

How are Trade Agreements like the AfCFTA Agreement implemented?

A free trade agreement is an international legal arrangement between two or more states to liberalise trade in goods and services among them. It provides for the obligations to be implemented by the State Parties in order to reduce barriers to imports and exports among them. These barriers are typically the tariffs charged on imported goods and non-tariff barriers (NTBs). NTBs are **trade barriers that restrict the import or export of goods through means other than tariffs**. They include import licensing, pre-shipment inspections, rules of origin, custom delays, and other mechanisms that prevent or restrict trade.

The objective behind free trade agreements is for goods and services to be bought and sold across international borders with little or no governmental restrictions or unfair trade practices. In order to make this possible, international obligations are entered into. They must be implemented once the agreement in question is in force.

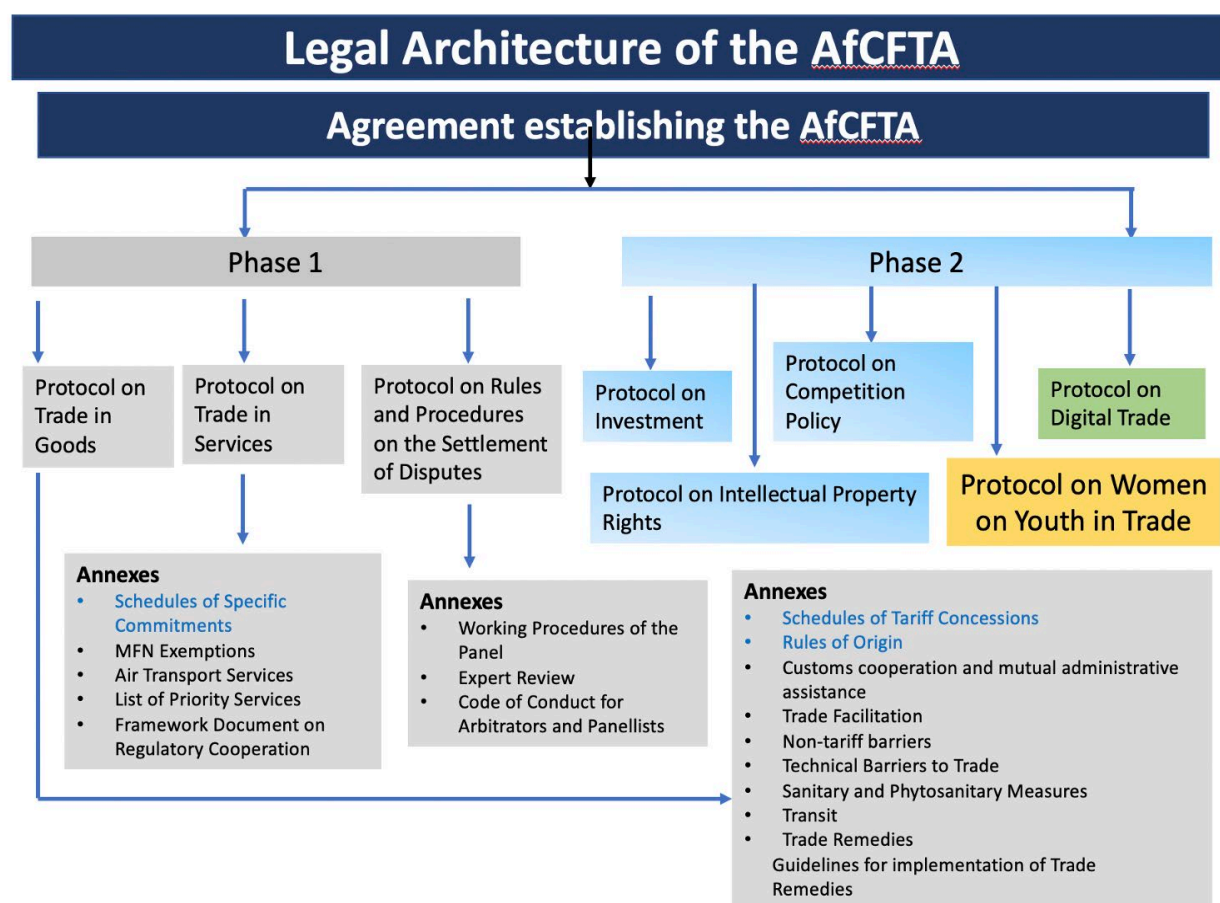
Seen against this background, the implementation of a trade agreement essentially involves the removal by the Governments of the State Parties of tariffs and other restrictions on trade in goods and services among them once the relevant agreement has entered into force. This is done by adopting the required national legal measures. These national measures will give domestic effect to the obligations contained in the relevant trade agreement or in one of its Protocols or Annexes. International trade agreements such as the AfCFTA are not self-executing; they need to be implemented via measures (laws, regulations, or administrative procedures) taken in terms of the law of the land of a State Party.

Since commerce across borders involves many kinds of activities by private firms and by the governments of the State Parties, modern trade agreements tend to be detailed. They consist of legal texts covering a wide range of disciplines. In the case of the AfCFTA, we

already have a founding agreement, Protocols on Trade in Goods and Services, and on Dispute Settlement.¹ Additional Protocols on investment, competition, intellectual property rights, women and the youth and digital trade are being added through further negotiations. Each will need its own implementation measures.

Each of the AfCFTA Protocols includes several Annexes and Appendices. See the infographic on the architecture of the AfCFTA below.

Figure 1: Legal Architecture of the African Continental Free Trade Area Agreement



All of them must be implemented once the relevant agreement has entered into force for the State Parties. This will normally require bespoke national legal instruments and responses, such as, for example, domestic regulations on how investors could start local businesses or by updating the national Tariff Book by adding a column on, for example, the AfCFTA tariff schedules and rules of origin for trade in goods. Customs officials will then be able to process goods imported under AfCFTA rules and preferences. Without the domestic

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

legal arrangement being enacted and promulgated in the Government Gazette, there will not be a legal basis for implementing a new trade agreement.

There are additional first order questions to be asked in respect of the implementation of a new trade agreement. This information is important to the private sector in particular because their commercial transactions and investments will determine how much new trade will actually happen. The first is whether the relevant agreement is in force, for which states and since when. Legal certainty is important and will determine whether private transactions will be concluded and how private contracts will be structured. The answers to these questions are to be found in the text of the agreement and in the relevant national or regional legal sources. A country's Ministry of Trade and of International Affairs normally serve as the depositaries of all international trade agreements of which that country is a party. They will, as a rule, disseminate the relevant information via electronic portals and websites too, in addition to promulgation in the Government Gazette. If the country in question belongs to a Customs Union, there will be a collective element in the implementation of tariff schedules because of the Common External Tariff (CET) which must be respected.

Article 23 of the AfCFTA Agreement tells us when the AfCFTA Agreement and its Protocols enter into force and for whom. But there is a complication here. The AfCFTA Agreement has entered into force on 30 May 2019. The reason why no trade is yet happening under its rules and preferences is because the tariff schedules, rules of origin and services commitments are still being negotiated. The formal implementation of the AfCFTA Protocols on Trade in Goods and Services will require an official announcement to that effect by the AfCFTA Council of Ministers. There will then be a basis for adopting the required national implementation measures.

The AfCFTA *Guided Trade Initiative*,² which will soon start under an interim arrangement for AfCFTA trade, will need specific domestic legal measures in the countries selected for participation in this scheme and for the products opted for. Private firms interested in the trade opportunities under this initiative will obtain the relevant information from the AfCFTA Secretariat and the relevant national trade authorities.

The AfCFTA wants to bring the benefits of competition, choice, and lower prices to the African continent and its consumers. To do so, legal certainty is vital. It gives businesses a clearer view of their future opportunities. With stability and predictability, investment is encouraged, jobs are created, and consumers can fully enjoy the benefits eventually to be had through the AfCFTA.

² <https://au-afcfta.org/2022/09/the-afcfta-guided-trade-initiative/>

- - -

tralac gratefully acknowledges the support of its Development Partners

