



A Guide to the African Continental Free Trade Agreement



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REPUBLIC OF SOUTH AFRICA

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Background

The AfCFTA is anchored on the development integration approach, which places emphasis on market integration, infrastructure development, and industrial development; in order to boost intra-Africa trade and support the continental development imperatives of sustainable economic growth. In support of these objectives, the AfCFTA Agreement covers both goods and services under Phase I and will include Investment, Intellectual Property and Competition under Phase II of the negotiations. E-Commerce will be negotiated under Phase III following the conclusion of Phase II negotiations.

The AfCFTA, as one of the flagship projects of the African Union's Agenda 2063, aims to build an integrated market in Africa that will see a market of over 1 billion people with a combined GDP of approximately US\$3.3 trillion. It also aims to boost intra-Africa trade that currently stands at approximately 16% with Africa's share of world trade estimated to be at only 3%.

The AfCFTA, which builds on the integration already attained within the respective Regional Economic Communities that make up the African Union, is an apt platform for industrialization, economic development and sustainable economic growth. Africa is the second fastest growing region in the world after Asia. It has enormous reserves of natural resources, 60% of unused arable agricultural land, a young and growing population and a growing middle class, coupled with vast improvements in political and economic governance.

However, Africa's vulnerabilities and limited participation in global trade is indicative of its traditional reliance on the export of raw commodities and the import of value-added products. The recent global financial and economic crises have demonstrated the vulnerability of many African economies to external shocks, including fluctuating commodity prices.

The continent's full potential will remain unfulfilled unless we address the challenges of poor infrastructure, small and fragmented markets, under-developed production structures and inadequate economic diversification.

The ACFTA Timeline

January 2012

The AU Assembly of Heads of State and Government endorses the Boosting Intra Africa Trade (BIAT) Action Plan and establishment of the AfCFTA (with an indicative date of 2017 for its establishment).

May 2013

The AU Assembly adopts the AU Agenda 2063, with the AfCFTA identified as one of its key flagship programmes.

June 2015

The AU Assembly launches the AfCFTA negotiations.

March 2018

During an Extra-Ordinary Summit launched on 21 March 2018 in Kigali, Rwanda, the AU Heads of State adopted the legal instruments establishing the AfCFTA.

July 2019

An Extra-Ordinary Summit held in Niamey, Niger, in July 2019 launches the operational phase of the AfCFTA.

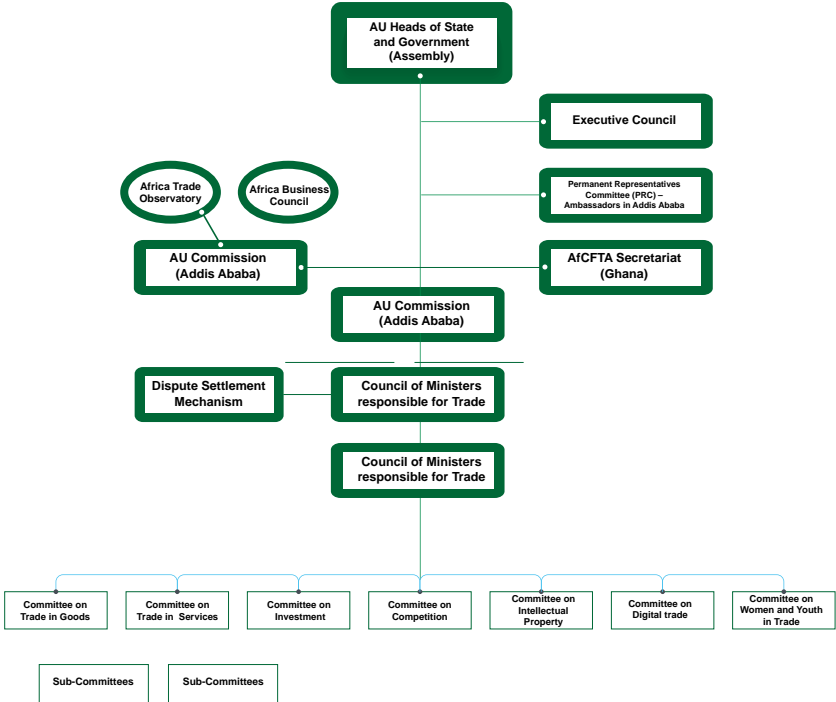
February 2020

H.E. Mr Wamkele Mene from South Africa elected as the first Secretary-General of the AfCFTA at the 33rd Ordinary Session of the Assembly of African Union in Addis Ababa, Ethiopia

January 2021

Preferential trade under the AfCFTA was launched on 1 January 2021 in accordance with the decision of the Extra-ordinary AfCFTA Summit of the African Union Heads of State and Government held on 5 December 2020

Organisational Architecture of the AfCFTA



Benefits of the AfCFTA

Larger Regional Market

The AfCFTA offers the opportunity to improve economies of scale and efficiency, thereby improving Africa's competitiveness both in its own markets and globally. The AfCFTA is an important initiative in accelerating industrialisation and economic development across the African continent.

Currently, South Africa's primary export destination in Africa is the southern and eastern regions. The AfCFTA, presents the country with the opportunity to expand into new markets in West and North Africa, and provides alternative markets for the export of value-added goods and services.

Boosting Intra-African Trade

The AfCFTA can boost intra-African trade by providing participating economies and traders with access to more open continental markets underpinned by enhanced legal certainty, predictability and due process in the resolution of trade disputes. The AfCFTA provides for the progressive elimination of tariff barriers, rules to manage non-tariff barriers including technical barriers to trade and sanitary and phyto-sanitary measures, and cooperation on trade facilitation and customs matters. It facilitates intra-Africa investment and increases the continent's prospects of stimulating industrialisation, employment, income generation and poverty reduction.

A Single Set of Rules for Trade and Investment

The agreement creates a single set of rules for trade and investment among African countries, and provides legal certainty for traders and investors through the harmonisation of trade regimes.

Ease of Movement of Goods and Services

The AfCFTA is expected to facilitate the movement of goods and services among participating African countries through better customs cooperation. The seamless movement of goods across borders should be of benefit to South African exporters, since the country is one of the largest exporters on the continent.

Conducive Investment Climate

The AfCFTA is anticipated to create a conducive climate for investment in Africa, signalling that the continent is open for business. The agreement could also contribute to improved economic governance as it will establish a single rule book for trade and investment.

The Legal Architecture of the ACFTA

The scope of the AfCFTA negotiations include trade in goods and services under Phase I of negotiations, and investment, intellectual property and competition policy under Phase II. E-Commerce will be negotiated under Phase III.

The AfCFTA consists of the following legal instruments:

- **Agreement establishing the AfCFTA**

This is the overall Framework Agreement to which the Protocols, Annexes and Appendices form an integral part. It stipulates the objectives, principles and scope of the Agreement. It also outlines the Institutional Framework for Implementation of the AfCFTA, Continental Preferences, Dispute Settlement, as well as the provisions for Entry into Force of the Agreement. The Protocols and Annexes are as follows:

- **Protocol on Trade in Goods and Adopted Modalities for Tariff Liberalisation**

The protocol includes provisions on non-discrimination (national treatment and most favoured nation), liberalisation of trade (import duties and schedules of tariff concessions) and general elimination of quantitative restrictions. It also gives effect to the following annexes:

- **Annex 1 on the Schedule of Tariff Concessions and Modalities for Tariff Liberalisation**

According to this annexure, state parties shall develop schedules of tariff concessions in accordance with the approved modalities for tariff liberalisation.

The adopted AfCFTA tariff reduction modalities require that:

- participating AU members or customs unions reduce tariffs to zero over five years in equal instalments (20% per annum) on 90% of their tariff lines;
- an additional 7% of tariff lines should be liberalised over 10 years, and 3% of tariff line;

- negotiations are amongst AU Members without preferential trading arrangements amongst themselves and thus preserve existing preferential trading arrangements;
 - tariff phase-down will be undertaken in equal installments (e.g. for South Africa, 20% cut per year over a five-year period on the 90%; 7% sensitive products will be subject to a longer period of liberalisation for least developed countries [LDCs], i.e. 13 years while non-LDCs = 10 years);
 - a transitional period of five years be provided for the commencement of liberalisation of sensitive products; and
 - the exclusions list be subject to review after five years.
- **Annex 2 on Rules of Origin**, which will include an appendix of the type of rules to be applied. The purpose of this annex is to implement provisions of the protocol on trade in goods concerning rules of origin and to ensure that there are transparent, clear and predictable criteria for determining eligibility for preferential treatment in the AfCFTA. The annex also articulates the following objectives:
 - Deepening market integration at regional and continental levels
 - Boosting intra-Africa trade
 - Promoting regional and continental value chains
 - Fostering economic transformation of the continent through industrialisation
 - **Annex 3 on Customs Cooperation and Mutual Assistance**

The annex indicates that the state parties, through their customs authorities and in accordance with the provisions set out, shall afford each other cooperation in all areas of customs administration. The objective is to improve the regulation of trade flows and enforcement of applicable laws within state parties, with mutual administrative assistance within the scope of this annex to ensure that customs laws are observed in their territories.

- **Annex 4 on Trade Facilitation**

This annex aims to simplify and harmonise international trade procedures and logistics to expedite the processes of importation, exportation and transit. The objective is to expedite the movement, clearance and release of goods, including those in transit across borders within state parties.

- **Annex 5 on Non-Tariff Barriers**

The objective of this annex is to implement the provisions of the protocol on trade in goods concerning the elimination of Non-Tariff Barriers. Without prejudice to the rights and obligations under the World Trade Organisation (WTO) Agreements, this annex provides a mechanism for the identification, categorisation and progressive elimination of NTBs within the AfCFTA.

- **Annex 6 on Technical Barriers to Trade**

The purpose of this annex is to implement the provisions of the protocol on trade in goods concerning technical barriers to trade. This annex shall apply to standards, technical regulations, conformity assessment procedures, accreditation and metrology in the state parties.

- **Annex 7 on Sanitary and Phyto-sanitary Measures**

The purpose of this annex is to implement the provisions of the Protocol on Trade in goods concerning sanitary and phyto-sanitary measures. This annex shall apply to such measures that directly or indirectly affect trade between the state parties.

- **Annex 8 on Transit**

This annex shall apply to any transitor, mail, means of transport or any shipment of bonded goods in transit between two points either in two different state parties or between a state party and a third party.

- **Annex 9 on Trade Remedies**

State parties may with respect to goods traded under the provisions of this annex, apply anti-dumping, countervailing and safeguard measures, as provided for in Articles 17-19 of the Protocol on Trade in goods, this annex and the AfCFTA Guidelines with the relevant WTO Agreements.

- **Protocol on Trade in Services and Adopted Modalities**

This protocol includes provisions on general obligations and disciplines as well as progressive liberalisation. In terms of the trade-in-services modalities, participating AU members are expected to progressively eliminate restrictive measures that affect trade in services through the reduction and removal of market access and national treatment barriers across the four modes of supply and the development of regulatory cooperation frameworks and schedules of commitments for services. The Ministers of Trade have agreed that the following sectors be prioritised in the first phase or round of negotiations:

- Transport
- Communication
- Financial
- Tourism
- Business services

The adopted modalities for trade in services articulate the following:

- Progressive elimination of restrictive measures that affect trade in services
- Positive list with commitments on the basis of request and offer
- Commitments are most favoured nation (MFN), national treatment and market access on four modes of supply, with exclusions as needed
- Development of regulatory cooperation frameworks and schedules of commitments for services
- Priority sectors out of 12 sectors covered in the 1st round of negotiations (communications, transport, financial, tourism and business services)



- No a priori exclusion of any service sector or mode of supply of services.
- **Protocol on Rules and Procedures for the Settlement of Disputes**

This protocol establishes a dispute settlement mechanism that is aligned to the WTO Dispute Settlement Body. It includes the following annexes:

- Schedule and Working Procedures of the Panel
- Expert Review
- Code of Conduct for Arbitrators and Panellists

Phase II and III AfCFTA Negotiations Legal Instruments

The protocols on investment, intellectual property and competition policy will be negotiated as part of

the Phase II work programme. Furthermore, Phase III should cover e-commerce.

Progress

Notable progress has been achieved in the negotiations on the AfCFTA. The AU Summit in March 2018 adopted the agreement establishing the AfCFTA and protocols on trade in goods and services, and rules for the settlement of disputes. Furthermore, modalities for tariff liberalisation and trade in services, and the rules of origin of products where consensus has been reached have been adopted.

The AfCFTA comprises 55 African countries and constitutes the largest free trade area globally. All AU Member States (with the exclusion of Eritrea, who had not yet signed the agreement by June 2020), have signed the agreement. South Africa signed on 1 July 2018 on the margins of the 31st Ordinary Session of AU Assembly of Heads of State and Governments, and deposited its instrument of ratification during the 32nd Ordinary Session of the AU Heads of State and Governments on 10 February 2019. Entry into force requires 22 member states to deposit instruments of ratification in accordance with Article 23 of the agreement establishing the AfCFTA. The required threshold was reached on 29 April 2019. As of January 2021, 35 countries have ratified the Agreement.

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