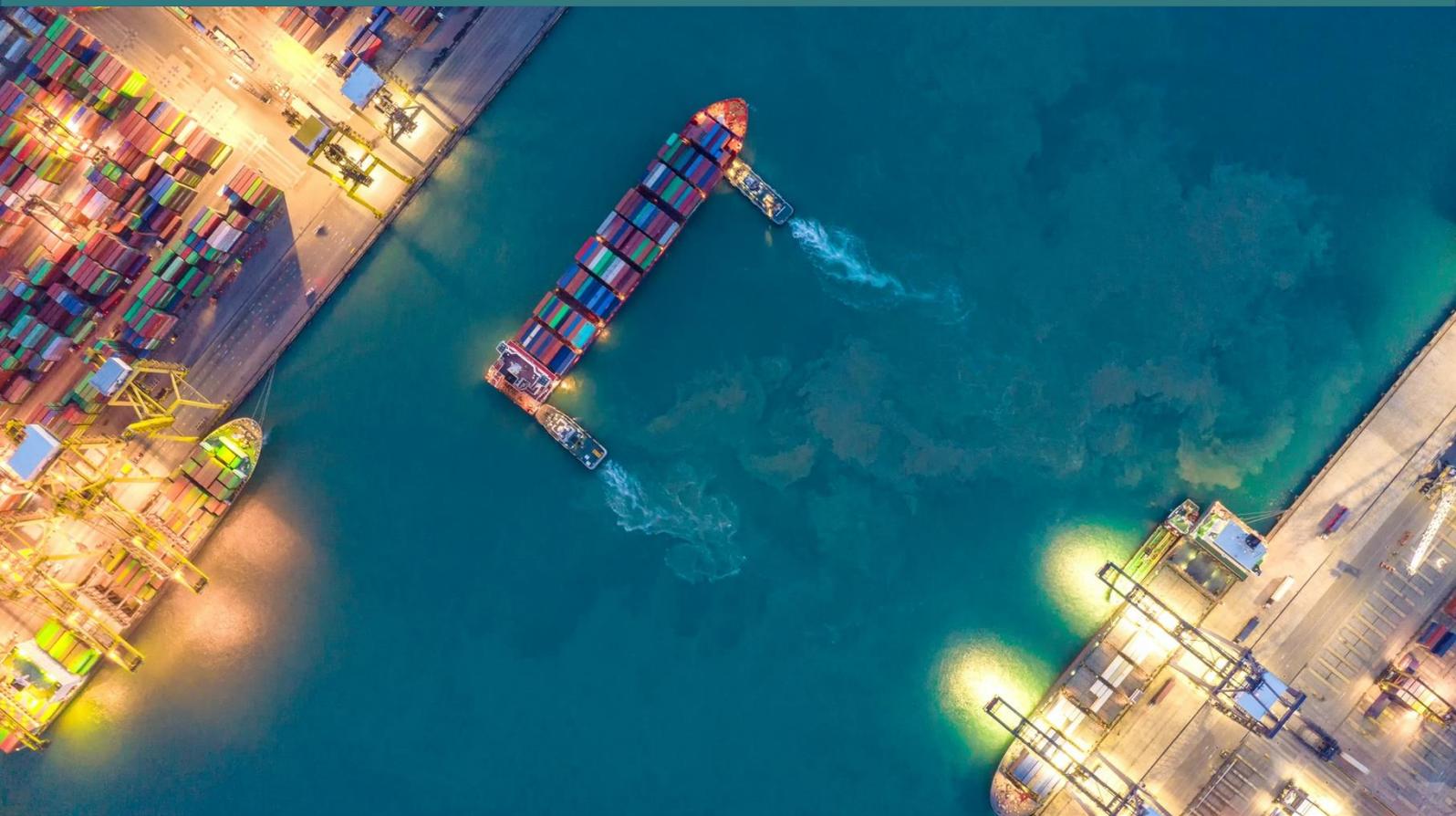


African Continental Free Trade Area (AfCFTA)

Frequently Asked Questions



African Continental Free Trade Area (AfCFTA) Frequently Asked Questions

1. What is the AfCFTA?

The African Continental Free Trade Area (AfCFTA)¹ is, in addition to being a free trade area, a flagship project of the African Union (AU) in terms of Agenda 2063. It offers a member-driven blueprint for attaining inclusive and sustainable development across the continent. It is anchored in an overarching Agreement, Protocols and additional Annexes and appendices. They constitute a single undertaking. The AU Summit adopted the [AfCFTA Agreement](#) in March 2018, in Kigali, Rwanda.

The **general** objectives of the AfCFTA, are, according to its own Agreement, to:

- » create a liberalised market for goods and services through successive rounds of negotiations
- » contribute to the movement of capital and natural persons and facilitate investments by building on the initiatives and developments in the State Parties and the Regional Economic Communities (RECs)
- » lay the foundation for a Continental Customs Union at a later stage; to promote and attain sustainable and inclusive socio-economic development, gender equality and structural transformation of the State Parties
- » enhance the competitiveness of the economies of State Parties
- » resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes.

¹ Visit tralac's AfCFTA Resources page at bit.ly/AfCFTAresources

The AfCFTA's **specific** objectives are to:

- » progressively eliminate tariffs and non-tariff barriers to trade in goods
- » progressively liberalise trade in services; cooperate on investment, intellectual property rights and competition policy
- » cooperate on all trade-related areas; cooperate on customs matters and the implementation of trade facilitation measures
- » establish a mechanism for the settlement of disputes
- » establish and maintain an institutional framework for the implementation and administration of the AfCFTA.

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

The AfCFTA Agreement refers to Member States and State Parties. The “Member States” are the Member States of the AU. The “[State Parties](#)” are the AU Member States that have ratified the AfCFTA Agreement or acceded to it, and for which the AfCFTA Agreement is in force. Only the State Parties will have rights and obligations under the AfCFTA Agreement. State Parties and non-State Parties are participating in the ongoing negotiations. Non-State Parties are Member States of the AU that have not ratified the AfCFTA.

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

Eight RECs are recognised by the AU. They are the Arab Maghreb Union (AMU), 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 states “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 the recognized RECs, as well as customs unions such as the Southern African Customs Union (SACU) and those planned for in some of the RECS, and the Tripartite Free Trade Area (TFTA), once in force, [shall be maintained](#). (See also Art 8(2) of the AfCFTA Protocol on Trade in Goods.)

4. What do the AfCFTA legal instruments cover?

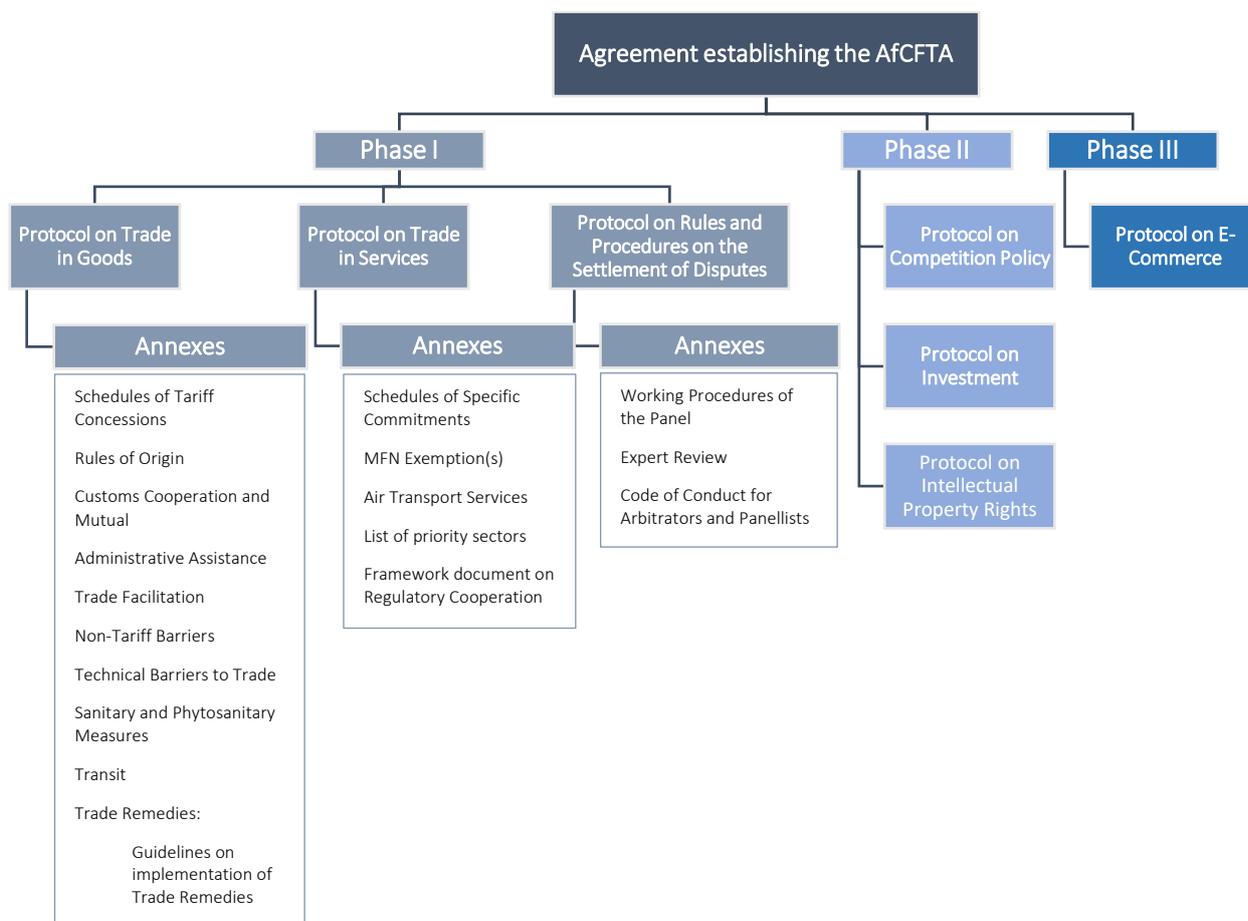
The AfCFTA Agreement is the founding agreement of the AfCFTA. It establishes the African Continental Free Trade Area and provides for Protocols on Trade in Goods, Trade in Services, Investment, Intellectual Property Rights, and Competition Policy.

The AfCFTA negotiations take place in phases. Phase I covers trade in goods and services as well as dispute settlement. Phase II covers intellectual property rights, investment, and competition policy. A Phase III has been added and will cover E-Commerce.

The AfCFTA Agreement, Protocol on Trade in Goods, Protocol on Trade in Services and Protocol on Rules and Procedures on the Settlement of Disputes (and their annexes and appendices) officially entered into force on 30 May 2019. However, the negotiations to finalise the rules of origin, schedules of tariff concessions, and schedules of specific commitments for the five priority services sectors (business services; communications; finance; tourism and transport) are ongoing. The deadline to finalise these negotiations is [June 2021](#).

Trade under AfCFTA rules can only happen once all the legal arrangements are in place, but the AU Summit decided in December 2020 to allow trade under the reciprocal offers already extended as part of the Phase I negotiations. (See Paragraph 7 below.) This has not happened, and at the 35th Ordinary Session of the Assembly of the AU (5-6 February 2022), Heads of State and Government decided that “commercially meaningful trade” should begin at a date to be determined (See Paragraph 8 below).

Figure 1: Architecture of the AfCFTA



5. What institutions are established by the AfCFTA?

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

- » The Assembly of the African Union comprises all AU Heads of State and Government. It provides oversight and strategic guidance on the AfCFTA.
- » The Council of Ministers comprises Ministers for Trade or other nominees from State Parties. It is separate from the African Union Ministers of Trade (AMOT) Committee under the AU. The Council must ensure the effective implementation and enforcement of the Agreement and must take all measures necessary for promoting the AfCFTA

objectives. The Council of Ministers shall report to the AU Assembly through the Executive Council of the AU.

- » The Committee of Senior Trade Officials consists of Permanent Secretaries or other officials designated by State Parties. It implements decisions of the Council of Ministers, is responsible for the development of programmes and action plans for the implementation of the AfCFTA Agreement, and must monitor the functioning of the AfCFTA.
- » The AfCFTA Secretariat is a permanent and functionally autonomous AfCFTA institution. It is responsible for several administrative and support functions to coordinate the implementation of the AfCFTA. It is based in Accra, Ghana. The Parliament of Ghana ratified the Agreement to host the AfCFTA Secretariat on 03 August 2020.
- » The AfCFTA Dispute Settlement Mechanism replicates, with the necessary adaptations, the WTO dispute settlement system. The principles and procedures appear in a dedicated Protocol.

The Protocols of the AfCFTA Agreement establish various technical committees to assist with the implementation of the Agreement. The committees comprise designated representatives from State Parties. The Committee on Trade in Goods and its sub-committees facilitates the operation of the Protocol on Trade in Goods and its annexes. The Committee on Trade in Services and its 5 sub-committees will facilitate the operation of the Protocol on Trade in Services.

Figure 2: Committees of the AfCFTA

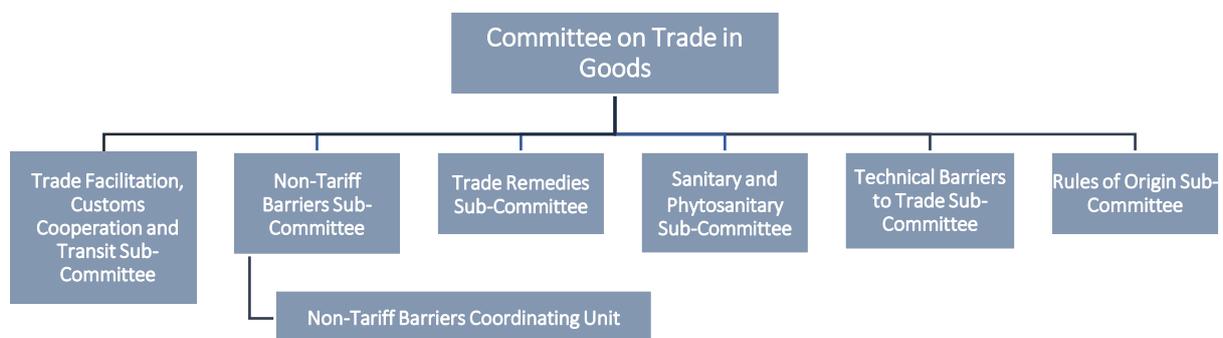


Figure 3: Committees on the AfCFTA – Trade in Services



6. When did the AfCFTA Agreement enter into force?

The AfCFTA Agreement [entered into force](#) on 30 May 2019 – 30 days after the deposit of the 22nd instrument of ratification, as specified in Article 23 of the AfCFTA Agreement. Protocols on Investment, Competition Policy, Intellectual Property Rights, and E-Commerce (and any other instrument within the scope of the AfCFTA Agreement deemed necessary) shall enter into force 30 days after the deposit of [their 22nd instrument of ratification](#).

7. When will preferential trade under the AfCFTA arrangement commence?

Preferential trade under the AfCFTA can, in principle, only begin once all the required legal instruments are in place. The AU Heads of States and Government did however, decide on 5 December 2020, at the 13th Extraordinary Session of the [Assembly of the Africa Union](#), to launch trade on 1 January 2021, despite the fact that negotiations on tariff schedules and Rules of Origin (RoO) are not yet finalised. The AU Heads of State and Government decided that trade in goods, for which RoO are finalised, can take place under the tariff offers that have been tabled, provided that the tariff offers comply with the [agreed modalities](#) for tariff negotiations, and that State Parties are “customs ready”. This means that the domestic processes including updating of the tariff book, gazetting changes to the customs legislation and ensuring that the necessary documentation requirements and processes (e.g. applications for rules of origin certificates) must be in place. This constitutes an “interim arrangement,” while negotiations on RoO and tariff concessions continue.

Despite this Decision by AU Heads of State and Government, trade under the AfCFTA did not begin in 2021. State Parties and non-State Parties that are participating in the negotiations continued to prepare offers of tariff concessions that are compatible with the agreed modalities.

8. What is the status of the AfCFTA trade in goods negotiations?

Preferential tariff concessions and rules of origin are the minimum requirements for a free trade area. Tariff and rules of origin are closely linked because the preferential rates of duty (tariffs) only apply to products that meet the preferential rules of origin. The trade in goods agenda includes other important matters such as standards (sanitary and phyto-sanitary standards, and technical barriers to trade), customs and border management, trade facilitation and transit arrangements. The Annexes that cover these issues have been concluded. As noted, tariff and RoO negotiations are not yet complete. Preferential rules of origin play a “gateway” role in a free trade area; only if the rules of origin are complied with, will goods enter a market under a preferential rate of duty.

The modalities for the tariff negotiations specify the level of ambition that has been agreed, and provide details on how the negotiations will be conducted. Tariff offers are tabled as an opening bid in the negotiations, and then negotiation process begins with requests and counter offers until agreement is reached. The aim is to liberalise 90% of tariff **lines** (not trade) over 5 years; least developed countries (LDCs) will implement their agreed tariff reductions over 10 years. The remaining 10% of tariff lines is divided into two categories – 7% of the tariff lines may be designated **sensitive products**, and liberalised over 10 years (LDCs have 13 years). The remaining 3% of the tariff lines (not exceeding 10% of the value of trade) may be **excluded** from liberalisation. In 2019 criteria for designating products as “sensitive” or “excluded” were agreed. Matters of food security, national security, fiscal revenue, livelihood, and industrialisation may provide reasons for products to be designated “sensitive” or “excluded.” The fact that all the customs unions include at least one LDC, has raised the issue of the time frame for the tariff liberalisation offer. It is expected that all will follow the LDC liberalisation time frame; for ease of management of the respective common external tariffs.

Where do we stand? The Decision of the [35th Ordinary Session of the AU Assembly of Heads of State and Government, 5-6 February 2022](#), is the response of the Assembly to the Report of the 8th Meeting of the AfCFTA Council of Ministers Responsible for Trade which was held in Accra, Ghana on 28-29 January 2022. The AU Assembly must adopt these decisions in order for them to become binding. An update on the status of the negotiations with new deadlines for completion of the negotiations and the start of “commercially meaningful” trade is included, with confirmation that RoO for 87.7% of tariff lines have been agreed. The outstanding RoO include some clothing and textile products, sugar, and automotive products. While the majority of the State Parties have tabled tariff offers; 29 “technically verified” offers – in line with the agreed modalities – have been submitted. “Technically verified” offers have been submitted by:

- CEMAC: Cameroon, Chad, the Central African Republic, Equatorial Guinea, Gabon, and the Republic of Congo.
- ECOWAS plus Mauritania: Benin, Burkina Faso, Cabo Verde, Côte d’Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo + Mauritania.
- Democratic Republic of Congo, Egypt, Madagascar, Malawi, Mauritius, Seychelles and Zambia.

The Assembly endorsed the Ministerial Directive (from the Council of Ministers Meeting, 28-29 January 2022) on the start of trade; directing that trade under Provisional Schedules of Tariff Concessions submitted by the 29 Member States should start on a date to be determined, [“pending the conclusion of all outstanding issues on the Schedules of Tariff Concession.”](#)

The Assembly further decided that the annual tariff cuts should be based on the date of the launch of trade on 1 January 2021 and to this end directed that the Council of Ministers, the AfCFTA Secretariat, State Parties and Customs Authorities to develop the AfCFTA Tariff book to reflect the annual tariff reductions that State Parties will apply. Tariff schedules must specify the annual tariff cuts to achieve zero rates of duty on 90% of tariff lines within the time frames agreed in the modalities and subject to reciprocity. The AfCFTA Secretariat is directed to facilitate the negotiations of the remaining 10% of tariff lines (7% designated sensitive products

and the remaining 3% excluded products), so that the Council of Ministers can submit the final schedule of tariff concessions.

The Assembly directed the Council of Ministers and the AfCFTA Secretariat to facilitate the publication of the agreed RoO, pending the conclusion of the negotiations on outstanding issues. The Secretariat is also to assist State Parties to migrate to HS 2022 by transposing their tariff schedules and adapting the RoO to HS 2022 nomenclature.

9. What is the status of AfCFTA services negotiations?

At the July 2017 Summit, the Assembly of the African Union adopted modalities for [trade in services negotiations](#). A Services Protocol was signed as part of the consolidated text of the Agreement Establishing the AfCFTA at the March 2018 Kigali Summit. The Services Protocol entered into force on 30 May 2019. Under Article 22 of this Protocol, each State Party must provide a schedule of specific commitments. At the July 2018 Summit, the Assembly adopted five priority services sectors for initial commitments. The priority services sectors are transport, communications, tourism, financial, and business services.

At the February 2019 Summit, the Assembly adopted the Guidelines for Development of Specific Commitments and Regulatory Cooperation Framework for Trade in Services and the new Roadmap for Finalization of the AfCFTA negotiations. The Assembly has set June 2022 as the deadline to finalise the development of schedules of specific commitments in the five priority sectors, including legal scrubbing.

10. How are the AfCFTA services negotiations taking place?

Services negotiations are 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 a group of parties. Negotiations are expected to be reciprocal, and while members may negotiate bilaterally or under the auspices of a REC, negotiations are to be transparent, so all negotiated outcomes must be transmitted to the AfCFTA Secretariat for dissemination among the members.

Services offers have been submitted by 46 State and non-State Parties: Angola, Algeria, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central Africa Republic, Cape Verde, Chad, Comoros, Congo, Cote d'Ivoire, Democratic Republic of Congo, Egypt, Eswatini, Equatorial Guinea, Gabon, The Gambia, Ghana, Guinea, Guinea Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Namibia, Niger, Nigeria, Rwanda, São Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, Sudan, Tanzania, Togo, Uganda, Zambia and Zimbabwe. The AfCFTA Secretariat is engaged in verification of the offers to ensure that they comply with the agreed modalities.

State Parties that are members of the WTO must build on their GATS commitments. State Parties 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.

11. How are services commitments structured?

According to [the Guidelines](#) and Modalities, the services scheduling takes a positive listing, General Agreement on Trade in Services (GATS)-plus approach. This means 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 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 divided into further subsectors. Against each mode of supply – 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. This can range from 'unbound' to 'none'.

- » For market access, 'unbound' means not committed and foreign suppliers or services can be excluded from the market, while 'none' means the sector is committed and there are no further restrictions for foreign suppliers.

- » For national treatment, ‘unbound’ means there is no commitment to treat the supplier or service the same as a national supplier or service, while ‘none’ means the sector is committed and there are no further restrictions for foreign suppliers.
- » If only the sector or subsector is listed, the commitments and listed limitations apply to all subsectors or sub subsectors.

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 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 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.

12. What will be added by the AfCFTA’s Phase II and III legal instruments?

Article 4 of the AfCFTA Agreement says the State Parties shall “cooperate on investment, intellectual property rights and competition policy”. The aim behind the AfCFTA Phase II Protocols appears to be limited to cooperation.

One of the guiding principles of the AfCFTA is the preservation of the *acquis* (Art. 5 of the AfCFTA Agreement). This principle means *building on what exists*. In the Phase II and III context, this means building on what has been achieved or exists in the RECs. AMU, COMESA, ECOWAS, and SADC have adopted regional investment agreements. AU member states have adopted a non-binding Pan-African Investment Code to guide AU member states when negotiating investment treaties. COMESA, EAC, SADC, ECOWAS, and ECCAS have adopted regional competition regimes. On IPRs, there are two African intellectual property organisations, namely Organisation Africaine de la Propriété Intellectuelle (OAPI) and African Regional

Intellectual Property Organisation (ARIPO). The AU and NEPAD efforts to establish a Pan-African Intellectual Property Organisation have not materialised. There is not yet an African regional (REC) regime on digital trade.

The outcomes of the negotiations of Phase II and III issues shall constitute Protocols on Intellectual Property Rights, Investment, Competition Policy, Digital Trade and Women and Youth in Trade, and shall form part of the single undertaking, subject to entry into force (Art. 8 of the AfCFTA Agreement). These Protocols will have to be adopted by the AU Assembly and be ratified according to the constitutional rules and procedures of Member States. The Protocols will enter into force 30 days after the deposit of the 22nd instrument of ratification. For acceding Member States, the Protocols shall enter into force on the date of the deposit of the instrument of accession. (Art 23 AfCFTA Agreement.)

Article 23 of the AfCFTA Agreement mentions the possibility of “*any instrument within the scope of the Agreement deemed necessary*” which may be added. Such other instruments will have to be negotiated, adopted, and be ratified.

13. Can AfCFTA State Parties negotiate free trade agreements with third parties?

A third party is defined as a State that is not a party to the AfCFTA Agreement (Art. 1 of the AfCFTA Agreement). Article 4 of the AfCFTA Protocol on Trade in Goods says that

“[n]othing in this Protocol shall prevent a State Party from concluding or maintaining preferential trade arrangements with Third Parties, provided that such trade arrangements do not impede or frustrate the objectives of this Protocol, and that any advantage, concession or privilege granted to a Third Party under such arrangements is extended to other State Parties on a reciprocal basis.”

14. How will the AfCFTA dispute settlement system work and who could bring claims?

The AfCFTA has a dispute settlement system modelled on the Dispute Settlement Understanding of the WTO. It consists of Panels and an Appellate body. Only [State Parties](#) have access to dispute settlement under the AfCFTA. Private parties (exporters, importers, service providers etc) do not, in their own right, have access to the AfCFTA dispute settlement system.

Private parties will only be protected if a State Party, able to show that its rights have been violated, brings a claim.

Parties to a dispute must first enter into consultations, to find an amicable resolution. They may at any time use good offices, conciliation, or mediation, which shall be confidential. Parties to a dispute may also resort to arbitration.

When a Panel or the Appellate Body concludes that a measure is inconsistent with the AfCFTA legal instruments, it shall recommend that the State Party concerned bring the measure into conformity with its obligations. The Panel or the Appellate Body may also suggest ways in which the State Party concerned could implement the recommendations. (Art 23 AfCFTA Protocol on Dispute Settlement.)

15. Are there any legal remedies for private parties?

Private parties are not in the same position as State Parties, but their actions are vital for the success of the AfCFTA. They may benefit from a different category of “trade remedies” that may be taken against unfair trade practices such as the dumping of goods or subsidized imports. They may also be (temporarily) protected when there is an upsurge in the importation of goods as a result of trade liberalisation occurring under the AfCFTA. These remedies involve a different procedure in which affected private parties may request national investigating authorities to undertake the prescribed investigations and impose anti-dumping duties, countervailing measures, or safeguard measures. There is a dedicated AfCFTA Annex on Trade Remedies and Safeguards.

Private parties such as service providers and private investors will enjoy certain due process rights under the law of host states. Once the Investment Protocol is adopted it will be known how the rights of private investors will be protected and where they could file claims.