

## What is the implementation of the AfCFTA about and how will Women be affected?

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The African Continental Free Trade Area (AfCFTA) Agreement establishes a rather standard continent-wide preferential trade regime for goods and services. It does not yet contain specific rules and obligations to accommodate the needs of women traders. The intention is that the Protocol on Women and the Youth, negotiated during Phase III of the AfCFTA, will do so. This Blog therefore provides a brief overview of the AfCFTA Protocols and Trade in Goods and Services, while noting that the Tariff Schedules and Annex on rules of origin must still be finalised.

The AfCFTA is not a self-executing arrangement. Article 4 of the AfCFTA Agreement provides that the **State Parties** shall **progressively** eliminate tariffs and non-tariff barriers to trade in goods; **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 concerning their rights and obligations; and establish and maintain an institutional framework for the implementation and administration of the AfCFTA.

These are the obligations of the State Parties. They are the AU Member States that have ratified or acceded to the AfCFTA Agreement and for which the Agreement is in force.<sup>1</sup> The agreed obligations are to be implemented through measures taken by the State Parties. For trade in goods this requires tariff reductions via new tariff columns added to national tariff books (if they belong to a customs union, there must be collective tariff liberalisation schedules for the AfCFTA), elimination of Non-Tariff Barriers (NTBs), measures to implement rules of origin, standards, and trade facilitation. Exceptions must

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<sup>1</sup> Art 1(v) AfCFTA Agreement.

comply with the agreed conditions. Trade remedies and safeguards are allowed, provided the applicable requirements are followed and due process is respected.<sup>2</sup>

In the case of African customs unions (such as SACU and to some extent also in the EAC and in COMESA) there must be collective action in respect of trade in goods liberalisation under the AfCFTA; in order to protect the CET of the customs union in question. Lessons about how this should happen, can be learned from the existing trade agreements which SACU member states have concluded with third parties and which are in force.<sup>3</sup>

For trade in services in terms of the relevant AfCFTA Protocol, the four modes of the General Agreement on Trade in Services (GATS) of the WTO will be followed<sup>4</sup>:

1. *Cross border supply* involves the supply of services flowing from the territory of one member state into the territory of another.
2. *Consumption abroad* happens when a consumer of services moves into another member's territory to consume a service.
3. *Commercial Presence* involves the setting up of a service supplier in the territory of another member state.
4. *Temporary presence of natural persons* involves the movement of a service supplier into the territory of another to supply a service.

Trade in services is regulatory intensive. The AfCFTA Protocol on Trade in Services shall apply to domestic measures by State Parties affecting trade in services.<sup>5</sup>

A Framework Document on Regulatory Cooperation is required and must still to be finalised.

Article 8 of this Protocol explains what the Right to Regulate implies:

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<sup>2</sup> Annex 9 and its Guidelines contain the AfCFTA's provisions on trade remedies and safeguards.

<sup>3</sup> Examples are the SACU trade agreements with EFTA and Mercosur, and the EU-SADC EPA.

<sup>4</sup> Art 1(p) AfCFTA Protocol on Trade in Services.

<sup>5</sup> Art 2 AfCFTA Protocol on Trade in Services.

Each State Party may regulate and introduce new regulations on services and services suppliers within its territory in order to meet national policy objectives, in so far as such regulations do not impair any rights and obligations arising under this Protocol.

Article 9 discusses domestic regulation and requires that service providers are protected by providing for due process rights and procedures:

1. In sectors where specific commitments are undertaken, each State Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective, transparent and impartial manner.
2. Each State Party shall maintain or institute, as soon as practicable, judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the State Party shall ensure that the procedures in fact provide for an objective and impartial review.
3. Where authorisation is required for the supply of a service liberalised under this Protocol, the competent authorities of a State Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the State Party shall provide, without undue delay, information concerning the status of the application.

For the moment and until the Phase II and Phase III Protocols of the have entered into force, implementation of AfCFTA obligations is about the duties of the State Parties to give effect to the legal instruments already adopted as part of the AfCFTA regime. The relevant Protocols indicate how trade in goods and services will be liberalised among the State Parties, how all the associated disciplines will be implemented, and how disputes among the State Parties may be settled. The detailed provisions and precise obligations of the State Parties are to be found in the Annexes and Appendices to the AfCFTA Protocols on Trade in Goods and Services. Once the Protocol on Women and the Youth has been finalised, it will be possible to study its provisions and to related them to the obligations on trade in goods and services already adopted.

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