



African Continental Free Trade Area: Entry into Force and Implementation

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Why have the AfCFTA & what should it do?

- It goes back to the 1960's, African Solidarity, & Abuja Treaty (1991)
- 8th Ordinary Session of AU Assembly in 2012 adopted a decision to establish a Continental Free Trade Area.
- Tripartite FTA perhaps served as an inspiration.
- AU launched the negotiations in 2015 & manages the process.

Objectives:

- Boost intra-African trade
- 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.
- Kigali Summit adopted the Agreement 2018 but negotiations incomplete.
- There have been 49 signatures and 20 ratifications (some promised)
- Nigeria did not attend Kigali Summit. Will it negotiate in Phase 1?
- 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.*

Art 5: Principles

The AfCFTA shall be governed by 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;*
- *Most-Favoured-Nation (MFN) Treatment;*
- *National Treatment;*
- *reciprocity;*
- *substantial liberalisation;*
- *consensus in decision-making; and*
- *best practices in the RECs, in the State Parties and International Conventions binding the African Union.*

How & when will AfCFTA Tariff Reductions
be negotiated and finalized?

How & when will AfCFTA Commitments re Trade in
Services be finalized?

Update: AU Colleagues

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.*

Trading under AfCFTA rules – When & How?

- Formal stages in Art 23: AfCFTA Agreement & Protocols must first enter into force.
- Which normally happens once negotiations are 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.
- Do not ignore the detail in the Protocols.

Must African Importers & Exporters wait till AfCFTA is finally done?

- No. Trade under REC rules & existing African trade arrangements continues. (Art 19 AfCFTA)
- 67 % of intra-African trade in SADC
- Trade under bilateral arrangements too.
- And there will be trade under MFN rules
- Could new trade deals be concluded before AfCFTA is finally in place?
- Could AU Council tell MS/State Parties to prioritize the AfCFTA?
- Could AU Council e.g. direct EAC Members re EPAs & Brexit once they are all Parties?
- How would Regional Courts be affected?

Art 19 AfCFTA Agreement

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.

Could AfCFTA be implemented piecemeal?

- What is Implementation? Remember Tariff Books
- Trade Agreements are not self-executing
- What is Compliance?
- Will first 22 State Parties enjoy a head-start?
- Immediate improvement re Trade Facilitation? Why not?
- In several areas WTO commitments repeated
- Often it is only about cooperation. This needs procedures
- Trade Remedies important – domestic laws & institutions
- Will Private Sector be enthusiastic or indifferent?
- Will they be fully informed?
- What will Secretariat(s) do re transparency?
- And re activating the building blocks towards AEC?
- What is an Economic Community?

What does AfCFTA tell us about Regional Integration in Africa?

- 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?