

How will the AfCFTA Regime be implemented and how will it develop?

tralac Annual Conference 2020
Session 3 (15:00 – 16:30)

22 September 2020

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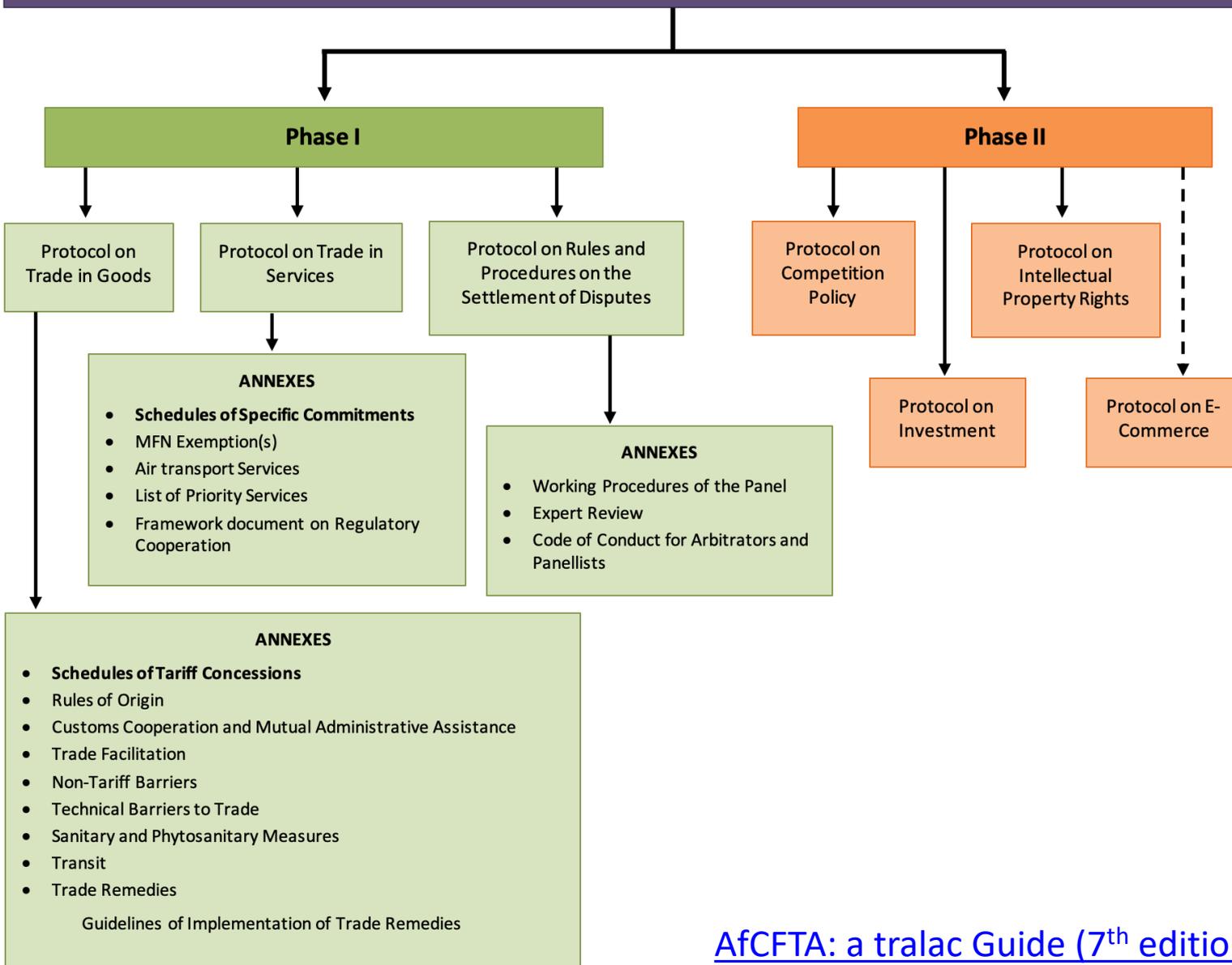
Overview - and key questions

- AfCFTA: an ambitious initiative to integrate 55 AU Member States
- Status update: AfCFTA is in force but not implemented
- This is a Member-driven Arrangement
- Who are the **State Parties**? What are their obligations?
- **Special & General Objectives**
- The detailed Obligations are in the **Protocols & Annexes**
- No new International Organization - but **Secretariat** is *sui generis*
- How will AfCFTA become a Continental preferential arrangement?
- Dispute Settlement & Remedies: What prospects?
- Substantive challenges: How do 55 different AU Member States adopt Tariff Schedules and RoO, keep RECs alive, and achieve Abuja goals/Agenda 2063?

What must State Parties do? Art 4

- “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.”

Agreement establishing the AfCFTA



[AfCFTA: a tralac Guide \(7th edition\)](#)

Outstanding Phase 1 negotiations

Trade in Goods:

A Free Trade Area (FTA) requires **preferential tariff concessions & rules of origin** - negotiations are underway (RoO for clothing and textiles, automotive products, edible oils and sugar are still being negotiated)

Trade in services:

Sector specific commitments are being negotiated for 5 priority sectors (financial services, transport, communication, business services and tourism) – and work on frameworks for regulatory cooperation

And then Phase 2 negotiations



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AfCFTA is also a flagship project of the AU



Related Initiatives

Afreximbank has announced a \$1billion AfCFTA Adjustment Facility, to support countries that may suffer revenue losses during the implementation process of the AfCFTA

<https://newafricanmagazine.com/19145/>

The Pan-African Payment and Settlement System (PAPSS) was launched by the African Export-Import Bank (Afreximbank) at the African Union Extraordinary Summit - July 7 2019

Afreximbank is providing assistance to Quality Assurance Centres to Support Compliance with International Standards and Technical Regulations

<https://www.afreximbank.com/afreximbank-rolling-out-quality-assurance-centres-to-support-compliance-with-international-standards-and-technical-regulations/>

And other developments too – African Medical Supplies Platform

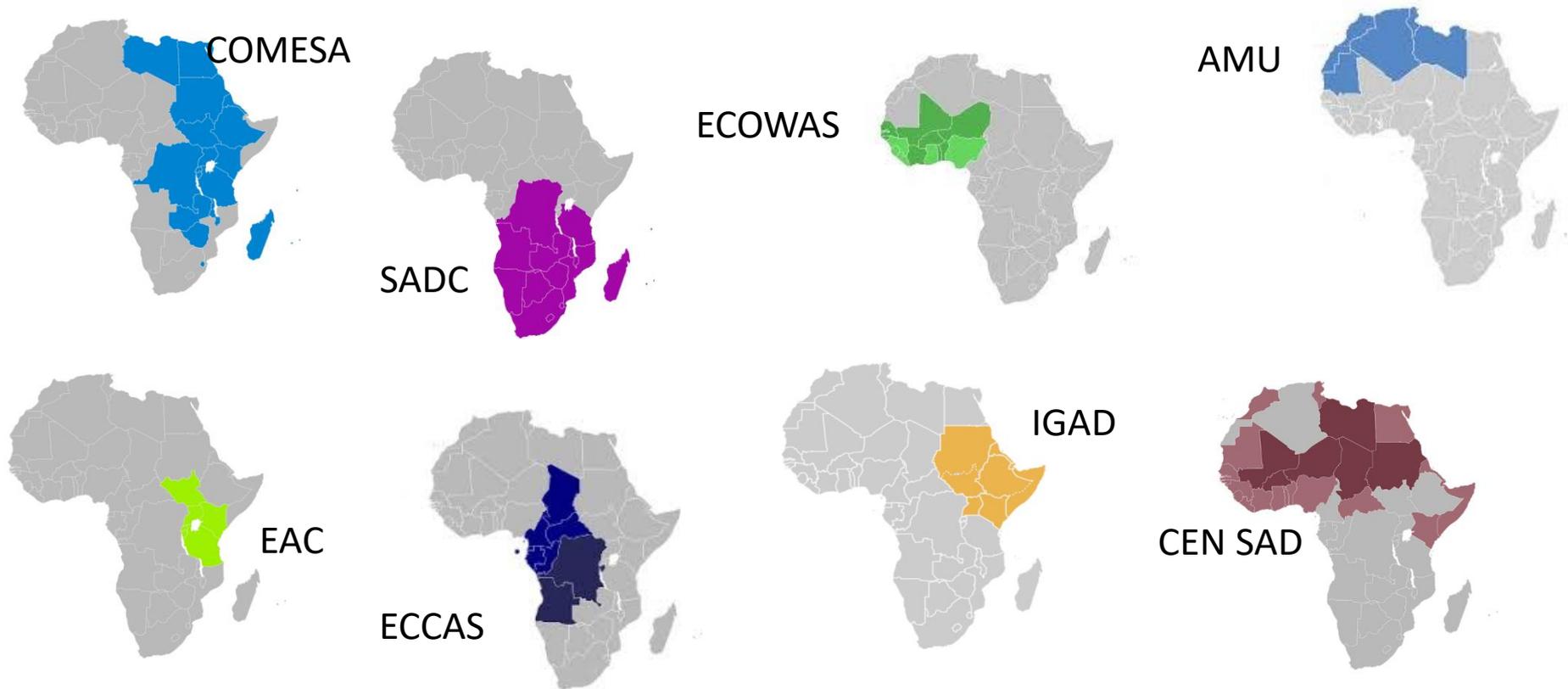
- African Medical Supplies Platform (AMSP) - launched by Pres. Cyril Ramaphosa (2020 Chairperson of the African Union)
- Provides access to an African and global base of vetted manufacturers and strategic procurement partners to enable AU Member States to purchase certified medical equipment (e.g. PPE)
- Afreximbank facilitates payments; logistics partners, African national carriers & global freight forwarders will do delivery.
- Strong focus on supporting Africa's manufacturers (Afreximbank has developed a \$3-bn Pandemic Trade Impact Mitigation Facility (PATIMFA), of which \$200 m reserved to support food production as well as the manufacture and trade in medical equipment and supplies (AfCFTA – AIDA link)

Parallelism - the new Reality

Art 19 AfCFTA Agreement:

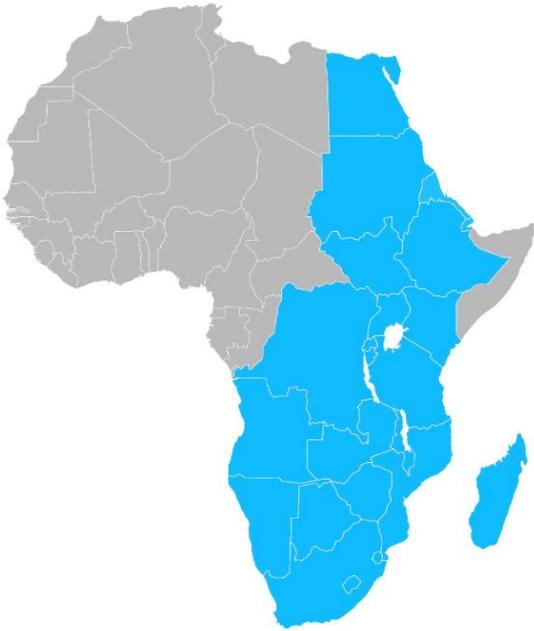
- *In the event of any conflict and inconsistency between this Agreement and any regional agreement, this Agreement shall prevail to the extent of the specific inconsistency, **except as otherwise provided***
- *Notwithstanding the provisions of Paragraph 1 of this Article, State Parties that are members 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.*
- *Art 8(2) Protocol on Trade in Goods: State Parties that are members of other RECs, which have attained among themselves higher levels of elimination of customs duties and trade barriers than those provided for in this Protocol, **shall maintain,** and where possible **improve upon,** those higher levels of trade liberalisation among themselves.*
- Consequences:
 - *Several African FTAs alongside each other*
 - *Distinguish between existing intra REC preferences, new AfCFTA preferences for specific State Parties, and moving towards Continental preferences.*
 - *What plan for amalgamation?*

Regional Economic Communities (RECs) will continue to exist



These 8 Regional Economic Communities are recognised by the African Union as building blocks for the African Economic Community & the AfCFTA – they are defined in the AfCFTA Agreement.

Tripartite Free Trade Area (TFTA) matters for SACU – will continue under Art 19 once in force



- Heads of States from SADC, EAC, COMESA convened in 2008 - decided to establish the TFTA as a single trade regime ... in 2011 ambitions were scaled back
- **Existing REC FTAs continue to trade according to own trade regimes (*acquis*)**
- TFTA was launched in June 2015
- Negotiations continue
 - i) Tariffs (SACU – EAC: tariff negotiations completed in July 2019; SACU – Egypt – no progress in last few years)
 - ii) Rules of origin – ongoing negotiations (clothing & textiles, autos, edible oils and sugar)

14 ratifications needed for entry into force. 8 Member States have ratified (South Africa, Egypt, Uganda, Rwanda, Kenya, Namibia, Burundi, Botswana.)

Work programmes on:

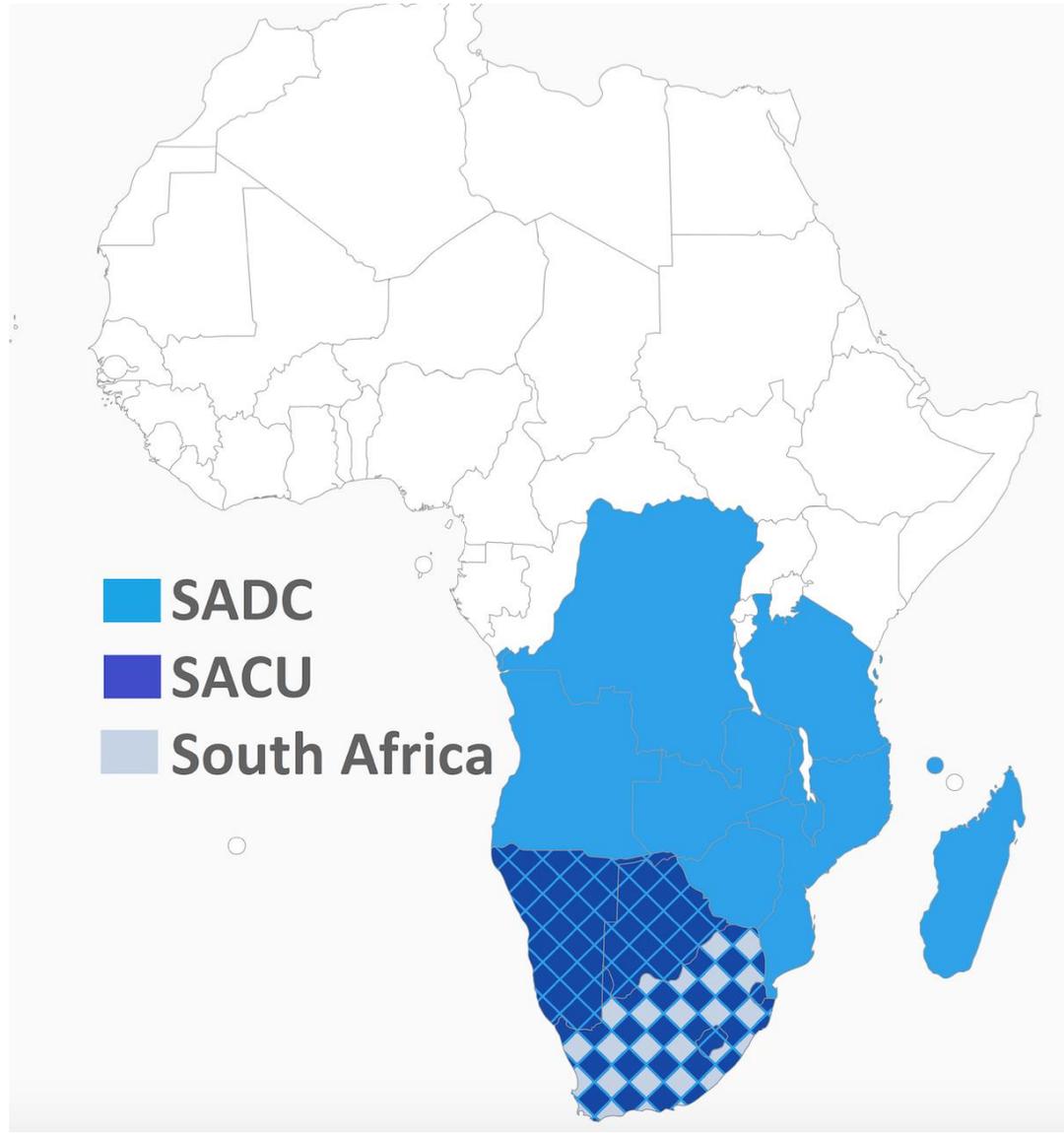
- i) Industrial development
- ii) Infrastructure
- iii) Trade facilitation

- TFTA matters for SA to secure market access, esp to Kenya. Now trade in services negotiations have begun (co-existence of TFTA and AfCFTA)

Intra-Africa trade – highly concentrated at sub-regional level (data for 2019)

Intra-Africa trade is highly concentrated (sub-regionally)

Approximately 15% of Africa's total trade is intra-trade



AfCFTA Institutions & their Powers

- The **Assembly** of the AU is the highest decision-making organ -- oversight and strategic guidance by consensus.
- The **Council of Ministers** (Trade Ministers of the State Parties): Implementation & enforcement of Agreement. May issue regulations, directives & recommendations. Reports to the Assembly through AU Executive Council.
- The **Committee of Senior Trade Officials** (Permanent or Principal Secretaries of State Parties) implements Council decisions, request investigations & directs Secretariat to undertake assignments, promote harmonisation of appropriate policies, consider reports, take appropriate actions, establish committees, as may be required.
- These 2 *Membership Platforms* meet twice a year & adopt decisions by consensus.

AfCFTA Institutions & their Powers...cont'd

- Secretariat: (Art 13)
 - *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.*
- Several ad hoc bodies (Trade in Goods Committee, Standards, Trade Remedies, Trade Facilitation...) in Protocols, Annexes.
- African Trade Observatory (ATO): Provides reliable information on trade data, market conditions, regulations, registered exporters/importers etc.
- AfCFTA Online Mechanism for Reporting, Monitoring and Elimination of NTBs (<https://tradebarriers.Africa>)
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Where and how will RECs fit into AfCFTA Design?

- The RECS = a fixed number (only 8). Not all are FTAs
- Note that Art 19(2) mentions “*regional economic communities, regional trading arrangements and custom unions*”
- Art 12(5) Agreement: *The RECs shall be represented in the Committee of Senior Trade Officials, in an advisory capacity.*
- Art 29 Goods Protocol: *The Secretariat, working with State Parties, RECs and partners, shall coordinate and provide technical assistance and capacity building in trade and trade related issues for the implementation of this Protocol.*
- Art 31 Goods Protocol: *The Council of Ministers shall establish the Committee on Trade in Goods, which shall carry out such functions as may be assigned to it by the Council of Ministers to facilitate the operation of this Protocol and further its objectives. The Committee may establish such subsidiary bodies as it considers appropriate for the effective discharge of its functions.*

Concluding remarks - preparing for Implementation

- International trade agreements are not self-executing
- National legislation & institutions required

Examples:

- Change the national tariff book
- New certificates of origin.....
- How are Standards complied with? Who does testing and issues certificates?
- And what about the private sector?

About tralac

(Trade Law Centre) **tralac** is a public benefit organisation based in South Africa. We develop technical expertise and capacity in trade governance across Africa.

We are committed to the principles of rules-based governance at the national, regional and international levels. We believe that better governance and strong institutions are essential elements for inclusive and sustainable growth. tralac's activities are anchored on three pillars.



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