

# Frequently Asked Questions about the African Continental Free Trade Area (AfCFTA)



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## 1. What's in a Name?

A Free Trade Area (FTA) is generally welcomed as a positive development. The AfCFTA – a *continent-wide* FTA for Africa – is generating great expectations. As the AfCFTA negotiations proceed, we are also reminded how difficult it is to integrate 55 sovereign States at very different levels of economic development. An FTA requires that these States accept a wide range of obligations to liberalise trade. Progress in many areas has been impressively swift. But, for trade in goods, the two essential elements of an FTA are still on the negotiating table. An FTA requires, at minimum, schedules of preferential tariff concessions and preferential rules of origin. This is in some sense the acid test of this exercise. What will be in the exclusion lists of the final tariff schedules? Will the rules of origin be used for their key purpose of preventing transshipment? Or will we see rules, for products like garments, that make trade under the AfCFTA near impossible, given the state of Africa's textile industry?

## 2. What will the AfCFTA cover?

The AfCFTA will eventually comprise several legal instruments covering trade in goods, trade in services, dispute settlement, investment, competition policy and intellectual property rights. During Phase I of the AfCFTA negotiations a founding Agreement and Protocols on trade in goods,<sup>1</sup> trade in services and dispute settlement have been adopted. They entered into force on 30 May 2019.<sup>2</sup> However, trade under the AfCFTA will only commence once essential outstanding aspects (tariff reductions, rules of origin) and the basic rules on trade in services have been finalized. The aim is to complete the

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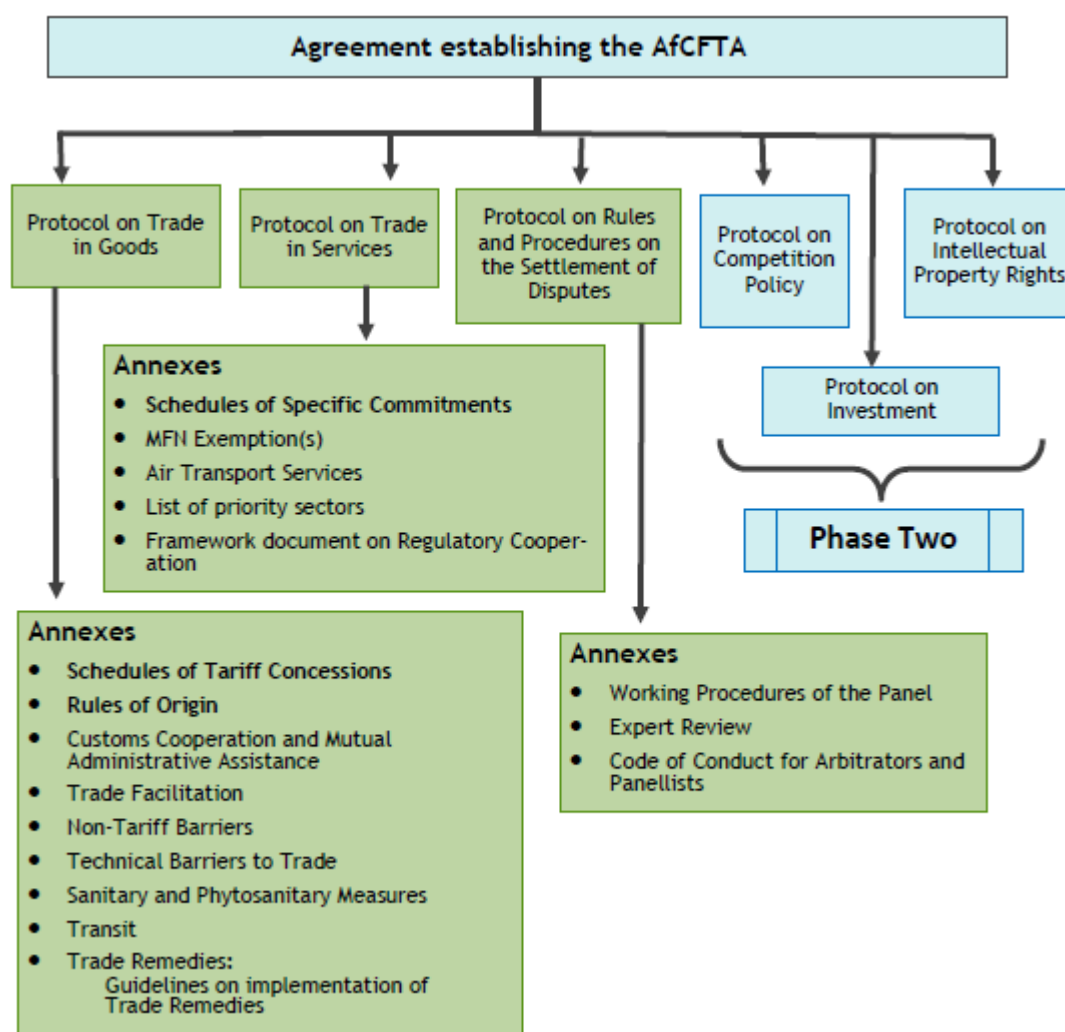
<sup>1</sup> As of 13 December 2019, trade in goods negotiations have been concluded except for the several outstanding issues: tariff schedules, rules of origin (clothing & textiles, automotive, sugar and edible oils), trade remedies guidelines, infant industry guidelines, and special economic zones regulations.

<sup>2</sup> As of 13 December 2019, trade in services negotiations have been concluded except for the several outstanding issues: schedules of specific commitments and guidelines thereof, and services sectors' regulatory frameworks.

negotiations on tariffs and rules of origin, as well as the preparatory implementation at national levels so that trade, under the AfCFTA can begin on 1 July 2020. For trade in services the timeframe to conclude the negotiations on sector specific commitments - at this stage initial offers are expected to be submitted by end January 2020. Much support is still required to complete these negotiations.

Phase 2 negotiations will cover investment, competition policy and intellectual property rights. They are expected to be complete by January 2021.

Figure 1: Architecture of the AfCFTA Agreement



### 3. What institutions will the AfCFTA have?

The institutions responsible for the implementation, facilitation, administration, monitoring and evaluation of the AfCFTA include the Assembly, the Council of Ministers, the Committee of Senior Trade Officials, the Secretariat and various technical committees.<sup>3</sup>

<sup>3</sup> See <https://www.tralac.org/blog/article/14238-the-institutions-of-the-african-continental-free-trade-area.html>

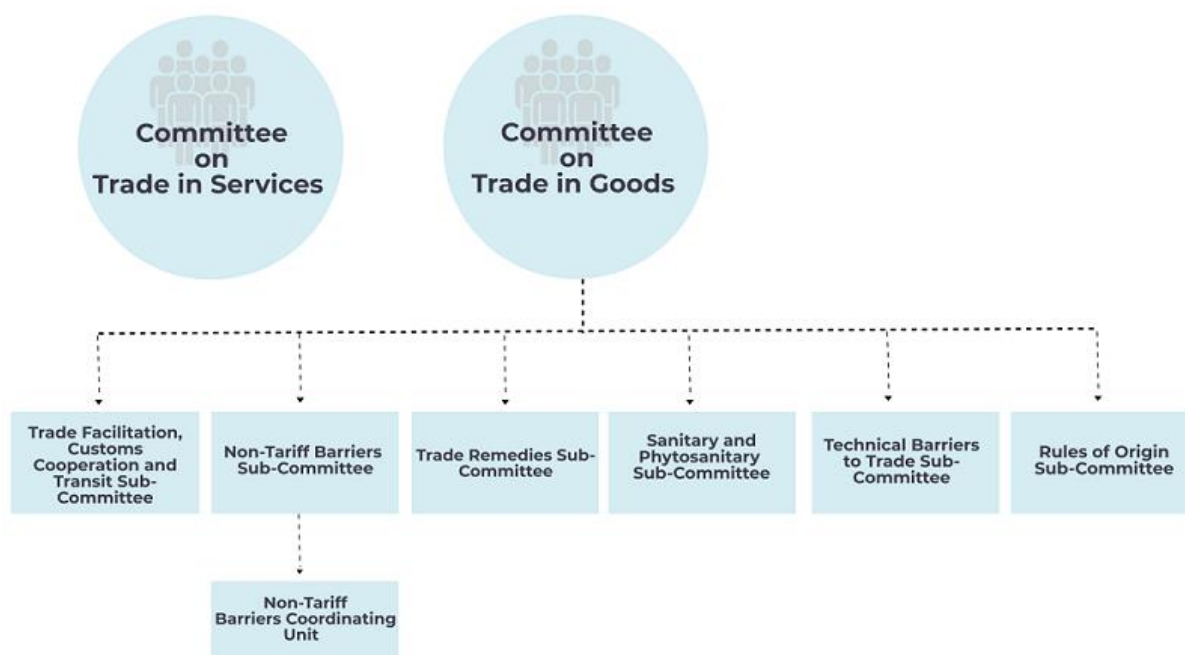
The Assembly of the AfCFTA is the AU Assembly consisting of all AU Heads of State and Government. It provides oversight and guidance on the AfCFTA. The Council of Ministers comprises Ministers for Trade of the State Parties. It will take decisions on all matters under the AfCFTA Agreement, and reports to the Assembly through the Executive Council of the AU. The AfCFTA Council of Minister is separate from the AU Ministers of Trade (AMOT).

The Committee of Senior Trade Officials comprises Permanent Secretaries or other officials designated by State Parties. It is responsible for the development of programmes and action plans for the implementation of the AfCFTA Agreement.

The Secretariat is the administrative organ to coordinate the implementation of the AfCFTA. It is expected to be functional by 31<sup>st</sup> March 2020. It will be based in Accra, Ghana.

The Protocols of the AfCFTA Agreement establish various technical committees to assist with the implementation of the Agreement. They include the Trade in Goods Committee and Trade in Services Committee.<sup>4</sup>

Figure 2: AfCFTA Committees



#### 4. When did the AfCFTA Agreement enter into force?

The AfCFTA Agreement entered into force on 30<sup>th</sup> May 2019 – 30 days after the deposit of the 22<sup>nd</sup> instrument of ratification, as specified in Article 23.-

Phase II Protocols on Investment, Competition Policy and Intellectual Property Rights (and any other

<sup>4</sup> Committees on Investment, Competition Policy and Intellectual Property Rights have been proposed.

instrument within the scope of the AfCFTA Agreement deemed necessary) shall enter into force 30 days after the deposit of their 22<sup>nd</sup> instrument of ratification.<sup>5</sup>

#### **5. When does the preferential trade under the AfCFTA arrangement commence?**

Preferential trade under the AfCFTA will commence when the outstanding phase I issues – tariff, rules of origin and services commitments – have been finalized. The intention is that preferential trade in goods and services under the AfCFTA instruments will commence on 1 July 2020. It remains to be seen whether this will be possible; tough complicated negotiations are still to be finalized.

#### **6. How will services negotiations work?**

Negotiations on schedules of specific commitments will proceed with all AU member states. However, implementation of the eventual schedules will be the purview of the AfCFTA State Parties. The 5 agreed priority services sectors are transport, communications, tourism, financial, and business services.

Services negotiations will be undertaken on a request-offer basis. Each State will make an initial offer to all other members. Other members may request improvements in the sectoral coverage of commitments or level of liberalisation – i.e. by the reduction or elimination of restrictions. State Parties may make requests to all other State Parties, to a single party or to a group of parties. Negotiations are expected to be reciprocal, and while members may negotiate bilaterally or under the auspices of a Regional Economic Community (REC), negotiations are to be transparent, so all negotiated outcomes must be transmitted to the Secretariat for dissemination among the members.<sup>6</sup>

#### **7. What will services commitments look like?**

According to the Guidelines and Modalities, the services scheduling will take a positive listing, GATS plus approach. Thus, each State Party lists each sector that they are committing under the AfCFTA. For each sector or sub-sector, State Parties list any derogations from market access for foreign service providers (Art. 19 of the Protocol) and national treatment (Art. 20 of the Protocol) – for each individual mode of supply. For example, the Financial Services sector may be listed, and under that, the sub-sector of banking and other financial services. This sub-sector is further divided into various sub subsectors. Against each mode – cross-border supply, consumption abroad, commercial presence and the presence of natural persons, the scheduling country will make a separate commitment for market access, national treatment and additional commitments.

Limitations on market access that may be listed include limitations on the number of suppliers, value of transactions or assets, number of people employed, number of operations or output as well as any

<sup>5</sup> See <https://www.tralac.org/blog/article/14052-the-afcfta-what-enters-into-force-now-and-what-does-it-mean.html>

<sup>6</sup> See <https://www.tralac.org/blog/article/14293-creating-a-single-african-market-on-trade-in-services-negotiating-the-schedules-of-specific-commitments-under-the-protocol-on-trade-in-services.html>

requirement for a specific type of legal entity, or a limit on the participation of foreign capital.

Listing a sector also requires making a commitment on national treatment – this means that foreign services and foreign service providers should be functionally treated, and subject to the same conditions of competition, as local services and services providers.

State Parties will also schedule horizontal commitments – limitations on market access and national treatment that apply across all services sectors committed in the schedule. In other trade agreements, members often have horizontal commitments on the movement of natural persons.

GATS-plus means that State Parties that are members of the WTO must make commitments building on the commitments already made under the General Agreement on Trade in Services ('GATS') – that is, they must offer more access in their AfCFTA schedule to AfCFTA member countries than they offer under the GATS to all WTO countries. For non-WTO members, the baseline is the current state of liberalisation and domestic regulation. In practice, this is likely to result in higher levels of liberalisation commitment from State Parties that are not members of the WTO, because many WTO members' services sectors are more open than is reflected in their GATS services commitments.<sup>7</sup>

## 8. Who are Member States and State Parties under the AfCFTA?

The AfCFTA Agreement refers to member States and State Parties. Member States refer to the member States of the AU. They are all participating in these negotiations. "State Parties" refers to the member States of the AU that have ratified or acceded to the AfCFTA Agreement and for which the AfCFTA Agreement is in force.

## 9. Who has access to dispute settlement under the AfCFTA?

Only State Parties have access to dispute settlement under the AfCFTA. Private parties (exporters, importers, producers etc.) do not, in their own right, have access to the AfCFTA dispute settlement. Private parties will only be protected if a State Party, able to show that its rights have been violated, would bring a claim. Parties to a dispute must first enter into consultations, with a view to finding an amicable resolution. They may at any time use good offices, conciliation, or mediation; which shall be confidential. Parties to a dispute may, in addition, resort to arbitration.<sup>8</sup>

## 10. What are the remedies available under the dispute settlement?

Article 23 of the Dispute Settlement Protocol provides that where the Panel or the Appellate Body concludes that a measure is inconsistent with the Agreement, it shall recommend that the State Party concerned bring the measure into conformity with the Agreement. They may also suggest ways in which the State Party concerned could implement the recommendations. Compensation and the suspension

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<sup>7</sup> Ibid

<sup>8</sup> See <https://www.tralac.org/blog/article/14150-dispute-settlement-in-the-african-continental-free-trade-area.html>

of concessions or other obligations are temporary measures available to the aggrieved Party in the event that the accepted recommendations and rulings of the Dispute Settlement Body are not implemented within a reasonable period of time.

### **11. What happens to the existing Regional Economic Communities (RECs) and other African regional trading arrangements?**

The RECs recognized by the AU are the AfCFTA means the Arab Maghreb Union (UMA), the Common Market for Eastern and Southern Africa (COMESA), the Community of Sahel-Saharan States (CEN-SAD), the East African Community (EAC), the Economic Community of Central African States (ECCAS), the Economic Community of West African States (ECOWAS), the Intergovernmental Authority on Development (IGAD), and the Southern African Development Community (SADC).

Article 19(2) of the AfCFTA Agreement contains an important provision: “State Parties that are members of other regional economic communities, regional trading arrangements and custom unions, which have attained among themselves higher levels of regional integration than under this Agreement, shall maintain such higher levels among themselves.” This means that customs unions such as the Southern African Customs Union (SACU) and those planned for in some of the RECS, as well as the Tripartite Free Trade Area (TFTA), once in force, shall also be maintained. Their members obviously consider them to be beneficial for their regional trade.<sup>9</sup>

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<sup>9</sup> See <https://www.tralac.org/blog/article/14051-what-happens-to-the-recs-once-the-afcfta-is-in-force.html>