



Legal and Institutional Features of the AfCFTA & why they matter

Gerhard Erasmus
Nairobi, 21 March 2019.



General Design of the AfCFTA

1. Article 3, State Parties shall:

- progressively eliminate tariffs and non-tariff barriers
- progressively liberalise trade in services;
- cooperate on investment, IP & competition policy;
- cooperate on customs matters and the implementation of trade facilitation measures;
- establish a mechanism for the settlement of disputes
- establish and maintain an institutional framework for the implementation and administration of the AfCFTA.

2. AfCFTA Embedded in the African Union & for AEC

3. Not a legal person

4. More than an FTA

5. Member driven -- but these are the AU Members

6. Design for Implementation assumes national structures.

Main Institutions

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
- Addis has its own practice & cycles of meetings
- AU has other trade & Economic Development Programmes

Will the Secretariat hold a Key? To do what?

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.*

AfCFTA & the 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.

Is there a missing link here?

Technical Bodies

- Standards
- IP
- Trade Facilitation
- Trade Remedies etc
- National contact points
- Non-Tariff Barriers example

Dispute Settlement & Trade Remedies

- Dispute Settlement Protocol flying through
- Why?
- Sophisticated --- follows DSU of WTO
- Only inter-State Disputes
- Most action re Trade Remedies & Safeguards?
- Regional Courts in a different jurisdiction & role.

So how will it work?

- What do Institutions of an FTA do?
- What does their design tell us?
- What should we look for?
- The *Framework* aspect significant
- National institutions vital
- AfCFTA a Platform for Policies?
- A Platform for one voice re the World?
- What will it say?
- Interacting with RECS?