

The AfCFTA Principles and the promotion of the Interests of Women

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The AfCFTA legal instruments have been negotiated in terms of founding *Principles* meant to steer the design and operations of the AfCFTA African Continental Free Trade Area (AfCFTA) in a particular direction. These Principles are repeated in Article 5 of the AfCFTA Agreement. In this format they indicate that the AfCFTA “shall be governed” in terms of the following principles:

- driven by Member States of the African Union
- RECs’ Free Trade Areas (FTAs) as building blocs for the AfCFTA
- variable geometry
- flexibility and special and differential treatment
- transparency and disclosure of information
- preservation of the *acquis*
- MFN Treatment
- National Treatment
- reciprocity
- substantial liberalisation
- consensus in decision-making
- best practices in the RECs, in the State Parties and International
- Conventions binding the African Union.

These *Principles* tell us, among other things, that the AfCFTA is a **member-driven** Free Trade Area (FTA), that the REC FTAs will continue to function, and that all decisions by the

State Parties and in the AfCFTA institutions (discussed in a subsequent Blog) will be taken on the basis of consensus. It means that new AfCFTA legal instruments (such as the *Protocol on Women and the Youth*) will be concluded through negotiations involving all the African Union (AU) Member States and will only be adopted once they have reached consensus about their content. Since the participating countries are of different backgrounds and have different policy needs, these negotiations can take time.¹ The texts often contain language signifying compromises and policy space for the State Parties.

Trade Agreements are a form of law-making but States are sovereign and cannot be bound by treaties that they have not consented to. Under the AfCFTA all the participating countries must agree on the text of a new AfCFTA Protocol and its Annexes before it can be adopted. Adoption is the responsibility of the AU Assembly.² Signature and ratification by individual AU member states then follow.³

One of the other noteworthy *Governing Principles* is the one providing for the preservation of the *acquis*. The *acquis* (which is not defined in the AfCFTA Agreement) became part of the African integration vocabulary around 2012, during the negotiations to establish the Tripartite Free Trade Area between COMESA, the EAC and SADC. It was adopted as a Guiding Principle for those negotiations and was defined as follows:

Building on the *acquis* of the existing REC FTAs in terms of consolidating tariff liberalisation in each REC FTA: *Acquis* is a French term meaning “that which has been agreed”. In the context of the Tripartite Free Trade Agreement it means that the negotiations should start from the point at which of the COMESA, EAC and SADC trade negotiations have reached. Tariff negotiations and the exchange of tariff concessions would be among Member/Partner States of the Tripartite FTA that have no preferential arrangements in place between them. This will both preserve the *acquis* and build on it.

This definition applies to the AfCFTA too. The tariff concessions extended as part of the AfCFTA negotiations would only be among those State Parties “*that have no preferential arrangements in place between them*”.

¹ The AfCFTA negotiations were launched in 2015 and good progress has been booked in many areas. However, the tariff schedules and rules of origin required by the Protocol on Trade in Goods have, in the beginning of 2023, not yet been finalized.

² Art 22 AfCFTA Agreement.

³ Art 23 AfCFTA Agreement.

Intra-REC trade is governed by the relevant REC FTA regimes and will not see direct liberalization via the AfCFTA negotiations. However, since the RECs are also the building blocks of the AfCFTA, there will have to be future strategies for them to advance the continental reach of AfCFTA preferences and closer customs cooperation. This will have implications for how the AfCFTA institutions will function. Article 12(5) of the AfCFTA Agreement provides that the RECs “*shall be represented in the Committee of Senior Trade Officials, in an advisory capacity*”.

What are the implications of these Principles for the accommodation of women within the AfCFTA? One implication is that the needs of women traders will have to be accommodated in the legal instruments and procedures of existing African Customs Unions and REC Free Trade Areas, in addition to those provided for by the relevant Annexes of the AfCFTA Protocol on Trade in Goods. Another is that it is of vital importance that the stakeholders pushing for the accommodation of the needs of women in the AfCFTA make their inputs into the new negotiations on the adoption of the AfCFTA Protocol on Women and the Youth, and into domestic approval processes.

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tralac gratefully acknowledges the support of its Development Partners

