

AfCFTA Tariff Negotiations

Factsheet

Tariffs and rules of origin

Tariff concessions and rules of origin are essential requirements for a free trade area (FTA). Preferential rules of origin serve a gate-keeper function in an FTA. Only if the rules confirming that a product originates in one of the FTA partner states, are complied with, can that good get access to the market of a partner state under the reduced or zero tariff. In the absence of compliance with the rules of origin, the applicable tariff will be the most favoured nation (MFN) rate, that also applies to imports from countries with whom the importing country does not have a free trade agreement. Since tariffs and rules of origin are closely connected in an FTA, these negotiations are usually conducted in a coordinated manner. The AfCFTA tariff and rules of origin negotiations are still ongoing (at mid-August 2021).

[Factsheets on Rules of Origin in the AfCFTA](#) are available on the **tralac** website.

AfCFTA tariff negotiations

The import tariff is an important trade policy instrument. For many African countries, especially least developed countries (LDCs), this border tax is an important source of fiscal revenue. Because the tariff impacts the price of the imported product directly, it is also an effective means of limiting import competition so protecting the domestic industry. The import tariff is thus also an important industrial policy tool. These factors make the tariff and rules of origin negotiations in the African Continental Free Trade Area (AfCFTA) sensitive and complex. The outcomes of these negotiations will be in Annex 1 (Schedules of Tariff Concessions) and Annex 2 (Rules of Origin) of the Protocol on Trade in Goods. All other Annexes are complete. They cover important additional requirements for trade under the

AfCFTA, such as standards, non-tariff barriers and practical customs and border management issues. These 9 Annexes, together contain the details for trade in goods under the AfCFTA. Guidelines for implementation of these Annexes will also be adopted.

Annexes to the Protocol on Trade in Goods

Annex 1: Schedules of Tariff Concessions

Annex 2: Rules of Origin

Annex 3: Customs cooperation and mutual administrative assistance

Annex 4: Trade facilitation

Annex 5: Non-tariff barriers

Annex 6: Technical Barriers to Trade

Annex 7: Sanitary and Phytosanitary Measures

Annex 8: Transit

Annex 9: Trade Remedies

Who is negotiating tariff concessions with whom in the AfCFTA?

The member states of the African Union are the negotiating parties. Who will negotiate with whom, depends on the REC and trading arrangement/s to which the member state belongs.

Member states of REC free trade areas

In an FTA members liberalise trade among themselves but retain policy space to enter into FTAs with third parties. A member of an existing REC FTA will make its own offer of tariff concessions and negotiate with parties that are not in the same FTA.

Member states of customs unions

A customs union has a common external tariff (CET) and a common customs territory. Members of a customs union adopt a common policy position on trade in goods towards third parties. This means that they give up trade policy space to negotiate FTAs independently with third parties. They negotiate trade in goods FTAs with third parties collectively, starting with a common offer of tariff concessions and continue the negotiations *en bloc*. This is necessary to assure the integrity of the CET and the common customs territory. Customs union members will decide how to practically manage the negotiating process. One member state may be the 'lead negotiator,' of course with inputs from all members.

RECs and the AfCFTA

The AfCFTA trade in goods regime will co-exist with the Regional Economic Communities' (RECs) trading arrangements, not replace them. This is clear in the provisions of the Agreement establishing the AfCFTA and the Protocol on Trade in Goods. Eight RECs are identified in the Definition Clause of the AfCFTA Agreement, and the Principles of the AfCFTA confirm that they are the building blocks of the AfCFTA. These RECs, which are also recognized by the African Union as building blocks of the African Economic Community, are shown in the table below.

RECs recognised in the AfCFTA – and by the African Union

- Arab Maghreb Union (AMU),
- Common Market for East and Southern Africa (COMESA),
- Community of Sahel-Saharan States (CEN-SAD),
- East African Community (EAC),
- Economic Community of Central African States (ECCAS),
- Economic Community of West African States (ECOWAS),
- Inter-governmental Authority on Development (IGAD)
- Southern African Development Community (SADC).

Note:

- (i) Some of these RECs do not currently have own trade arrangements. These are AMU, CEN-SAD, ECCAS and IGAD.
- (ii) In addition to these, there are other RECs or customs unions (including the Southern African Customs Union (SACU)). They exist, and will continue, in terms of their own legal instruments.

Members of REC FTAs will not negotiate further tariff concessions with one another under the AfCFTA. They continue to trade with one another as before. Existing customs unions will remain intact too. Only those members of the African Union that are not in the same REC trading arrangements (FTAs) or customs unions, will be negotiating tariff concessions with one another. This means that only those AU member states that are trading under MFN tariffs will negotiate tariff concessions under the AfCFTA.

It is important to note that State Parties (those that have ratified the AfCFTA) as well as other members of the African Union that have not ratified the Agreement are participating in the AfCFTA negotiations. This does have the implication that non-State Parties are participating in the process where they have no legal commitments, along with others that do. This is an example of a compromise in the AfCFTA which is accommodated in the broader interest of the AfCFTA which is not only an FTA, but also a flagship project of the African Union.

Who is negotiating with whom? The case of SACU, EAC and SADC

Overlapping membership is a key feature of African integration, with important implications for who will be negotiating with whom under the AfCFTA.

The **Southern African Customs Union (SACU)** has 5 members (South Africa, Botswana, Lesotho, Namibia and Eswatini). SACU members will negotiate tariff concessions collectively – starting with a single tariff offer.

All SACU member states also members of the **Southern African Development Community (SADC)**. The non-SACU members of SADC are Angola, Comoros, DRC, Madagascar, Malawi, Mauritius, Mozambique, Seychelles, Tanzania, Zambia and Zimbabwe.

Each of the non-SACU members of the SADC FTA (e.g. Malawi), except Tanzania, will make its own tariff offer to start negotiations with other parties. Tanzania belongs also to the **East African Community (EAC)**, which is a customs union, and negotiates as a member of the EAC under the AfCFTA, along with the other EAC members – Burundi, Kenya, Rwanda, South Sudan, and Uganda. As a customs union, EAC makes a single tariff offer and negotiates with concessions collectively – just as SACU does.

Member states of SADC, that are party to the SADC Trade Protocol, will continue to trade with one another under this REC FTA. Three members of SADC (Angola, Comoros, and the Democratic Republic of the Congo (DRC)) do not currently belong to the SADC FTA. The distinction between **RECs** and **REC trading regimes** is therefore important.

The member states of SADC (and by implication, SACU) and EAC, together with the member states of the COMESA are all participating in the **Tripartite Free Trade Area (TFTA)** negotiations. Tariff negotiations between SACU and EAC were concluded in mid-2019. Other tariff negotiations are continuing. Rules of origin negotiations are also still underway. The TFTA has not entered into force yet. Fourteen ratifications are required for entry into force

Relevant provisions in the AfCFTA

Article 5 of the [Agreement establishing the AfCFTA](#), contains the Principles of the AfCFTA. They provide guidance on who is negotiating tariff concessions. The following are particularly relevant:

- RECs Free Areas (FTAs) as building blocks for the AfCFTA
- Preservation of the *acquis*

As building blocks of the AfCFTA, the RECs will continue to exist. The term '*acquis*' is not defined in the AfCFTA. It entered the regional integration discourse with the TFTA negotiations. The initial objective to resolve the problem of overlapping membership was expected to lead to the establishment of a single trade in goods regime for (at the time) the 26 member states of these RECs. Soon after the negotiations began, the negotiating guidelines were clarified and a specific interpretation of the '*acquis*' was adopted. In the TFTA the '*acquis*' is specific to the tariff negotiations and means that only those member states of the three TFTA RECS that are not members of the same REC FTA or customs union, will negotiate tariff concessions with each other. The three RECs and their trading arrangements will continue to exist.

The '*acquis*' is not defined in the AfCFTA and could well be interpreted to extend beyond tariffs to cover other disciplines too.

Article 19 (2) of the AfCFTA Agreement* provides that:

'... State parties that are members of other regional economic communities, regional trading arrangements and customs unions, which have attained among themselves higher levels of regional integration than under this Agreement, shall maintain such higher levels among themselves.'

This provision confirms the continued existence of RECs, trading arrangements and customs unions, supporting the principle of the *acquis*.

* Agreement Establishing the AfCFTA [Article 19\(2\)](#)

Article 8 (2) of the Protocol on Trade in Goods**

confirms the continued existence of RECs, which have attained higher levels of tariff liberalisation than the AfCFTA and encourages further liberalisation among REC members:

'Notwithstanding the provisions of this Protocol, State Parties that are members of other RECs, which have attained amongst themselves higher levels of elimination of customs duties and trade barriers than those provided for in this Protocol, shall maintain, and where possible improve upon, those higher levels of trade liberalization among themselves.'

This formulation in the Protocol on Trade in Goods is very similar to that of the AfCFTA Agreement.

^ AfCFTA Agreement: Protocol on Trade in Goods, [Article 8\(2\)](#)

Implications for intra-African trade

The AfCFTA creates 'parallelism' in Africa's integration ecosystem. The AfCFTA will exist alongside current RECs, REC trading arrangements and customs unions.

Members of an FTA will make an individual offer of tariff concessions to all the State Parties of the AfCFTA and other AU member states participating in the AfCFTA process, with whom it currently trades under MFN rates of duty. Following this opening bid, negotiations will follow a request and offer process until the necessary compromises are reached.

Members of a customs union will make a collective offer to all with whom these customs union members are trading under MFN rates of duty, and a similar request and offer negotiation process will follow until all agree on the

Update on the tariff negotiations

A very important phase in tariff negotiations is the "negotiations about the negotiations" to determine the *tariff negotiating modalities*. These modalities contain decisions about the level of ambition, treatment of sensitive and excluded products and time frames for tariff phasedowns. The AfCFTA negotiating modalities were considered by the [Assembly of the African Union's Thirty Second Ordinary Session, 10-11 February 2019](#). The Assembly confirmed the level of ambition to liberalize 90% of tariff lines and endorsed recommendations by the African Union Ministers of Trade (AMOT) on the designation of Sensitive Products and Excluded Lists for reasons of food security, fiscal revenue, livelihood, and industrialization. Sensitive products will comprise 7% of tariff lines and the remaining 3% may be excluded from liberalization. The Assembly also endorsed the recommendation of the AMOT that a transitional period of maximum 5 years may be used by countries that require flexibility before starting the liberalization of Sensitive Products, provided that full liberalization is achieved by the end of the agreed phase-down period - 10 years for developing countries and 13 years for least developed countries. For non-sensitive products developing countries have 5 years to liberalize non-sensitive products and least developed countries have 10 years. The base tariff rates, from which liberalisation will start, are those applicable on 30 May 2019.

The modalities also include agreement on the design and implementation of special and differential treatment (SDT) – especially for least developed countries (LDCs). SDT is one of the key principles of the AfCFTA. A group of 7 AU member states, which included both developing and least developed countries had requested SDT, specifically requesting that they be permitted to achieve liberalisation of 85% of tariff

lines rather than 90%. Subsequently several members of the group withdrew, and finally the remaining members also agreed to 90% level of ambition. This means that under the AfCFTA, there is no SDT, but variable geometry which is also an AfCFTA principle, is accommodated in terms of the different timelines, for LDCs and non-LDCs to implement the agreed tariff reductions.

No trade in goods yet under the AfCFTA

No preferential trade under the AfCFTA has taken place yet. The AfCFTA entered into force on 30 May 2019, 30 days after the deposit of the 22nd instrument of ratification with the Chair of the African Union Commission - the designated Depository for the AfCFTA Agreement. But until the tariff and rules of origin negotiations are finalized, there can be no trade under this FTA.

The [Decision and Declaration of the Assembly of the African Union on 5 December 2020, at its 13th Extraordinary Session](#) confirmed that trade under the AfCFTA should begin on 1 January 2021, “on the basis of legally implementable and reciprocal Tariff Schedules and Concessions, with agreed Rules of Origin and Customs Documentation...”. It transpired that most of the tariff offers that had been made were not compliant with the agreed negotiating modalities, and in addition not all Rules of Origin had been agreed. Trade under this “interim arrangement’ was not possible. The Assembly also decided that the outstanding negotiations on tariffs and Rules of Origin should be finalized by 30 June 2021.

Indications are that as 30 June not all State Parties have submitted their revised tariff offers, and not all Rules of Origin have been agreed. It is expected that a new deadline – the end of 2021 – will be agreed.

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