

## Notification of the AfCFTA in terms of WTO rules

Gerhard Erasmus

Practically all the African Continental Free Trade Area (AfCFTA) State Parties are members of the World Trade Organisation (WTO) and the AfCFTA must therefore be notified and function in terms of the applicable multilateral rules.<sup>1</sup>

Article XXIV (8) GATT defines a Free Trade Area (FTA)

to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce... are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

The AfCFTA also wants to liberalise trade in services. Article V GATS must therefore be complied with. It governs RTAs in the area of trade in services, for both developed and developing country Members.<sup>2</sup> An Agreement under Article V GATS must provide for substantial sectoral coverage.

FTAs and Customs Unions (CUs) are implemented as exceptions to the Most Favoured Nation (MFN) principle of the General Agreement on Tariffs and Trade (GATT). Under an FTA substantially all trade in goods is liberalised as per legal instruments negotiated and implemented by the member states.

WTO sources explain the notification process as follows:

When a WTO Member enters into a regional trade agreement (RTA) through which it grants more favourable conditions than for trade with other WTO Members, it departs from the guiding principle of non-discrimination defined in the GATT, and the GATS. WTO Members are however permitted to enter into such arrangements under specific conditions which are spelled out in three sets of rules:

---

<sup>1</sup> Algeria, Equatorial Guinea, Ethiopia, Libya, Sao Tome and Principe, Somalia, Sudan, South Sudan, and the Sahrawi Arab Democratic Republic are not WTO members. The WTO membership of Comoros was approved at MC13 on 26 February 2024. See [https://www.wto.org/english/news\\_e/news24\\_e/acc\\_26feb24\\_e.htm](https://www.wto.org/english/news_e/news24_e/acc_26feb24_e.htm)

<sup>2</sup> See Regional Trade Agreements Database User Guide [https://rtais.wto.org/UserGuide/User%20Guide\\_Eng.pdf](https://rtais.wto.org/UserGuide/User%20Guide_Eng.pdf)

- [Paragraphs 4 to 10 of Article XXIV of GATT 1994](#) (as clarified in the Understanding on the Interpretation of Article XXIV of the GATT 1994) provide for the formation and operation of customs unions and free-trade areas covering trade in goods, and interim agreements leading to one or the other;
- Paragraph 2(c) of the so-called [Enabling Clause](#) (the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, [also known as the Enabling Clause]) refers to preferential trade arrangements in trade in goods amongst developing country Members; and
- [Article V of GATS](#) governs RTAs in the area of trade in services, for both developed and developing country Members.

In addition, the [Transparency Mechanism](#) – negotiated in the Negotiating Group on Rules established under the Doha Development Agenda – provides for the [early announcement](#) of any RTA. Each of the above-mentioned sets of rules provide for the notification of RTAs to the WTO; notified RTAs are considered by Members on the basis of a Factual Presentation drafted by the WTO Secretariat in consultation with the parties to the RTA.<sup>3</sup>

The consideration of RTAs shall be carried out by the WTO [Committee on Regional Trade Agreements](#) (CRTA), except for those RTAs that are notified under the Enabling Clause, which are considered by the WTO [Committee on Trade and Development](#) (CTD) meeting in dedicated session.

The parties to an RTA can notify several types of RTAs:

- A Free Trade Agreement (FTA), as defined in [Paragraph 8\(b\) of Article XXIV of GATT 1994](#);
- A Customs Union (CU), as defined in [Paragraph 8\(a\) of Article XXIV of GATT 1994](#);
- An Economic Integration Agreement (EIA), as defined in [Article V of GATS](#); or
- A “Partial Scope” Agreement (PS). “Partial Scope” which is not defined or referred to in the WTO Agreement, means that the agreement covers only certain products. Partial scope agreements are notified under [paragraph 4\(a\) of the Enabling Clause](#).

---

<sup>3</sup> WTO Transparency Mechanism for RTAs

At the end of the RTA's implementation period, the parties shall submit to the WTO a short report on the realisation of the liberalisation commitments contained in the RTA.<sup>4</sup>

The indications are that the AfCFTA will be notified under Article XXIV of GATT 1994. Since essential aspects (Tariff Schedules and Rules of Origin) are still to be finalised, notification has not yet happened.<sup>5</sup>

The WTO is aware of the AfCFTA negotiations and supports its formation, as do other multilateral institutions such as the World Bank and the International Monetary Fund.<sup>6</sup> The notification of the ACFTA will take place:

in line with standard transparency obligations. Among other things, this would help the WTO Secretariat to provide more targeted assistance and technical advice to the AfCFTA. And it would also give other trading partners an opportunity to study it and incentivise those partners to notify agreements that may be of interest to Africa.<sup>7</sup>

Must the Guided Trade Initiative (GTI) be notified to the WTO? At this stage the answer is that notification is not required. The GTI is an interim procedure to liberalise trade in goods (a GTI for services is also contemplated) among the AfCFTA State Parties.<sup>8</sup> It is not designed as and does not function as an FTA. A limited number of AfCFTA State Parties participate in it and a small number of products are traded under the GTI. If the GTI becomes a long-term trade arrangement, questions may arise as to whether it is a "Partial Scope" Agreement. A "Partial Scope" Agreement within the context of the WTO refers to an arrangement which covers only certain products.<sup>9</sup>

An FTA regime includes, in addition to tariff schedules and rules of origin, commitments on customs administration, non-tariff barriers (NTBs), trade facilitation, technical and safety standards and dispute settlement. Article 3 of the AfCFTA Protocol on Trade in Goods defines the scope of the AfCFTA regime for trade in goods:

---

<sup>4</sup> See Regional Trade Agreements Database User Guide

<sup>5</sup> DDG Ellard stresses WTO's commitment to support AfCFTA implementation, 25 November 2021

[https://www.wto.org/english/news\\_e/news21\\_e/ddgae\\_25nov21\\_e.htm](https://www.wto.org/english/news_e/news21_e/ddgae_25nov21_e.htm)

<sup>6</sup> DDG Wolff: AfCFTA and WTO can help "knit together" Africa in peace and prosperity, 4 March 2021

[https://www.wto.org/english/news\\_e/news21\\_e/ddgaw\\_04mar21\\_e.htm](https://www.wto.org/english/news_e/news21_e/ddgaw_04mar21_e.htm)

<sup>7</sup> See DDG Ellard stresses WTO's commitment to support AfCFTA implementation

<sup>8</sup> Special Trade Brief: The AfCFTA Secretariat's Guided Trade Initiative has been launched: How will it work and where does trade under AfCFTA rules now stand? tralac <https://www.tralac.org/documents/events/tralac/4625-tralac-special-trade-brief-afcfta-guided-trade-initiative-october-2022/file.html>

<sup>9</sup> See Regional Trade Agreements Database User Guide

The provisions of this Protocol shall apply to trade in goods between the State Parties. 2. Annex 1 on Schedules of Tariff Concessions, Annex 2 on Rules of Origin, Annex 3 on Customs Cooperation and Mutual Administrative Assistance, Annex 4 on Trade Facilitation, Annex 5 on Non-Tariff Barriers, Annex 6 on Technical Barriers to Trade, Annex 7 Sanitary and Phytosanitary Measures, Annex 8 on Transit and Annex 9 on Trade Remedies shall, upon adoption form an integral part of this Protocol.

This highlights another feature of the GTI; it mentions and promotes the start of preferential trade in goods among those State Parties that are customs ready (which is a domestic matter) but does not say how the Annexes on trade facilitation, NTBs or customs cooperation will be implemented. Neither is there any indication whether trade remedies (anti-dumping and countervailing duties) or safeguards will apply to trade under the GTI.

The GTI is not a mini-FTA, it is a pilot arrangement for testing the AfCFTA system and to drum up support for the AfCFTA. The AfCFTA, as originally designed and the Agreement of which is already in force,<sup>10</sup> should be completed and be implemented as soon as possible. Completion requires that the final Tariff Schedules of the State Parties and the Annex on Rules of Origin are adopted and implemented.

tralac gratefully acknowledges the support of its Development Partners



---

<sup>10</sup> The AfCFTA Agreement entered into force on 30 May 2019.