

## AfCFTA Institutional Arrangements will impact the interests of Women

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The policies, decisions, and measures adopted within the African Continental Free Trade Area (AfCFTA) institutions and in the State Parties, will impact directly on the position of women traders. It is therefore necessary to know what institutions are provided for, how they will function, and what powers they have.

Part III of the AfCFTA Agreement provides for an “*institutional framework for the implementation, administration, facilitation, monitoring and evaluation of the AfCFTA.*” It consists of the African Union (AU) Assembly, the Council of Ministers (COM), the Committee of Senior Trade Officials, and the Secretariat.<sup>1</sup>

The Assembly of Heads of State and Government is the AU’s supreme policy and decision-making organ. It comprises all the Heads of State and Government of the AU Member States and determines the AU’s policies, establishes its priorities, adopts its annual programme, and monitors the implementation of its policies and decisions.<sup>2</sup> The Assembly provides oversight and strategic guidance in respect of the AfCFTA.<sup>3</sup>

The CoM (consisting of the Ministers of Trade of the State Parties or officials designated by them) is a high-level political platform where decisions are taken on the basis of consensus. It is responsible for the implementation and enforcement of AfCFTA Agreement, including the Protocols, their Annexes and Appendices.<sup>4</sup> It will also be responsible for the enforcement of the proposed AfCFTA Protocol on Women and the Youth. The CoM reports to the AU Assembly through the AU Executive Council. All the AfCFTA State Parties are members of the AU. The COM can make regulations, issues directives, and make reco-

<sup>1</sup> Arts 9 – 13 AfCFTA Agreement.

<sup>2</sup> See the African Union website: [The Assembly](#)

<sup>3</sup> Art 10(1) AfCFTA Agreement.

<sup>4</sup> The AfCFTA Agreement is defined in Art 1 of the Agreement to include all these instruments.

mmendations. It meets twice a year in ordinary session and may meet as and when necessary, in extraordinary sessions.

What will CoM decisions deal with and what effect will they have? Article 11 of the AfCFTA Agreement says decisions

that have legal, structural or financial implications shall be binding on State Parties upon their adoption by the Assembly. The State Parties shall take such measures as are necessary to implement the decisions of the Council of Ministers.

CoM decisions will only be adopted if there is consensus among the State Parties. Consensus is usually achieved if no State, present at a meeting, objects to a proposal related to a matter on the agenda. The chairperson does not specifically ask each delegation whether it is in favour of a proposal, nor is there a formal vote. Abstention does not prevent adoption by consensus.

How will matters (for example, about the needs of women traders) end up on the agenda of the CoM? The CoM has its own rules of procedure, can determine what to put on agendas of its meetings, will take account of reports submitted by the Committee of Senior Trade Officials, and will consider matters suggested by the Secretariat or specific State Parties.

The Committee of Senior Trade Officials (Permanent Principal Secretaries of State Parties) implements Council decisions, requests investigations, and directs the Secretariat to undertake assignments. It promotes the harmonisation of policies, considers reports, acts as required, and establishes committees.<sup>5</sup>

The Regional Economic Communities (RECs) shall be represented in the Committee of Senior Trade Officials in an advisory capacity.<sup>6</sup> Exactly how all the different RECs (some of which do not have FTAs) will act through a single forum, will presumably be worked out later.

The AfCFTA Secretariat is a “*functionally autonomous body within the AU system*” with an independent legal personality. It is “*autonomous of the AU Commission*”<sup>7</sup> but is funded by the AU. Its headquarters are in Accra.

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<sup>5</sup> Art 12 AfCFTA Agreement.

<sup>6</sup> Art 12(5) AfCFTA Agreement.

<sup>7</sup> Art 13(3) AfCFTA Agreement

New structures such as the African Trade Observatory (ATO) are being added to the AfCFTA architecture. It will provide information on trade data, market conditions and applied regulations, registered exporters/importers and authorized economic operators. The African Export-Import Bank (Afreximbank) is a multilateral financial institution, established in 1993 by African governments, African private and institutional investors as well as non-African financial institutions and private investors for the purpose of financing and promoting intra-African and extra-African trade. Afreximbank has launched the operations of a **Pan-African Payment and Settlement System (PAPSS)** as the payment and settlement platform to underpin the implementation of the AfCFTA. It might presumably become involved in operations targeting women traders too.

The AfCFTA Secretariat will operate on a full-time basis and will be responsible for matters such as the following:

- Dissemination of official information. State Parties must notify each other, through the Secretariat, of laws, regulations, procedures, and administrative rulings of general application as well as any other commitments under an international agreement relating to any trade matter covered by the AfCFTA Agreement.<sup>8</sup>
- State Parties shall also, through the Secretariat, promptly provide information and respond to questions pertaining to an actual or proposed measure, irrespective of whether or not the other State Party was previously notified of that measure.<sup>9</sup>
- State Parties shall notify the Secretariat of any international and regional agreement pertaining to or affecting trade in services with Third Parties to which they are signatory prior to or after entry into force of this Protocol.<sup>10</sup> The Secretariat shall promptly circulate the said notification to other State Parties.
- The Secretariat must circulate information on the modification of Schedules of Specific services Commitments to State Parties.<sup>11</sup>

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<sup>8</sup>Art 17 AfCFTA Agreement.

<sup>9</sup> Ibid.

<sup>10</sup> Art 5 AfCFTA Protocol on Trade in Services.

<sup>11</sup> Art 23 Protocol on Trade in Services.

- The Secretariat will also be responsible for technical assistance and capacity building. It shall, for example, coordinate the provision of technical assistance in the area of trade in services.<sup>12</sup>
- Article 10 of the AfCFTA Trade Remedy Annex states that the Secretariat shall provide technical assistance to State Parties in order to enhance the capacities of State Parties in the application of trade remedies measures.
- The Secretariat shall, in addition, develop mechanisms for cooperation in technical assistance and capacity building to address standards, technical regulations, conformity assessment, accreditation and metrology.<sup>13</sup>

There is a second layer of technical institutions, listed in the Protocols and in the Annexes. These are instruments for joint action in those instances where more specialized governance structures are required. They will, as a rule, be composed of duly designated representatives (usually senior officials) from the State Parties and shall carry out the responsibilities assigned in the relevant Annexes. They will, in appropriate instances,<sup>14</sup> be linked to National Bodies and Focal Points.

These bodies consist of the following and will perform the associated tasks:

- The Committee on Trade in Goods.<sup>15</sup>
- The Committee on Trade in Services.<sup>16</sup>
- The Sub-Committee on Rules of Origin.<sup>17</sup>
- The Sub-Committee on Trade Facilitation, Customs Cooperation and Transit.<sup>18</sup>
- The Sub-Committee on Trade Facilitation, Customs Cooperation and Transit.<sup>19</sup>
- The Sub-Committee on Non-Tariff Barriers.<sup>20</sup>

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<sup>12</sup> Art 27(3) AfCFTA Protocol on Trade in Services.

<sup>13</sup> Art 12(2) AfCFTA Annex on Technical Barriers to Trade.

<sup>14</sup> As for Non-Tariff Barriers and Trade Facilitation.

<sup>15</sup> Art 31 AfCFTA Protocol on Trade in Goods. The Council of Ministers must establish it.

<sup>16</sup> Art 26 AfCFTA Protocol on Trade in Services. The Council of Ministers must establish it.

<sup>17</sup> Art 38 AfCFTA Annex on Rules of Origin.

<sup>18</sup> Art 13 AfCFTA Annex on Customs Co-operation and Mutual Administrative Assistance. See also Art 12 of the AfCFTA Annex on Transit.

<sup>19</sup> Art 27 AfCFTA Annex on Trade Facilitation.

<sup>20</sup> Art 4 AfCFTA Annex on Non-Tariff Barriers.

- The Sub-Committee on Technical Barriers to Trade.<sup>21</sup>
- The Sub-Committee on Sanitary and Phytosanitary Measures.<sup>22</sup>
- The Sub-Committee on Trade Remedies.<sup>23</sup>
- The Protocol on Women and the Youth will also provide for its own Sub-Committee.

A final observation needs to be added: The AfCFTA is a member-driven organization. It means the State Parties have the final say about AfCFTA policies and measures. There are no supra-national bodies in the AfCFTA. Women traders will have to interact with the AfCFTA structures (via the applicable rules of procedure) in order to advance their own agenda. They may find it useful to establish their own forums and develop proposals to be discussed and acted upon in the relevant AfCFTA institutions.

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<sup>21</sup> Art 13(1) AfCFTA Annex on Technical Barriers to Trade.

<sup>22</sup> Art 15 AfCFTA Annex on Sanitary and Phytosanitary Measures.

<sup>23</sup> Art 12 AfCFTA Annex on Trade Remedies. The AfCFTA Guidelines on the Implementation of Trade Remedies shall, upon adoption, form an integral part of this Annex.