

Some aspects of the AfCFTA regime cannot be implemented via the GTI. Dispute settlement is an example. The AfCFTA Dispute Settlement Protocol defines a dispute to mean “*a disagreement between State Parties regarding the interpretation and/or application of the Agreement in relation to their rights and obligations.*”<sup>16</sup> (Emphasis added.) As long as some of the founding legal instruments (such as Tariff Schedules and the Annex on Rules of Origin) remain outstanding, there is no AfCFTA Agreement. The “disputes” that might arise over the implementation of the GTI do not fall under the jurisdiction of the Dispute Settlement Body of the AfCFTA.

The GTI is an interim initiative. It should be implemented as such. Hopefully the outstanding negotiations will soon be concluded, in order to have a proper and legally consistent continental Free Trade Area. If the uncertainty about the conclusion of the Phase I negotiations lingers on indefinitely, the forward momentum and the opportunity might be lost.

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<sup>16</sup> Art 1(e) AfCFTA Protocol on Dispute Settlement.