

## Accommodating the needs of Women under AfCFTA and REC Instruments

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The African Continental Free Trade Area (AfCFTA) wants to boost intra-African trade through a continent-wide preferential trade in goods (and some services) arrangement. It wants to do so in a specific manner and via a design adopted as part of the AfCFTA Agreement. This Agreement is in force since 30 May 2019 and cannot be re-designed. The accommodation of the needs of women as part of the AfCFTA has to reckon with basic AfCFTA features already in place and in force.

The first AfCFTA feature to be mentioned is that it is a Free Trade Area (FTA), not a Customs Union (CU). Since an FTA is the most basic regional integration arrangement allowing preferential trade in goods among the relevant member states, it does not have a common external tariff (CET) nor a single customs territory, as Article XXIV GATT requires of Customs Unions. The AfCFTA State Parties will retain policy space in respect of trade relations with third parties and the use of the import tariff (as provided for in the AfCFTA tariff schedules) for domestic development purposes. It means they are, to a considerable extent, in control of national border and customs matters as part of their obligations under the AfCFTA Agreement.

The AfCFTA State Parties belonging to customs unions (such as the Southern African Customs Union (SACU)) must of course respect the relevant CET. Women trading within CUs will not face tariff related restrictions but there may be other obstacles, such as immigration, clearance and personal allowances requirements and rules. The needs of women traders operating within CUs require specific remedies and bespoke procedures. This issue is discussed elsewhere.

The second relevant AfCFTA feature is related to the fact that intra-African trade under the AfCFTA regime (once it is finally up and running), will not be based on a single set of preferential trade rules. Article 19(2) of the AfCFTA Agreement reads:

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.

Preferential trade across the continent will in future be covered by a different preferential regime. The AfCFTA will not replace the Regional Economic Communities (RECs) which have already formed FTAs, customs unions, or common markets. It is building on the preservation of the *acquis*;<sup>1</sup> what has already been agreed, remains binding and in place. The AfCFTA thus entails a continuation of REC FTAs that have been in existence for quite some time. Previous intra-African integration arrangements will not be dismantled. Over time, when AfCFTA tariffs are eliminated in respect of goods so designated, the different African trade arrangements will presumably become a more integrated regime. It means that border administration, trade facilitation and customs procedures (which deal with aspects that are vital for achieving rules-based economic integration) will have to be streamlined and merged. This will take time. The AfCFTA Protocol on Trade in Goods has bespoke Annexes for these disciplines. They are discussed in subsequent Blogs.

Those RECs with their own regional integration agendas will pursue their specific strategies on deeper integration, as well as other disciplines necessary for local needs. Article 8(2) of the AfCFTA Protocol on Trade in Goods, for example, says that:

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. (Emphasis added.)

The continuation of REC has implications for other regional practices and cooperation policies. The RECs are about more than trade in goods and services and have their own legal arrangements for matters

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

such as regional energy networks, the sharing of water courses, education, environmental protection etc. There are no plans for abolishing existing benefits pertaining to regional integration in the broader sense of the term.

The AfCFTA will exist alongside RECs with legal regimes for liberalizing trade among their members and promoting economic integration. The RECs are anchored in specific treaties which provide for rights and duties for the respective member/partner states. Women traders will be affected by the requirements, procedures and rules pertaining to specific cross-border transactions they will be engaged in; including those anchored in REC regimes.

The implications of overlapping memberships and the absence of special arrangements for women traders can and should be addressed when the AfCFTA membership negotiates and adopts the additional Protocol on Women and the Youth. This is the very reason why such a Protocol is necessary. However, in order to bring about lasting and real improvements, such a Protocol should also address the obstacles faced by women under REC regimes. The REC FTAs are the building blocks of the AfCFTA.<sup>2</sup> This will pose a separate challenge; to design additional REC legal instruments for women.

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<sup>2</sup> Art 5(b) AfCFTA Agreement.