# A Guide to the AFRICAN CONTINENTAL FREE TRADE AREA for US companies

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PROSPER AFRICA
A U.S. TRADE AND INVESTMENT INITIATIVE

USAID
FROM THE AMERICAN PEOPLE

CORPORATE COUNCIL ON AFRICA

# Introduction

The African Continental Free Trade Agreement is at the heart of several coordinated projects designed to fundamentally reshape Africa's economy, creating a more highly integrated, more competitive, and more industrialized continent, better able to provide jobs and prosperity as its population doubles. Combined with shifts in global supply chains, these developments will create significant new trade and investment opportunities for U.S. and African firms. This guide is intended to help U.S. companies:

1. Get a basic understanding of what the AfCFTA is and how it will change the architecture of trade and investment in Africa;

2. Better understand how the AfCFTA will impact the current rules and regulations of doing business in a specific (potential) business location;

3. Get a basic understanding of the new tools that the AfCFTA is introducing, including an electronic tariff book, dispute settlement system, and a payments and settlement system; and

4. Incorporate this information into refining the search for business opportunities and partners.

# The AfCFTA Opportunity

The African Continental Free Trade Area (AfCFTA) Agreement will create the largest free trade area in the world measured by the number of countries participating. The Agreement creates a continent-wide market comprising 55 countries with 1.3 billion people and a combined GDP of US$3.4 trillion. The AfCFTA's effective implementation will reduce tariff and non-tariff barriers to trade, providing investors in AfCFTA State Parties with access to an expanded market for goods and services across the continent. The Agreement's focus extends beyond trade in goods to include a broader spectrum of issues critical to FDI strategies and activities, including trade in services, investment, competition, digital trade, intellectual property rights, and dispute settlement.

**Projected benefits of the AfCFTA's implementation by 2035**[1]


[1] World Bank. 2020. *The African Continental Free Trade Area: Economic and Distributional Effects.* https://www.worldbank.org/en/topic/trade/publication/the-african-continental-free-trade-area

"The AfCFTA sends a strong signal to the international investor community that Africa is open for business, based on a single rule-book for trade and investment."

- H.E. Wamkele Mene

*Secretary General, AfCFTA Secretariat*

# Objectives of the AfCFTA

The Agreement establishing the African Continental Free Trade Area (AfCFTA) was signed on 21 March 2018 in Kigali, Rwanda. The AfCFTA Agreement entered into force on 30 May 2019. As of May 2023, 47 African countries have ratified the Agreement. The main objectives of the AfCFTA are to:

- Create a single continental market for goods and services, with free movement of business persons and investments
- Expand intra-Africa trade across the regional economic communities and the continent in general
- Enhance competitiveness and support economic transformation
- Promote industrial development

The AfCFTA is a flagship project the African Union's **Agenda 2063**, Africa's framework for structural transformation. It builds on, and aims to facilitate, the implementation of existing continental initiatives that are geared towards, among other objectives, achieving industrial development, infrastructure development, agricultural development, and enhanced intra-African trade. Importantly, the UN Agenda 2030's 17 SDGs are incorporated in the 20 goals of Agenda 2063. By implementing Agenda 2063, Africa will also meet its global commitments under the SDGs.

# The Agreement's scope and legal architecture

The AfCFTA Agreement is a comprehensive legal treaty which includes the Agreement establishing the AfCFTA as well as Protocols on Trade in Goods, Trade in Services, Dispute Settlement, Investment, Intellectual Property Rights, and Competition Policy, and more recently added to the negotiating agenda, Digital Trade and Women and Youth in Trade. Protocols enter into force after AU Heads of State approve them (often at one of two annual meetings). The AfCFTA negotiations take place in phases:

**Negotiating Agenda**

**Phase I**

- **Protocol on Trade in Goods**
- Annexes
- **Protocol on Trade in Services**
- Annexes
- **Dispute Settlement**
- Annexes

**Phase II**

- **Protocol on Investment**
- Annexes
- **Protocol on Competition Policy**
- **Protocol on Intellectual Property Rights**
- Annexes

**Phase III**

- **Protocol on Women and Youth in Trade**
- **Protocol on Digital Trade**

# Trade in goods

The Protocol on Trade in Goods nominally entered into force with the AfCFTA Agreement in 2019, although negotiations to finalise the rules of origin and schedules of tariff concessions are still ongoing. The AfCFTA will see the progressive liberalisation of 97% of intra-Africa tariffs, 7% of which are categorised as sensitive products and will be liberalised over a longer time frame. The remaining 3% of tariffs may be excluded from liberalisation for reasons relating to food security, national security, fiscal revenue, livelihood, and industrialization. The majority of State Parties have tabled tariff offers that comply with the below modalities. Rules of origin (the legal provisions that are used to determine the nationality of a product in the context of international trade) have been agreed to for 88.3% of total tariff lines.

| Tariff Elimination Modalities | Coverage (%) | | Transition Period | |
|---|---|---|---|---|
| | Tariff lines | Import Value | non-LDCs | LDCs |
| General | 90 | 90 | 5 years | 10 years |
| Sensitive products | 7 | | 10 years | 13 years |
| Excluded products | 3 | 10 | No liberalization | No liberalization |

Non-tariff barriers (NTBs) are in fact a larger contributor to intra-Africa trade costs than tariffs. The Annexes to the Protocol on Trade in Goods which deal with issues related to non-tariff measures, such as standards (sanitary and phyto-sanitary standards, and technical barriers to trade), customs and border management, trade facilitation, and transit arrangements, are complete.

# Rules of origin

Rules of Origin (RoO) determine the economic nationality of a product and hence its eligibility for preferential tariff treatment in a free trade area. RoO for 88.3% of tariff lines have been finalised. These RoO include the ‘wholly obtained’ rule for agricultural and other primary products, and various product-specific rules have been agreed on to encourage local value addition and transformation of inputs.

Rules of Origin for automotive and textile tariff lines have not yet been agreed. Both are significant contributors to Africa’s industrial development and economic growth.

At the meeting of the Council of Ministers held in Nairobi, Kenya on 18-19 July 2023, deliberations focused on reaching agreement on RoO that can prevent the trans-shipment of cheap global imports and support the development of local textile industries. The same logic applies to the automotive sector, which has the potential to generate substantial employment and develop ancillary components industries. These RoO are designed to encourage U.S. and other foreign companies to invest and establish a commercial presence in an AfCFTA State Party to get the benefits of the AfCFTA, rather than simply exporting to Africa.

**WHAT APPROACH DOES THE AFCFTA FOLLOW FOR DETERMINING ORIGIN STATUS ?**

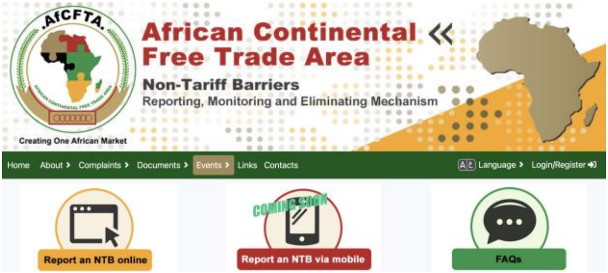
*The **AfCFTA RoO** are essentially being negotiated on a **sector by sector level**, resulting in product-specific origin rules (rather than generic origin criteria that apply equally to all products). The advantage of this is that suitable criteria can be designed that better take account of the specific dynamics of each sector; however, this process also means that negotiations are more complex and time consuming. The general RoO provisions contained in the main RoO Protocol (Annex II) however apply equally to all products.*

# The AfCFTA aims to reduce/eliminate non-tariff barriers

Non-tariff barriers (NTBs) include cumbersome import and export procedures, and high transport costs. On average, these non-tariff trade costs amount to, according to the latest data[1], an *ad valorem* tariff equivalent of just over 290% for goods trade and more than 300% for services trade. The AfCFTA aims to reduce or eliminate these NTBs. An Annex to the Protocol on Trade in Goods sets out the parameters for achieving this objective and provides for the establishment of the **AfCFTA Online Mechanism for Reporting, Monitoring and Elimination of NTBs.** This is a portal for online reporting of identified NTBs, including reporting via SMS. Reported NTBs and the status of their resolution can be tracked.

NTB notifications will be received by the focal points of the reporting country, the responding country, and the AfCFTA Secretariat for processing. The system facilitates information exchange between the concerned State Parties to monitor and resolve NTBs.

It is already possible to register on the platform: [https://tradebarriers.africa](https://tradebarriers.africa)




[1] See tralac's infographic at [https://bit.ly/44Om31Z](https://bit.ly/44Om31Z)

# Trade in Services

The Protocol on Trade in Services negotiations are taking place in successive rounds. For the first round of negotiations, which is ongoing, State Parties have agreed to schedule commitments in 5 priority sectors:


Future rounds of negotiations on trade in services will cover all the remaining sectors such as construction, distribution, education, environmental, health and related social services, and recreational, cultural, and sporting services, as well as other services not listed elsewhere. The aim is to complete the first round of negotiations by end 2023.

Negotiations are underway for the development of Regulatory Frameworks that will underpin the market access (MA) and national treatment (NT) conditions guaranteed in the Schedules of Specific Commitments. These frameworks should promote regulatory predictability by guiding the implementation of national laws, regulations and policies while respecting States Parties' right to introduce new regulations. Regulatory frameworks for financial and communication services are being prioritised.

# Dispute Settlement

The AfCFTA has a **Protocol on Rules and Procedures on the Settlement of Disputes** which was adopted during Phase I of the AfCFTA negotiations and has been in force since 30 May 2019. The AfCFTA's dispute settlement system is modelled on the Dispute Settlement Mechanism of the WTO. It consists of panels and an appellate body. **Only AfCFTA State Parties have standing to file claims** under this Protocol, which can be heard and decided by Panels and the Appellate Body of the AfCFTA. Since violations of obligations regarding trade in goods and in services in most instances impact private firms, it is for the national governments of the relevant countries (if they are members of the WTO or the AfCFTA) to litigate against States adopting and implementing measures in violation of their obligations.

## Legal remedies for private parties (companies)

While companies do not have direct access to the AfCFTA's State-State dispute settlement mechanism, they can lobby the host government to take up a dispute on their behalf, or approach the domestic courts to address a complaint.

They can also benefit from the application of trade remedies. Private parties who have been affected by unfair trade practices, such as the dumping of goods or subsidized imports, can request national investigating authorities to undertake the required investigations and impose anti-dumping duties, countervailing measures, or safeguard measures. There is a dedicated AfCFTA Annex on Trade Remedies and Safeguards.

# Phase II Negotiations

The Protocols on Investment, Intellectual Property Rights (IPRs), and Competition Policy have been completed and adopted. Further negotiations are required for finalising the Annexes to the Investment and IPR Protocols.

## Dispute resolution under the Investment Protocol

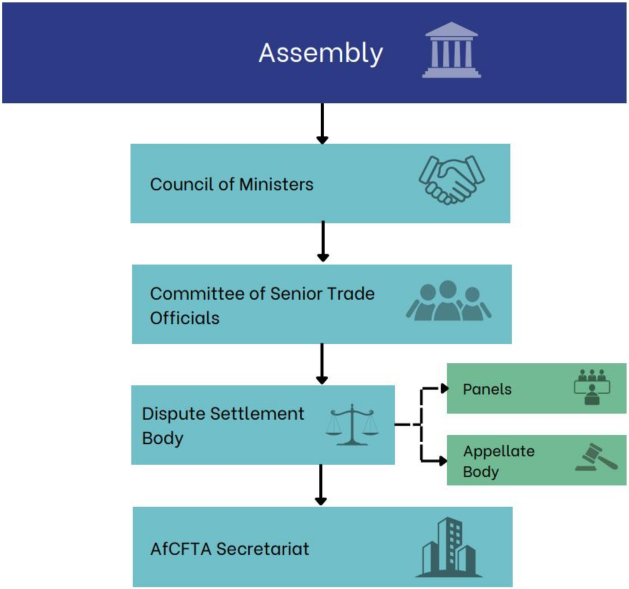
The Protocol on Investment provides for a dispute resolution mechanism that investors will have access to. Article 47 of the Protocol provides that in the event that an investor of a State Party and the Host State are unable resolve a dispute amicably, they may make use of the dispute resolution mechanism provided in the Annex (which is yet to be negotiated). While the Investment Protocol only applies to intra-Africa investment, U.S. firms that already have an established commercial presence in a State Party will be able to make use of the Protocol's dispute settlement mechanism.

# Phase III Negotiations

The Phase III Protocols on Digital Trade and Women and Youth in Trade are in progress and negotiations are expected to be concluded in 2023. The Protocol on Digital Trade (which covers e-commerce) aims to support the Protocols on Trade in Goods and Trade in Services by promoting the sustainable and inclusive transformation of digital trade on the continent. The Protocol on Women and Youth is geared towards towards eliminating gender-specific barriers to trade and unlocking the potential of the continent's young population.

# Institutions of the AfCFTA

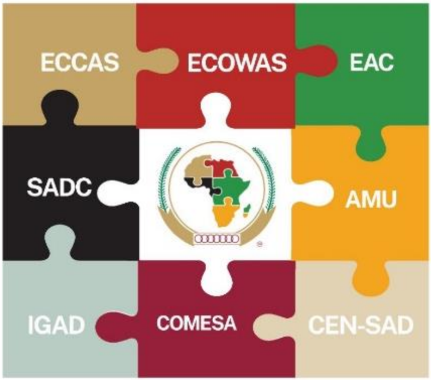
The institutions responsible for the implementation, facilitation, administration, and monitoring of the AfCFTA include the Assembly, Council of Ministers, Committee of Senior Trade Officials, the Secretariat and various technical committees. Decisions by these institutions are taken on the basis of consensus.



# Regional Economic Communities

A key features of Africa's regional economic communities (RECs) is overlapping membership (see next page). In these cases, such as between SADC and COMESA members, traders choose the regime under which they trade.

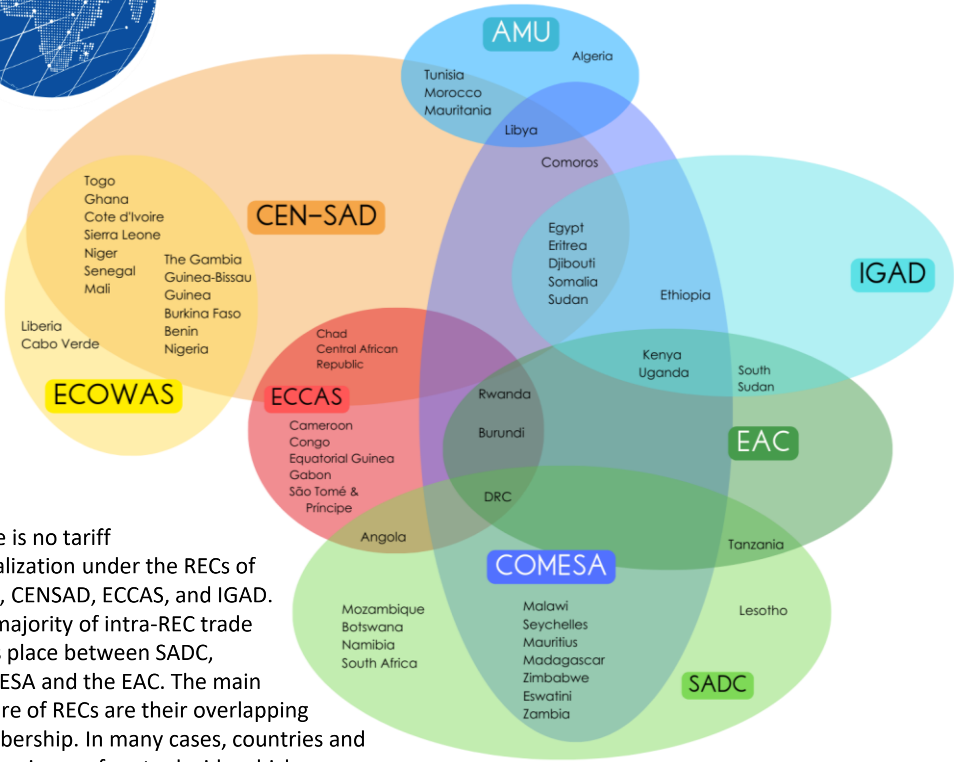
The vast majority of intra-African trade today takes place within RECs, where countries trade under the REC free-trade areas with reduced or zero tariffs. For members of fully fledged customs unions, such as SACU, trade is duty-free among the member states. Tariffs are highest on goods traded between those countries that do not yet have a preferential agreement in place and trade under Most Favoured Nation (MFN) terms.




Source: African Union

The African Union recognizes the Free Trade Agreements of eight RECs as building blocks of the AfCFTA. While the AfCFTA will not replace the RECs and trade among members of an existing REC will continue according to its trade regime, for those that have one (EAC, ECOWAS, SADC and COMESA), under the AfCFTA, all REC members agree to reduce and harmonize tariff and non-tariff barriers, while harmonizing standards and procedures.

The AfCFTA is an opportunity for firms in these RECs to tap into under-exploited export markets in African countries outside of their regional groupings.




There is no tariff liberalization under the RECs of AMU, CENSAD, ECCAS, and IGAD. The majority of intra-REC trade takes place between SADC, COMESA and the EAC. The main feature of RECs are their overlapping membership. In many cases, countries and companies are free to decide which provisions to apply. Many African countries also have bilateral FTAs and investment agreements between them.

# The AfCFTA as a framework for Africa's industrialization

The AfCFTA has become a framework for Africa's industrialization with a strong focus on regional value chain development. Under the AfCFTA Secretariat's Private Sector Engagement Strategy, four priority value-chains have been identified for development:

1. Agro-processing
2. Pharmaceuticals
3. Transport and logistics
4. Automotive

As a part of this agenda, the AfCFTA has partnered with the African Export-Import Bank (Afreximbank) to establish the **Automotive Fund.** Afreximbank has committed a US$1 billion facility available to any investment that seeks to pursue local content development in the automotive value chain. The funding will also be used for ensuring access to consumer finance as part of the creation of demand and associated insurance products.

Afreximbank has also established the **Fund for Export Development** in Africa (FEDA) to support intra-African trade growth, value-added export development, and industrialization. FEDA was created to address the US$110 billion equity financing gap on the continent.

# Guide to the AfCFTA's Operational Instruments

- The **AfCFTA e-tariff book** is a digital platform containing the tariff schedules and applicable tariff rates for all the AfCFTA State Parties based on the WCO 6-digits Harmonized System (HS). Available at: etariff.au-afcfta.org

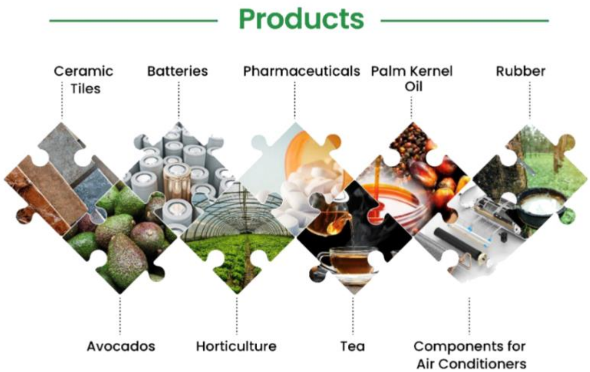
- The **AfCFTA Rules of Origin Manual** is a guidebook providing detailed information on how to determine the origin status of goods traded between State Parties within the AfCFTA. Available at: https://au-afcfta.org/rules-of-origin/

- **AfCFTA Online Mechanism for Reporting, Monitoring and Elimination of NTBs**. This is a portal for online reporting of identified non-tariff barriers (NTBs), including for reporting via SMS. Reported NTBs and the status of their resolution can be tracked. Available at: www.tradebarriers.africa

- The **Pan-African Payment and Settlement System** (PAPSS), developed by the African Export Import Bank (Afreximbank) in collaboration with the African Union and AfCFTA Secretariat, is a cross-border, financial market infrastructure for enabling payment transactions across Africa. PAPSS allows for payment and settlement using local currencies. Available at: https://papss.com/

# AfCFTA Guided Trade Initiative

While preferential trade under the AfCFTA can only truly begin once negotiations on issues such as tariff concessions and rules of origins are finalized, a 'pilot phase' of the AfCFTA was launched in 2022 in the form of the Guided Trade Initiative (GTI). A primary aim of the GTI is to test the operational, institutional, legal and trade policy environment under the AfCFTA. Eight State Parties are participating: Cameroon, Egypt, Ghana, Kenya, Mauritius, Rwanda, Tanzania and Tunisia. Others, who have had their Provisional Schedules of Tariff Concessions verified, may join. At least 96 products are eligible for trade among participating countries including ceramic tiles, batteries, horticulture products and flowers, avocados, palm oil, tea, rubber, and components for air conditioners. The initiative will be expanded in 2023 to include more products and participants.




Source: https://twitter.com/africarenewal/status/1578037992492605441?s=20

# What does the AfCFTA mean for a U.S. company doing business in or with Africa?

- The biggest change for U.S. exporters who are not invested in Africa will be that they find the process of exporting more streamlined. Procedures and paperwork will be more harmonized between countries, making it easier to export to multiple markets. More processes will also be available online/electronically.

- AfCFTA will NOT necessarily change or eliminate tariffs charged on imports. Tariffs on external (outside of Africa) goods will continue to be set by individual countries and/or Regional Economic Communities (such as the EAC) and Customs Unions (such as SACU). Currently only Morocco has an FTA with the U.S.

- To the extent that AfCFTA achieves its objectives of increasing overall economic growth and prosperity, it should lead to a steady increase in potential markets for U.S. exporters of final goods.

- For those U.S. companies exporting intermediate goods, they are likely to see an increase in potential demand as the reduction/elimination of tariffs and non-tariff barriers across African borders will support the creation of regional value chains.

- Note that existing REC trading regimes will continue to exist – and trade will continue using current processes and procedures. The AfCFTA will apply to all trade that currently takes place without any tariff preferences.

# U.S. and foreign partner agreements with African countries

The U.S. has only one Free Trade Agreement (FTA) in Africa, concluded with Morocco in 2004 and in force since 1 January 2006.

Some African countries have concluded FTAs with other global partners, providing preferential access to their markets. The **European Union** has Economic Partnership Agreements (EPAs) with Kenya (negotiations were concluded in June 2023); the SADC-EU EPA (South Africa, Botswana, Eswatini, Lesotho and Namibia, since October 2016, and Mozambique since 2018); Ghana (provisional application since 2020); Côte d'Ivoire (provisional application since 2016); Cameroon (provisional application since 2014); and a group of East and Southern African countries (ESA-EU EPA) – Madagascar, Mauritius, Seychelles and Zimbabwe since 2012, and Comoros since 2019.

Following Brexit, the United Kingdom (UK) concluded EPAs with three countries in East and Southern Africa (Mauritius, Seychelles and Zimbabwe); South Africa, Botswana, Eswatini, Lesotho, Namibia and Mozambique (SACU+M); Cameroon; Côte d'Ivoire; Morocco and Tunisia.

China has a comprehensive FTA with Mauritius.

# Bilateral Investment Treaties (BITs) between the U.S. and African countries

The U.S. has concluded BITs with various African countries, in force since the indicated dates: **Rwanda (2012)**, **Mozambique (2005)**, **Republic of Congo (1994)**, **Democratic Republic of the Congo (1989)**, **Cameroon (1989)**, and **Egypt (1992).** The aims of the BITs include:

- to protect investment abroad especially in countries where investor rights are not already protected through existing agreements.

- to encourage the adoption of market-oriented domestic policies which treat private investments in an open, transparent and non-discriminatory way and support development of international law standards.

# How U.S. investors can produce products ‘made in Africa’

- U.S. companies invested in one African country that has submitted its tariff offer will be able to take full advantage of exports to other African countries (as long as their tariff offers have also been accepted) – in practical terms, their production on the continent has to comply with the AfCFTA Rules of Origin.

- Rules of origin are not all exactly the same, however, as some require higher levels of African inputs or value added. A company should explore the specific rules of origin for their product to understand their requirements.

- While the AfCFTA’s objective of increasing African value added will impose some restrictions on what the level of input American companies can bring to the continent, it also creates new opportunities.

- Details on the agreed rules of origin will be available on the AfCFTA Secretariat website at https://au-afcfta.org/etariff/

# Investing in regional value chains

One of the AfCFTA's core objectives is increasing value added production in Africa, particularly through the creation of regional and continental value chains. For U.S. companies already invested in Africa or willing to look at investments, they will want to look beyond just the opportunities in one country to better understand the scope of available opportunities.

- Given the critical role that Regional Economic Communities will continue to play, U.S. companies will want to evaluate potential investment destinations based both on their national laws (as in standard investment due diligence) and on the provisions RECs offer.

- Comparing REC provisions to find the most advantageous for a particular sector is important.

- African governments and companies are still figuring out how best to unlock this potential; there may be opportunities for U.S. companies to propose steps that can accelerate development of particular sectors.

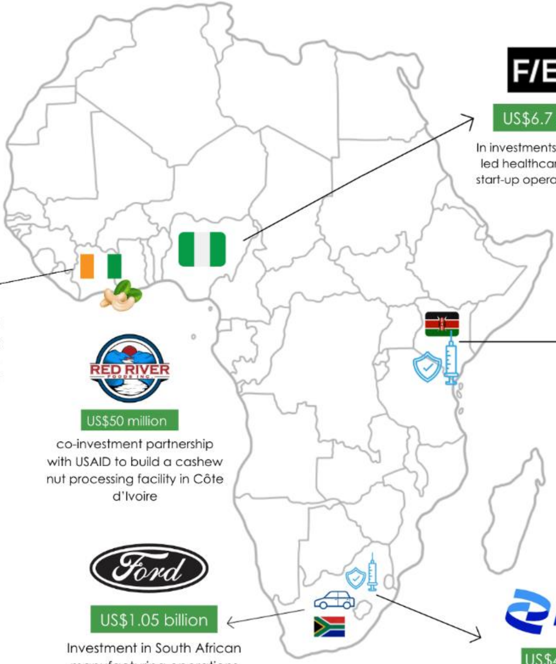
# How to pick a country to invest in?

- Picking the right country involves both the more traditional process of looking at specific aspects of a country's investment regime and application of rule of law.

- It also involves assessing the impact of REC provisions, as well as understanding whether the country is on a faster track for liberalization under the AfCFTA or slower (as a least developed country).

- Companies will also want to include in their assessment any provisions or agreements that the host country may have with competitors (e.g., the European Union).

# Some U.S. companies already in Key Value Chains



**F/ELD**

US$6.7 million

In investments raised by U.S.-led healthcare technology start-up operating in Nigeria

**Cargill**

US$100 million

Investment (2021) to expand its cocoa processing facilities in Côte d'Ivoire creating the largest cocoa-grinding plant in Africa.

**RED RIVER FOODS INC.**

US$50 million

co-investment partnership with USAID to build a cashew nut processing facility in Côte d'Ivoire

**moderna**

US$500 million

Investment (finalised in 2023) in partnership with the Kenyan government for the development of a vaccine production facility.

**Ford**

US$1.05 billion

Investment in South African manufacturing operations (announced 2021) - Ford's largest investment in its near-century of operating in South Africa

**Pfizer**

US$43 million

Investments in South African pharmaceutical industry since 2015 through partnership with SA company BioVac

# Many of the rules are still being negotiated

- The AfCFTA State Parties will be writing important parts of the new rules for some time – including provisions like the Investment Protocol. Protocols on Digital Trade and on Women and Youth in Trade are also being negotiated.

- Implementation happens at the domestic level; countries will update their tariff books and amend laws and regulations to comply with their AfCFTA obligations.

- Companies should both look to stay on top of developments and seek out opportunities to provide feedback.

# Qualifying for benefits

Those firms that set up a presence in a member state will have access to a range of new programs to support trade connections, payments and investments.

Examples of programs U.S. companies can benefit from as "African" companies include the following:

- Afreximbank African trade portal
- Afreximbank Export financing
- Afreximbank insurance and investment support programs

Further details are available at: [https://www.afreximbank.com](https://www.afreximbank.com)

CCA and tralac are partnering with the U.S. Government's Prosper Africa initiative to increase two-way trade and investment between African countries and the United States. This work is supported by the American people through the U.S. Agency for International Development (USAID).

## About CCA

Corporate Council on Africa (CCA) is the leading U.S. business association focused solely on connecting business interests in Africa. CCA serves as a neutral, trusted intermediary connecting its member firms with the essential government and business leaders they need to do business and succeed in Africa. CCA uniquely represents a broad cross section of member companies, from small and medium size businesses to multinationals, as well as U.S. and African firms.

## About tralac

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



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