

When will trade under the AfCFTA begin?

The answer to this question is straight forward: *When all the required legal instruments are in place.* The African Continental Free Trade Area (AfCFTA) Agreement¹ is in force since 30 May 2019,² but there has not yet been any trade under its rules. The AfCFTA is a Free Trade Area (FTA) and allows for new preferential trade in goods and services among the State Parties.³ It means, as a minimum, that there are binding legal instruments in the form of tariff schedules, rules of origin (RoO) for all the products that will be traded, and commitments to liberalise trade in services. The new preferences (lower tariffs) will only be available to goods that qualify in terms of the relevant RoO. Trade under Regional Economic Community (REC) Free Trade Areas (FTAs) continues as before.

The reason why the necessary instruments are not yet available is that it has proven very difficult to reach consensus among the 54 African countries involved in these negotiations, which began in 2015.⁴ They are at different levels of economic development and have unique needs, but typically want to advance their national offensive and defensive interests. COVID-19 has also disrupted the negotiating process. And since the REC FTAs will remain in place,⁵ tariff concessions must be designed in a manner that will focus on new preferential trade streams without disrupting intra-FTA regimes. The preservation of the *acquis* is one of the AfCFTA's foundational principles.⁶

¹ <https://www.tralac.org/documents/resources/cfta/1998-afcfta-agreement-legally-scrubbed-signed-16-may-2018/file.html>

² As stipulated by Art 23 of the AfCFTA Agreement, it entered into force 30 days after the 22nd instrument of ratification was deposited.

³ The *State Parties* are the African Union Member States that have ratified the AfCFTA Agreement or have acceded to it, and for whom this Agreement has entered into force.

⁴ Eritrea does not participate in these negotiations.

⁵ Art 19(2) AfCFTA Agreement and art 8(2) AfCFTA Protocol on Trade in Goods.

⁶ Art 5(f) AfCFTA Agreement.

Under the agreed modalities, 90% of tariff lines must be liberalised within a reasonable period of time. Three percent of tariff lines may be excluded (each country makes its own choices for exclusions, subject to the agreed modalities) and for 7% of tariff lines liberalisation will take place over a longer period. These negotiations are based on **reciprocity**. Officials calculate how their country will benefit from offers extended by others and they make (and refine) counteroffers. Countries that are members of customs unions (such as SACU and the EAC) must decide on joint offers first because they must protect the integrity of the common external tariff of their respective customs unions.

This does not mean that there is presently no trade among the State Parties. They trade with each other under FTA preferences in the RECs to which they belong (and often they belong to more than one REC⁷), in terms of bilateral arrangements, and under World Trade Organisation (WTO) MFN rates or so-called general rates (applied by those that are not yet members of the WTO). Intra-African trade in goods is highly concentrated in SADC, SACU and the EAC and will not see immediate changes. And while we are on this point: It is not countries as such or their governments that trade. Private firms in particular countries are the importers, exporters, retailers, service providers and investors. They will make their own decisions about how to gain from the AfCFTA in terms of the commercial benefits to be had. An exporter from one country must find an importer in another country, conclude a contract, and then export the goods in question. The latter means customs officials in the country of destination must clear the goods in terms of all applicable requirements such as the payment of import duties and compliance with RoO and technical standards.

There are high expectations about what the AfCFTA regime will make possible. The private sector is keen to exploit new opportunities on the continent and the international community shares these high expectations, sometimes unrealistically so. This has resulted in several decisions to start trade on an *ad hoc* basis. The first such decision was adopted on 5 December 2020 at an Extraordinary AU Summit in Johannesburg. Interim trade was supposed to begin on 1 January 2021 (trade to be conducted in terms of tariff offers that had been extended, provided RoO had been concluded for the relevant goods, and the offer of the partner country complied with the tariff negotiating modalities). It also required that domestic implementation processes had to be completed, participating countries had to be 'customs ready'. This 'interim AfCFTA trade arrangement' did not materialise.

Then came the Summit decision of February 2022 to launch **commercially meaningful trade**. The Decision of the [35th Ordinary Session of the AU Assembly of Heads of State and Government, 5-6 February 2022](#) is the response of the Assembly to the Report of the 8th Meeting of the AfCFTA Council of Ministers Responsible

⁷ Apparently only Mozambique, which is a member of SADC, does not belong to more than one REC.

for Trade which was held in Accra, Ghana on 28-29 January 2022. The AU Assembly must adopt these decisions in order for them to become binding. An update on the status of the negotiations with new deadlines for completion of the negotiations and the start of “commercially meaningful” trade is included, with confirmation that RoO for 87.7% of tariff lines have been agreed. The outstanding RoO include some clothing and textile products, sugar, and automotive products. While most of the State Parties have tabled tariff offers, 29 “technically verified” offers – in line with the agreed modalities – had been submitted. “Technically verified” offers had been submitted by:

- CEMAC: Cameroon, Chad, the Central African Republic, Equatorial Guinea, Gabon, and the Republic of Congo.
- ECOWAS plus Mauritania: Benin, Burkina Faso, Cabo Verde, Côte d’Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo + Mauritania.
- Democratic Republic of Congo, Egypt, Madagascar, Malawi, Mauritius, Seychelles and Zambia.

It was observed that this Ministerial Directive had established a *“legal basis for countries that had submitted tariff schedules in accordance with the agreed-upon modalities to trade preferentially among themselves”*. However, because commercially meaningful trade also failed to materialise, the AfCFTA Secretariat subsequently embarked on a “solution-based” approach in the form of an AfCFTA **Initiative on Guided Trade**.

The AfCFTA Guided Trade Initiative intends to achieve its goal by *“matchmaking businesses and products for export and import between interested State Parties in collaboration with their national AfCFTA implementation committees”*. The Secretariat is of the view that the AfCFTA Guided Trade Initiative *“will serve as a gateway to encourage continued trade under the AfCFTA, resulting in a multiplier effect and increased opportunities for SMEs, youth, and women in trade, and ultimately establishing sustainable and inclusive economic development”*.⁸ The 9th Meeting of the Council of Ministers (CoM) in Accra, Ghana, held on 25 and 26 July 2022, announced specific objectives for the AfCFTA Guided Trade Initiative. These are to:

- Test the operational, institutional, legal, and trade policy environment under the AfCFTA.
- Allow commercially meaningful trading under the AfCFTA.
- Send an important positive message to African economic operators about the veracity of the AfCFTA as well as its promise to create real opportunities.

⁸ The 9th Meeting of the Council of Ministers (CoM) in Accra, Ghana, held on 25 and 26 July 2022.

In the meantime, the negotiations to conclude the overall AfCFTA deal continue. The negotiations on Phase II Protocols (on investment, competition, intellectual property rights, digital trade, and women and the youth) have also been launched.⁹ The 12th Meeting of the Committee of Senior Trade Officials takes place from 3 to 5 October 2022 and the 10th Meeting of the Council of Ministers from 7 to 8 October 2022 in Accra. Stakeholder engagements in preparation for the negotiation of the Protocol on Digital Trade and the Protocol on Women and Youth in Trade are progressing. Notably, an AfCFTA Women and Youth in Trade Conference took place 12-14 September.

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⁹ The Assembly of Heads of State and Government has decided that the conclusion of all Protocols on Phase II issues must be done by September 2022. This was not possible.