

The African Continental Free Trade Area

A TRALAC GUIDE

11th ed. May 2024



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Background

In 2012, the African Union (AU) decided to establish a continent-wide Free Trade Area. The negotiations to adopt the required international agreement began in 2015. All Members of the AU were invited to participate in these negotiations. The Agreement establishing the African Continental Free Trade Area was presented for signature at the 10th Extraordinary Summit of the AU Assembly on 21 March 2018 in Kigali, Rwanda. After the required number of ratifications were deposited with the designated depositary the AfCFTA Agreement entered into force on 30 May 2019. Its general objectives are to create a single continental market for goods and services, with free movement of businesspersons and investments, to expand intra-Africa trade across the regional economic communities and the continent; to enhance competitiveness and support economic transformation; and to promote industrial development.

The AfCFTA's specific objectives are to eliminate tariffs and non-tariff barriers to trade in goods; liberalise trade in services; cooperate on investment, intellectual property rights and competition policy and on all trade-related areas.

The AfCFTA a Flagship Project of the AU, as mentioned in Agenda 2063. Others include the establishment of a single air transport market (Yamoussoukrou Decision and the Single Air Transport Market Decision) and achieving free movement of persons (Protocol on Free Movement of Persons, Right of Residence and Right of Establishment) and Several complementary continental frameworks complete Agenda 2063. These include the Comprehensive African Agricultural Development Programme (CAADP), Programme for Infrastructural Development in Africa (PIDA), African Mining Vision (AMV), Science Technology Innovation Strategy for Africa (STISA), Boosting Intra African Trade (BIAT), and the Accelerated Industrial Development for Africa (AIDA).



Sources: Continental Initiatives and Flagship Projects of Agenda 2063:

<https://au.int/en/agenda2063/flagship-projects>; <https://au.int/en/agenda2063/continental-frameworks>

Architecture of the AfCFTA

The AfCFTA Agreement is a comprehensive legal compact which includes the Agreement establishing the AfCFTA, Protocols on Trade in Goods, Trade in Services, Dispute Settlement, Investment, Intellectual Property Rights and Competition Policy. Protocols on Digital Trade and Women and Youth in Trade have also been added.

Phase 1 negotiations cover Trade in Goods, Trade in Services and Dispute Settlement. The Protocol on Trade in Goods and the Protocol on Trade in Services each have several Annexes covering substantive disciplines. Negotiations on a number of issues (e.g. tariff concessions, rules of origin for goods and schedules of specific commitments for services) are still ongoing. The negotiations of the Protocol on Dispute Settlement have been concluded.

Phase 2 negotiations cover Investment, Competition Policy and Intellectual Property Rights. These Protocols are mentioned in Article 7 of the Agreement establishing the AfCFTA.

Phase 3 negotiations cover Digital Trade, and Women and Youth in Trade. These two Protocols were added subsequent to the entry into force of the AfCFTA, as is permissible in terms of Article 8 of the Agreement establishing the AfCFTA, which provides: *“additional instruments, within the scope of this Agreement, deemed necessary, shall be concluded in furtherance of the objectives of the AfCFTA, and shall, upon adoption, form an integral part of this Agreement”*.

It is now common practice to refer simply to Phase 2 AfCFTA negotiations – covering Investment, Competition Policy, IPR, Digital Trade and Women and Youth in Trade. For clarity, we distinguish Phase 2 and Phase 3.

Agreement establishing the AfCFTA

Phase 1

Protocol on Trade in Goods

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 on implementation of Trade Remedies

Protocol on Trade in Services

Annexes

- Schedules of Specific Commitments
- MFN Exemption/s
- Air Transport Services
- List of Priority Sectors
- Framework Document on Regulatory Cooperation

Protocol on Rules and Procedures on the Settlement of Disputes

Annexes

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

Phase 2

Protocol on Competition Policy

Protocol on Investment

Protocol on IPRs

Annex on Dispute Settlement

Eight Annexes

Phase 3

Protocol on Women and Youth in Trade

Protocol on Digital Trade

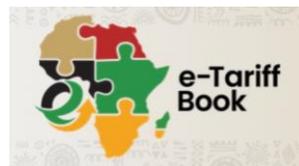
Annexes

Trade in Goods: Tariff Negotiations

The Protocol on Trade in Goods entered into force with the Agreement establishing the AfCFTA on 30 May 2019, although negotiations on some rules of origin and schedules of tariff concessions are still ongoing. The AfCFTA will see the progressive liberalisation of 97% of intra-Africa tariffs, 7% of which are categorised as sensitive products and will be liberalised over a longer time frame than the 90% of tariff lines in Category A (see below). The remaining 3% of tariffs may be excluded from liberalisation for reasons relating to food security, national security, fiscal revenue, livelihood, and industrialisation.

Tariff Elimination Modalities	Coverage (%)		Transition Period	
	Tariff lines	Import Value	non-LDCs	LDCs
Category A products	90		5 years	10 years
Sensitive products	7	90	10 years	13 years
Excluded products	3	10	No liberalisation	No liberalisation

Forty-five State Parties have (as at February 2024) submitted offers of tariff concessions that have been verified by the AfCFTA Secretariat to be compliant with the negotiating modalities. These Provisional Schedules of Tariff Concessions are available in the e-Tariff Book (<https://etariff.au-afcfta.org/mapsearch>) and are applied to trade under the Guided Trade Initiative. Tariff offers of Angola, São Tomé and Príncipe and Zimbabwe are being reviewed by the Secretariat. Djibouti, Libya, Mozambique, Somalia, the Saharawi Republic and Sudan are still to submit tariff offers.



Rules of Origin

Rules of Origin (RoO) determine the economic nationality of a product and hence its eligibility for preferential tariff treatment in a free trade area. The AfCFTA RoO include the 'wholly obtained' rule for agricultural and other primary products, and product-specific rules have been agreed on to encourage local value addition and transformation of inputs.

WHAT APPROACH DOES THE AFCFTA FOLLOW FOR DETERMINING ORIGIN STATUS ?



The AfCFTA RoO are essentially being negotiated on a sector by sector level, resulting in product-specific origin rules (rather than generic origin criteria that apply equally to all products). The advantage of this is that suitable criteria can be designed that better take account of the specific dynamics of each sector; however, this process also means that negotiations are more complex and time consuming. The general RoO provisions contained in the main RoO Protocol (Annex II) however apply equally to all products.

RoO for 92.3% of tariff lines have been agreed; general RoO and administrative rules are also finalised. Below is an update on specific RoO. (See tralac's RoO Guides at <https://www.tralac.org/resources/by-region/cfta.html#rules-of-origin>)

Textiles (yarns and fabrics), clothing, household textiles

Chapters affected:

51, 52, 54, 55, 58, 60, 61, 62, 63

Several product headings in the textiles (yarn, fabric and household textiles) and clothing sector have no finalised RoO yet. This relates to wool products (fabric), cotton products (yarn and fabric), synthetics (fabrics), products from man-made staple fibres (fabrics), special woven textiles (towelling, gauze, tapestries), knitted goods (fabrics), as well as household textiles. For articles of clothing, a chapter rule has been agreed (manufacture from yarn, subject to review), but most products within each chapter are still without rules.

Automotive sector

Chapters affected:

Parts of 87

While a general chapter rule has been agreed (where the value of non-originating materials may not exceed 60% of the ex-works price of the product), many sub-categories are excluded from the chapter rule, and these provisions remain outstanding. This includes tractors, passenger motor vehicles, vehicles for the transport of goods, special purpose vehicles (e.g. concrete mixer lorries, crane lorries), chassis with engines, motor vehicle bodies, parts, motorcycles, bicycles and trailers.

RoO with an automatic review process

Chapters affected:

Parts of 11, 17, 61, 62, 87

Some of the agreed origin criteria will be reviewed after a period of 5 years has lapsed. This negotiating outcome can also be considered as having helped find common ground among different positions. For example, the criteria for wheat flour (of chapter 11) is to confer origin based on a *change in heading* - whereby the processing of flour represents a substantial transformation, such as from wheat (of any origin). This rule will be reviewed after 5 years. Similar provisions apply to sugar, clothing (the agreed chapter rule), as well as to automobiles.

Trade in Services

The Protocol on Trade in Services negotiations are taking place in successive rounds. For the first round of negotiations, which is ongoing, State Parties have agreed to schedule commitments in the following 5 priority sectors:



Negotiations are underway for the development of Regulatory Frameworks that will underpin the market access (MA) and national treatment (NT) conditions guaranteed in the Schedules of Specific Commitments. These frameworks should promote regulatory predictability by guiding the implementation of national laws, regulations and policies while respecting States Parties' right to introduce new regulations. Regulatory frameworks for financial and communication services are being prioritised.

The Assembly has adopted 22 Schedules of Specific Commitments in the 5 priority services sectors; financial, transport, communication, business and tourism services. Twenty-six additional offers in the five priority sectors are currently being negotiated. Five EAC member states (Kenya, Rwanda, Tanzania, Burundi, Uganda) have gazetted their adopted Schedules of Specific Commitments for the 5 priority sectors.

A Guided Trade Initiative for services has also been suggested.

Phase II and Phase III Negotiations

The Protocols on Investment, Intellectual Property Rights (IPRs), and Competition Policy have been completed and adopted. Further negotiations are required for finalising the Annexes to the Investment and IPR Protocols.

Dispute resolution under the Investment Protocol

The Protocol on Investment provides for a dispute resolution mechanism that investors will have access to. Article 47 of the Protocol provides that in the event that an investor of a State Party and the Host State are unable resolve a dispute amicably, they may make use of the dispute resolution mechanism provided in the relevant Annex (which is yet to be negotiated). While the Investment Protocol only applies to intra-Africa investment, foreign firms that already have an established commercial presence in a State Party will be able to make use of the Protocol's dispute settlement mechanism.

The Protocols on Digital Trade and Women and Youth in Trade have been adopted by the AU Assembly in February 2024. The Protocol on Digital Trade (which covers e-commerce and digitally-delivered trade) aims to support the Protocols on Trade in Goods and Trade in Services by promoting the sustainable and inclusive transformation of digital trade on the continent.

The Protocol on Women and Youth in Trade is geared towards eliminating gender-specific barriers to trade and unlocking the potential of the continent's young population.

Dispute Settlement

The AfCFTA has a **Protocol on Rules and Procedures on the Settlement of Disputes**. It was adopted during Phase I of the AfCFTA negotiations and has been in force since 30 May 2019. The AfCFTA's dispute settlement system is modelled on the Dispute Settlement Understanding of the WTO. It consists of panels and an appellate body. **Only AfCFTA State Parties have standing to file claims** under this Protocol, which can be heard and decided by Panels and the Appellate Body of the AfCFTA. Since violations of obligations regarding trade in goods and in services in most instances impact private firms, it is for the national governments of the relevant countries (if they are members of the WTO or the AfCFTA) to litigate against States adopting and implementing measures in violation of their obligations.

Legal remedies for private parties

While private parties do not have direct access to the AfCFTA's State-State dispute settlement mechanism, they can lobby their governments to take up a dispute on their behalf. They may also, if they have the necessary standing, approach domestic tribunals or courts of law to review measures taken by national authorities which impact on the rights of private parties involved in international trade and commerce.

Private Parties can also benefit from the application of trade remedies. If they have been affected by unfair trade practices, such as the dumping of goods or subsidised imports, they can request national investigating authorities to undertake the required investigations and impose anti-dumping duties, countervailing measures, or safeguard measures. Annex 9 of the Protocol on Trade in Goods provides for Trade Remedies and Safeguards.

Trade facilitation

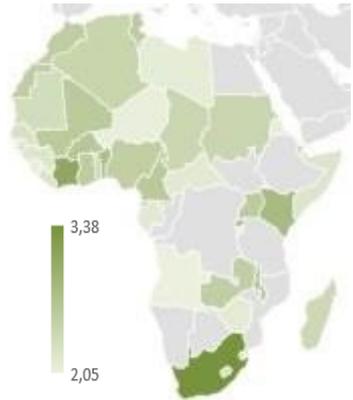
High transport costs, delays, port inefficiencies and cumbersome border procedures can have a more negative impact on the trade of goods than any tariffs.

Annex 4 of the AfCFTA Protocol on Trade in Goods sets out rules that seek to address specific procedural hurdles to facilitate trade procedures. This Annex presents a significant opportunity for State Parties to reap the economic benefits from improving the speed and efficiency of border procedures through the elimination of NTBs.

Logistics performance index

The World Bank **Logistics Performance Index (LPI)** is based on a survey of freight forwarders and express carriers. It ranks countries on customs, international shipments, quality and competence, tracking and tracing, timeliness and infrastructure. A higher score indicates higher performance. South Africa, Ivory Coast, Egypt, Kenya, Benin and Mauritius are the best performing African countries. Angola, Burundi, Niger, Sierra Leone and Eritrea the lowest scoring African countries.

Source: World Bank



Institutions of the AfCFTA

The institutional framework for the implementation, administration, facilitation, monitoring, and evaluation of the AfCFTA consists of the AU Assembly, the Council of Ministers, the Committee of Senior Trade Officials, and the Secretariat (Art 9 AfCFTA Agreement.) Decisions by AfCFTA institutions are taken by consensus, unless otherwise provided.

The **Assembly** of Heads of State and Government of the African Union (AU) provides oversight and strategic guidance on the AfCFTA, including the Action Plan for Boosting Intra-African Trade (BIAT).

The **Council of Ministers** (CoM) consists of the Ministers for Trade (or other designated Ministers) of the State Parties. The State Parties are the AU Member States that have ratified the AfCFTA Agreement or have acceded to it, and for whom this Agreement is in force. The COM has authority to take all decisions as provided for in a rather wide mandate provided for in Article 11 of the AfCFTA Agreement. This includes the responsibility to ensure the effective implementation and enforcement of the AfCFTA Agreement. It also supervises the work of all committees and bodies established under the Agreement, considers reports of the Secretariat, makes regulations, issues directives, and makes recommendations. The COM meets twice a year in ordinary session and may meet as and when necessary, in extraordinary sessions.

The **Committee of Senior Trade Officials** consists of Permanent or Principal Secretaries of the State Parties, or of other officials designated by them. It must implement the decisions of the CoM and is responsible for the development of programmes and action plans for the implementation of the AfCFTA Agreement. It may direct the Secretariat to undertake specific assignments.

The Regional Economic Communities (RECs) are not parties to the AfCFTA Agreement but shall be represented in the Committee of Senior Trade Officials in an advisory capacity. The REC Free Trade Areas are also the building blocks of the AfCFTA.

The **AfCFTA Secretariat** is the only permanent institution of the AfCFTA and is based in Accra, Ghana. It must implement instructions of the CoM and must provide technical assistance to the State Parties and AfCFTA institutions, as provided in the AfCFTA Agreement. The AfCFTA Agreement does not establish a new international legal person but does say the Secretariat *“shall be a functionally autonomous institutional body within the African Union system with an independent legal personality”*.

The **Dispute Settlement Mechanism** of the AfCFTA replicates, with the necessary adaptations, the WTO dispute settlement system. The relevant principles and procedures appear in a dedicated Protocol. The AfCFTA Dispute Settlement Mechanism has its own institutions, such as the Appellate Body and the Panels. Only State Parties may bring disputes against other State Parties. Natural or legal persons have no standing to bring applications for the settlement of AfCFTA related disputes.

Assembly



Council of Ministers



Committee of Senior Trade Officials



Dispute Settlement Body



Panels



Appellate Body



AfCFTA Secretariat



AfCFTA Committees

The AfCFTA Protocols and Annexes establish various technical committees to assist with the implementation of the AfCFTA. They will comprise designated representatives from State Parties.

The Committee on Trade in Goods will facilitate the operation of the Protocol on Trade in Goods. This Committee has established Sub-Committees responsible for the operationalisation of the Annexes of the Protocol on Trade in Goods.

The Committee on Trade in Services will facilitate the operation of the Protocol on Trade in Services. The Committee has established Sub-Committees responsible for the operationalisation of specific matters in the Protocol on Trade in Services.

During its 5th Meeting held on 3 May 2021, the AfCFTA Council of Ministers established Committees on Investment, Competition Policy, Intellectual Property Rights, Digital Trade, and Women and Youth in Trade to facilitate negotiations in these areas and assist with the implementation of the relevant Protocols.

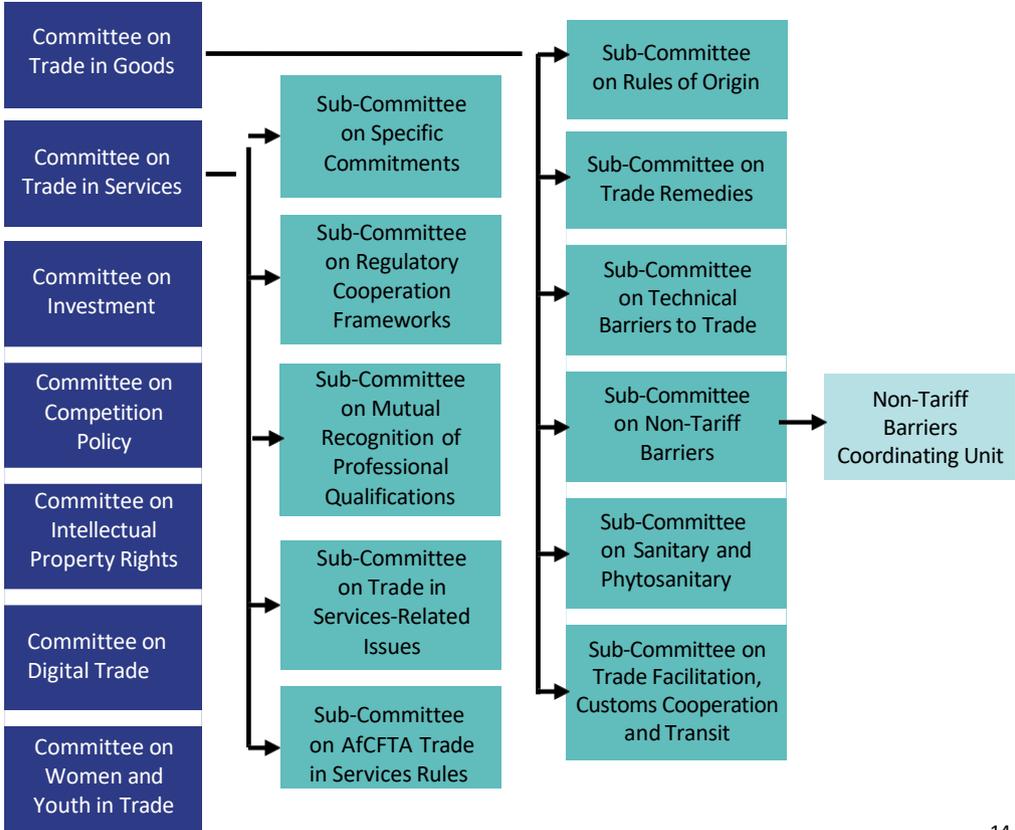




Committees



Sub-Committees



Guided Trade Initiative

At the 9th Meeting of the Council of Ministers (25-26 July 2022), H.E. Wamkele Mene, AfCFTA Secretary General, presented the AfCFTA Secretariat's proposed Guided Trade Initiative (GTI). The GTI is not provided for in the AfCFTA legal instruments. Ministerial Directive 1/2021 provides the necessary legal basis for the Application of Provisional Schedules of Tariff Concessions.

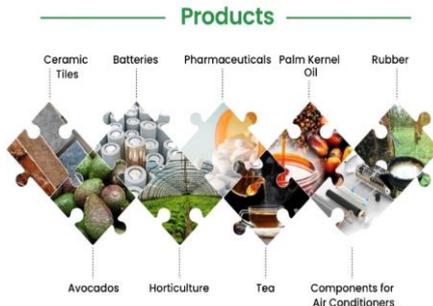
The GTI is a pilot project, while the outstanding negotiations on tariff concessions and Rules of Origin continue. Once these negotiations are complete, trade under the AfCFTA can begin.

The objectives of the GTI are, to:

- test the operational, institutional, legal and trade policy environment under the AfCFTA
- allow commercially meaningful trading under the AfCFTA, and
- send a positive message to African economic operators about the AfCFTA.

The GTI was launched in Accra, Ghana on 7 Oct 2022, with seven State Parties: Ghana, Kenya, Rwanda, Tanzania, Mauritius, Egypt and Cameroon. Others, who have had their Provisional Schedules of Tariff Concessions verified, may join. Products can only be included if their Rules of Origin are finalised.

Below are the products that these countries registered an interest to trade under the GTI.



Source: <https://au-afcfta.org/2022/09/the-afcfta-guided-trade-initiative/>

Guided Trade Initiative Update

In 2023, the year for “Acceleration of the Implementation of the AfCFTA”, the AfCFTA Secretariat undertook a second phase of the Initiative expanding the list of participating countries and the products that can be traded.

38 State Parties have registered interest to participate in Phase 2 of the GTI:

- **East Africa:** Kenya, Uganda, United Republic of Tanzania and Rwanda;
- **Central Africa:** Cameroon, Burundi, Gabon, Equatorial Guinea, Central African Republic, Democratic Republic of Congo, Republic of Congo and Chad;
- **North Africa:** Algeria, Egypt, Morocco and Tunisia
- **Southern Africa:** South Africa, Angola, Botswana, Eswatini, Lesotho, Malawi, Namibia and Zimbabwe.
- **West Africa:** Côte d'Ivoire, Ghana, Nigeria, Senegal, Sierra Leone and Togo; and
- **Island states:** Cape Verde, Comoros, Mauritius, Madagascar and Seychelles.

South Africa began trading under the GTI on 31 January 2024, with two consignments of goods departing from the port of Durban bound for Kenya and Ghana. South African firms can currently trade with firms in the following countries under the GTI: Algeria, Cameroon, Egypt, Ghana, Kenya, Rwanda (these State Parties have implemented their Provisional Schedules of Tariff Concessions and other requirements to be ‘trade ready.’)



A GTI for trade in services is being discussed.

Other AfCFTA initiatives

- **African Trade Observatory:** the African Trade Observatory (ATO) aims to create a continent-wide trade information portal to facilitate intra-African trade and to support the roll-out of the AfCFTA. The ATO collects trade-related data from member states with the aim of providing trade intelligence to both market players and governmental and non-governmental agencies. The ATO includes services trade, exchange rate and competitiveness indicators, internal tax data and foreign direct investment data.

Available at: <https://ato.africa/en/>

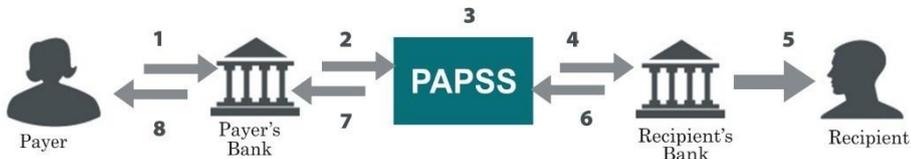
- The **AfCFTA Online Mechanism for Reporting, Monitoring and Elimination of NTBs** provides a facility for online reporting of identified non-tariff barriers (NTBs) including for reporting via SMS. Reported NTBs and the status of their resolution can be accessed on the public domain. NTB notifications will be received by the focal points of the reporting country, the responding country and the AfCFTA Secretariat for processing. In a non-public space, the system then allows information exchange between the concerned State Parties to monitor and resolve NTBs.
- Available at: <https://tradebarriers.africa>



Pan-African Payment and Settlement System

The Pan-African Payment and Settlement System (PAPSS), developed by the African Export Import Bank (Afreximbank) in collaboration with the African Union and AfCFTA Secretariat, is a cross-border, financial market infrastructure for enabling payment transactions across Africa. PAPSS allows for payment and settlements using local currencies.

How does PAPSS work?



1. Payer sends payment instruction in local currency to their bank or payment service provider
2. Payer's bank sends a message to PAPSS with all the payment details
3. PAPSS validates the payment
4. Payment instruction is sent the Recipient's bank to validate the details of the recipient account
5. The payment instruction is forwarded to the beneficiary's bank or payment service provider.
6. PAPSS changes the status of the transaction to final
7. The Payer's bank is notified of the outcome of the transaction
8. The Payer is notified of the outcome

Regional Economic Communities & the AfCFTA

Article 5 of the Agreement Establishing the AfCFTA says the RECs' Free Trade Areas are building blocs of the AfCFTA and the *acquis* (what has already been achieved) must be preserved. Article 19(2) states:

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.

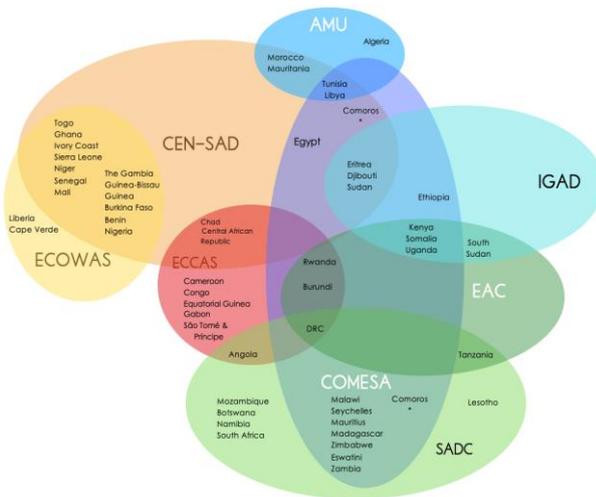


Source: African Union

This means that the AU-recognised REC FTAs, as well as other trading arrangements such as the Southern African Customs Union (SACU) and the Tripartite Free Trade Area (TFTA), shall be maintained (See also Art 8(2) of the AfCFTA Protocol on Trade in Goods.)

Given that the RECs will remain in place and implement their own regional agendas, **trade among members of an existing REC trading arrangement (FTA or customs union) will continue according to this trade regime.**

Regional Economic Communities



EAC recently gained two new members: Democratic Republic of Congo (DRC) and Somalia acceded to the EAC in 2022, and 2023, respectively. Ethiopia is expected to accede to the EAC too.

There is no tariff liberalisation under the AMU, CENSAD, ECCAS or IGAD.

Many AU members are party to FTAs with external partners. These AU members then trade with other AU members of these FTAs under their specific FTA preferences. The Greater Arab Free Trade Area (GAFTA) is an example. It has 18 members across North Africa and the Middle East. Algeria, Egypt, Libya, Morocco, Sudan and Tunisia are members, and grant each others' goods preferences under the GAFTA.

Many African countries also have operational bilateral trade agreements between them.

Most intra-REC trade takes place in SADC, COMESA and the EAC.

AfCFTA: a framework for Africa's industrialisation

The AfCFTA has become a framework for Africa's industrialisation with a strong focus on regional value chain development. Under the AfCFTA Secretariat's Private Sector Engagement Strategy, four priority value-chains have been identified for development:

1. Agro-processing
2. Pharmaceuticals
3. Transport and logistics
4. Automotive

As a part of this agenda, the AfCFTA has partnered with the African Export-Import Bank (Afreximbank) to establish the **Automotive Fund**. Afreximbank has committed a US\$1 billion facility available to any investment that seeks to pursue local content development in the automotive value chain. The funding will also be used for ensuring access to consumer finance as part of the creation of demand and associated insurance products.

Afreximbank has also established the **Fund for Export Development** in Africa (FEDA) to support intra-African trade growth, value-added export development, and industrialisation. FEDA was created to address the US\$110 billion equity financing gap on the continent.

RECs also have regional industrial strategies – with focus on regional value chain development. There are overlapping value chain priorities across the RECs and the AfCFTA.

Value chain opportunities for African and global investors

African countries have hitherto specialised as resource exporters, with some mostly internally-focused (import replacing) industrialisation.

Africa has, however, been experiencing premature deindustrialisation since the 1990s.

One of the 4 main objectives of the African Continental Free Trade Area (AfCFTA) is to promote industrial development in Africa, the others relating to trade, integration and competitiveness.

For the AfCFTA to be a facilitator of trade-driven industrialisation, it has to meaningfully impact tariff and non-tariff barriers and so improve intra-African market access. Logistics and border challenges must also be resolved.

Value-chain driven industrialisation is a special case of trade-driven industrialisation where the production chain is fragmented across several countries, permitting specialisation and the development of country and regional competencies and competitiveness in designated industrial sectors.

There are opportunities to participate in continental value chains for African and global investors. Once a global investor establishes a commercial presence in one of the AfCFTA State Parties, it has access to trade opportunities under the AfCFTA. This makes the AfCFTA a very important vehicle to attract foreign direct investment from outside the continent. This in part explains the global interest in the AfCFTA.

About tralac

tralac (Trade Law Centre) is a public benefit organisation based in South Africa. We develop technical expertise and capacity in trade governance across Africa.

We are committed to the principles of rules-based governance at the national, regional and international levels. We believe that better governance and strong institutions are essential elements for inclusive and sustainable growth. tralac's activities are anchored on three pillars:



INFORM

Publications
Daily news service
Trade data
Infographics



CAPACITATE

Training programs
Internship program
Trade law and policy
advisory services



EMPOWER

Policy dialogue &
forums
Policy dialogue
contributions

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