



Current and Emerging Trade Issues for Kenya

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Tripartite Free Trade Area & African Continental Free Trade Area Developments

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Tripartite Free Trade Area - Overview

Update

- Why this endeavour & where does the TFTA stand?
- Main Features
- How will it be implemented and when?

Relationship with the AfCFTA

- Features of the AfCFTA
- Can it be a building block for the AfCFTA?
- What are we learning about Regional Integration in Africa?

Background and update

- Kampala Decision - October 2008
- High level promise became state-driven negotiations
- TFTA negotiations began in 2011 - soon after the negotiations were steered in a different direction:

*Definition of **acquis**: 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.*

- “Launched” June 2015 but ...no tariff schedules and RoO.
- Trade Remedies also took long - why?
- Negotiations still incomplete: Built-in Agenda
- But the enthusiasts signed ... and RSA will ratify
- AfCFTA process then announced in 2012.

Technical Features of the TFTA

- Launched as an FTA for trade in goods, with services in Phase II
- Not a legal person = Framework Agreement
- No Secretariat
- Institutions are State Party Platforms
- Legal instruments consist of Agreement, Annexes and Protocols
- Obligations are qualified or WTO duties are repeated.
- Whiff of Dispute Settlement
- RECs will exist alongside

Objectives are to:

- Progressively eliminate tariffs & Non-Tariff Barriers on goods
- Liberalise trade in services
- Cooperate re customs & trade facilitation
- Establish and promote cooperation in trade-related areas
- Establish and maintain an institutional framework for implementation and administration of the TFTA.

How & when will the TFTA be implemented?

- Original Plan: Complete the built-in agenda.
- Then sign, ratify and deposit ratifications (or accede)
- Entry into force after 14 Ratifications
- Will only bind the State Parties
- State Parties must domesticate what's necessary (update tariff books etc)
- Tell private sector/businesses about it.....
- What will then happen/change?
- Apart from tariff reductions & RoO, obligations mostly about cooperation & WTO repetition
- Variable geometry.
- What about complaints re unfair practices or violations?
- RSA supports TFTA – in context of its *Developmental Integration*

Relationship with the AfCFTA

- TFTA apparently increased AU resolve to launch AfCFTA
- Overlap between TFTA & AfCFTA objectives: Both about large single market, enhance the regional & continental integration, progressively eliminate tariffs, establish institutional implementation frameworks.
- Art 45 TFTA: *“Tripartite Member/Partner States agree to negotiate and endeavour to conclude the following protocols within 24 months upon entry into force of this Agreement:”*
- But Services, Investment, Competition, Trade & Development, and IP meant for Phase II of TFTA, will now not happen
- TFTA thus about trade in goods only.....
- TFTA outcomes sanctioned by Art 19(2) AfCFTA Agreement

Can TFTA be a building block for the AfCFTA/AEC?

- What is a building block?
-as opposed to merging of AfCFTA & TFTA processes?
- Merger of the 2 sets of tariff negotiations?
- TFTA decided to negotiate Services & other disciplines in AfCFTA context
- But what about synergies between goods and services?
- Are AfCFTA talks/processes geared to do this?
- Duplication & overlap come automatically
- Art 19 AfCFTA consolidates RECs & other African trade regimes

What does TFTA tell us about Regional Integration in Africa?

- In trade negotiations - still emphasis on tariff reductions
- Negotiations are **state-driven** to focus on Offensive and Defensive national interests
- Notion of **acquis** has entered the narrative
- RECs are the most enduring institutions
- Continental integration via Abuja Treaty still professed.....
-but world has moved on
- AU has entered this arena with AfCFTA regime
- Trade Governance happens within States and through well-endowed institutions. Will we get them?
- Dispute settlement & rule of law advanced?
- Who really trades? Where does the private sector stand?

Origins of the AfCFTA

- 8th Ordinary Session of AU Assembly held in Addis Ababa in January 2012 adopted a decision to establish a Continental Free Trade Area.
- AU launched the negotiations in 2015 & manages the process.

Objectives:

- Boost intra-African trade
- Create a single market for goods & services, facilitated by movement of persons
-through successive rounds of negotiations
- Contribute to the movement of capital and natural persons
- Lay the foundation for a Continental Customs Union at a later stage
- Resolve the challenges of overlapping memberships.
- AU Kigali Summit adopted the Agreement one year ago but negotiations incomplete.
- There have been 49 signatures and 20 ratification (some promised)
- Nigeria did not attend this Summit.
- AfCFTA Legal Instruments consist of the Agreement, Protocols, Annexes, & Schedules. Some *Guidelines* also added.

Specific Objectives: Art 4

For purposes of fulfilling and realising the objectives set out in Article 3, 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.*

How will AfCFTA enter into force?

Article 23: Entry into Force

- This Agreement and the Protocols on Trade in Goods, Trade in Services, and on the Settlement of Disputes shall enter into force 30 days after the deposit of the 22nd instrument of ratification.
- The Protocols on Investment, Intellectual Property Rights, Competition Policy and any other Instrumentdeemed necessary, shall enter into force 30 days after the deposit of the 22nd instrument of ratification.
- For any Member State acceding to this Agreement, the Protocols on Trade in Goods, Trade in Services, and on the Settlement of Disputes shall enter into force in respect of that State Party on the date of the deposit of its instrument of accession.
- For Member States acceding to the Protocols on Investment, Intellectual Property Rights, Competition Policy, and any other Instrument deemed necessary, shall enter into force on the date of the deposit of its instrument of accession.
- The Depositary shall inform all Member States of the entry into force of this Agreement and its Annexes.

Institutions

1. AfCFTA is not a legal person --- programme of the AU

2. AfCFTA Institutions are:

- Assembly --- but of the AU
- Council of Ministers of the State Parties;
- Committee of Senior Trade Officials of the State Parties
- Secretariat

3. **Art 13 AfCFTA Agreement provides for a sui generis Secretariat:**

- *The Assembly shall establish the Secretariat, decide on its nature, location and approve its structure and budget.*
- *The Commission shall be the interim Secretariat.*
- *The Secretariat shall be a functionally autonomous institutional body within the African Union system with an independent legal personality.*
- *The Secretariat shall be autonomous of the African Union Commission.*
- *The Funds of the Secretariat shall come from the overall annual budgets of the African Union.*
- *The roles and responsibilities of the Secretariat shall be determined by the Council of Ministers of Trade.*

What will happen to RECs?

Article 19: Conflict and Inconsistency with Regional Agreements

1 In the event of any conflict and inconsistency between this Agreement and any regional agreement, this Agreement shall prevail to the extent of the specific inconsistency, except as otherwise provided in this Agreement.

2. Notwithstanding the provisions of Paragraph 1 of this Article, 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.

Trading under AfCFTA rules – when?

- AfCFTA Agreement & Protocols must first enter into force.
- Outstanding negotiations must be concluded.
- Only those AU Members which have ratified the AfCFTA (or have subsequently acceded) will be bound and will enjoy the benefits once the Agreement is in force for them.
- The State Parties must also adopt domestic arrangements to ensure that there will be compliance with the commitments undertaken in terms of the AfCFTA legal instruments.
- There are 2 Phases
- New, continent-wide preferential trade in goods and services and other matters (investment, competition and intellectual property) to wait till both Phases are operational and all AU Members have become AfCFTA Parties.
- But sovereign States must consent to new agreements