The African Continental Free Trade Area (AfCFTA) has dominated news about intra-African trade liberalisation for several years now. There have been many concrete results in terms of new institutions and international legal instruments but the promise to bring about continent-wide preferential trade in goods is yet to be realised. The AfCFTA negotiations began in 2015 and its Agreement entered into force on 30 May 2019. Forty-seven African Union member states have already ratified the AfCFTA Agreement.

But the AfCFTA negotiations must yet book final results on its tariff schedules and rules of origin. For trade in services there is even more to be done. This serves as a reminder of the complexities inherent in a negotiating process involving 55 countries at very different levels of economic development and with different industrialisation objectives. To this must be added that the AfCFTA compact is a single undertaking[1], and no reservations to its agreement are permitted.[2] Decisions in the AfCFTA structures are based on consensus.

There are Provisional Schedules of Tariff Concessions (PSTCs) for more than 45 State Parties, for Category A of the tariff lines to be liberalised.[3] However, Category B (7% of tariff lines for sensitive goods) and Category C (3% of tariff lines for excluded goods) are still to be finalised. Rules of origin have been agreed for 92.3% of tariff lines. The outstanding Rules of Origin cover tariff lines in the textile, clothing, and automotive chapters. The Council of Ministers has adopted the rule, which requires a double transformation process, with exceptions for synthetic fibres and fabrics, for finished garments classified in Chapters 61 and 62. A decision by the Council of Ministers bans trade in second-hand clothing under the AfCFTA.

In another Conference Note we discuss the Guided Trade Initiative (GTI), which is an important development. It allows for interim preferential trade in goods based on the PSTCs. AfCFTA State Parties are eligible to participate in GTI trade in goods provided they have verified Provisional Schedules of Tariff Concessions; that they have gazetted the amendment to the tariff book and adopted the required customs procedures and domestic regulations. South Africa and Algeria are recent additions to the list of GTI participants.
The GTI is implemented through bilateral reciprocity. Only when all the tariff schedules have been negotiated, adopted, and appended to Annex I of the AfCFTA Protocol on Trade in Goods (as opposed to being verified by the Secretariat as being compliant with the tariff negotiations modalities) will the final AfCFTA regime for trade in goods be in place.

Under the final AfCFTA regime, preferential trade in goods will happen as traders in the State Parties conclude commercial transactions with counterparts in other State Parties and then export or import the relevant products. Note that there is no separate protocol on trade in agricultural goods. Trade in agricultural products will also be governed by the AfCFTA Protocol on Trade in Goods.

Article 8(1) of the AfCFTA Protocol on Trade in Goods requires that each State Party shall apply “preferential tariffs to imports from other State Parties in accordance with its Schedule of Tariff Concessions contained in Annex 1 to this Protocol and in conformity with the adopted tariff modalities”. The AfCFTA is a member-driven Free Trade Area (FTA), not a customs union.

The applicable Rules of Origin will have to be met:

Goods shall be eligible for preferential treatment under this Protocol, if they are originating in any of the State Parties in accordance with the criteria and conditions set out in Annex 2 on Rules of Origin, and in accordance with the Appendix to be developed on General and Product Specific Rules.[4]

Preferential trade in goods can of course also happen in terms of existing REC FTAs and customs unions. As Article 5 of the AfCFTA Agreement provides; the acquis (what has already been achieved) will be preserved by the AfCFTA regime.

One of the objectives of the AfCFTA is to promote industrial development in Africa. How can this be achieved? For the AfCFTA to be a facilitator of trade-driven industrialisation, it must meaningfully impact tariff and non-tariff barriers and therefore improve intra-African market access. However, logistics and border challenges must also be solved. This emphasises the link between trade facilitation and value chain development.

Value-chain driven industrialisation is a special case of trade-driven industrialisation where the production chain is fragmented across several countries, permitting specialisation and the development of country and regional competencies and competitiveness in specific industrial sectors. The proposed mechanism for African value chain industrialisation is more of a 'horizontal' value chain structure: most African countries are value originators, they are the beginning of the value chain.

Special Economic Zones (SEZs) are part of the strategy on industrialisation. Ministerial Regulation 1/ 2023 (adopted by the Council of Ministers in February 2023) deals with the treatment of products from the SEZs of State. It defines an SEZ as entailing
“special regulatory provisions applicable in a geographical demarcation within a State Party’s territory where the legal, regulatory and fiscal and customs schemes, applicable to business, differ, generally in a more liberal way, from those in application in the rest of the State Party’s territory.”[5]

It has been agreed that goods produced in an SEZ shall be treated as originating in the relevant State Party, provided they meet the Rules of Origin (Annex 2, Protocol on Trade in Goods). Importing State Parties shall apply preferential duties to such goods, as per Annex 1 to the AfCFTA Protocol on Trade in Goods. Products produced in SEZs shall be subject to the provisions under the Annex on Trade Remedies, Competition Policy and Infant Industry Protection.

Some domestic arrangement must be in place. Enterprises that wish to benefit from SEZs shall register with the competent authority. The AfCFTA Secretariat, in collaboration with the competent authorities, shall maintain a registry of SEZs in the State Parties. The Committee on Trade in Goods shall submit an annual report on SEZs to the Council of Ministers. This arrangement will be reviewed after 5 years.

Protocols on Investment, Competition Policy, Intellectual Property Rights (IPR) – that were already provided for in the AfCFTA legal instruments – have recently been adopted by the African Union Assembly. In addition, Protocols on Digital Trade and Women and the Youth in Trade have been added by the State Parties, and recently also adopted by the AU Assembly. These Protocols and the outstanding work on the Annexes to some of them (and developments in trade in services) are discussed in separate Conference Notes.

[1] Art 8(2) Agreement Establishing the AfCFTA.
[2] Art 25 Agreement Establishing the AfCFTA.

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2024 tralac Annual Conference