



Update on the Protocol on Intellectual Property Rights

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Background

- Article 7 of the Agreement establishing the African Continental Free Trade Area (AfCFTA) provides that in pursuance of the objectives of the Agreement, Member States shall enter into Phase II negotiations in the areas of Intellectual Property Rights (IPRs), Investment; and Competition Policy.
- Article 8 then makes it clear that the Protocol on IPRs and its associated Annexes and Appendices are integral parts of the Agreement and shall form part of the single undertaking, subject to entry into force.

The AfCFTA Committee on IPRs

- In order to facilitate the negotiations, the 5th meeting of the AfCFTA Council of Ministers responsible for Trade (COM) meeting held in Accra on 3 May 2021 established the AfCFTA Committee on IPRs.
- During its first meeting, which took place from 14-16 September 2021 in Accra, the Committee adopted its Terms of Reference and the Modalities for Negotiating the Protocol on IPRs.

The current status

- At the Ninth Meeting of the COM, held in Ghana from 25 – 26 July 2022, the Chairperson reported on the 2nd meeting of the IP Committee which was held in Accra from 24 - 27 May 2022. The COM then directed the IP Committee and the AU Secretariat to conclude negotiations on the Protocol by the deadline of September 2022.
- A final draft text was submitted to Thirty-Sixth Ordinary Session of the AU Assembly which took place from 18 - 19 February 2023 in Addis Ababa. The Assembly adopted the Protocol and directed the AfCFTA Secretariat to develop the Annexes foreseen by the Protocol and submit them to the relevant AfCFTA Institutions for consideration.

The Annexes foreseen by the Protocol

- Plant Variety Protection
- Geographical Indications
- Marks
- Copyright and Related Rights
- Patents
- Utility Models
- Industrial Designs and Models
- *Traditional Knowledge, Traditional Cultural Expression and Genetic Resources*

What are the objectives of the final AfCFTA Protocol on IPRs?

- Support intra-Africa trade
- Promote African innovation and creativity and deepen intellectual property culture in Africa
- Promote coherent intellectual property rights policy in Africa
- Contribute to the promotion of science, industrialization, investment, digital trade, technology, and technology transfer, and regional value chains
- Promote and ensure a harmonized system of intellectual property protection throughout the continent

What are the objectives of the final AfCFTA Protocol on IPRs? (continued)

- Encourage African positions on intellectual property rights
- Support and promote creative and cultural industries by setting up a legal framework while securing and giving incentives that would help in their development
- Contribute to access to knowledge
- Support public health needs and priorities of State Parties.

What will guide the development of the Annexes?

- The AFCFTA Agreement
- The Protocol text
- Other AU instruments on IPRs
- The legal and policy instruments of the Regional Economic Communities (RECs)
- Best practices in AU Member States
- Best practices in other jurisdictions
- Regional institutions dealing with IPRs
- IP issues of special importance to Africa
- *The existing international IPR frameworks*
- *The existing international obligations on IPR*