

South Africa's Trade and Regional Integration Agenda & Agreements

Workshop for Portfolio Committee on Trade and Industry
South African Parliament
18 September 2019

Facilitators: Trudi Hartzenberg & Gerhard Erasmus



Overview

- Why and how do Nations trade?
 - Trade in the 21st Century
 - Trade Policy Instruments
 - Multilateral Trade Governance
 - Regional Trade Governance & Integration
 - Current Trade Negotiations Overview
 - Domestic Trade Governance
-
- What happens after Brexit and AGOA?

Why and How do Nations Trade?

- Trade and commerce predate the Nation State
- Trade has welfare benefits: We cannot prosper in isolation
- Integration into global economy & part of foreign policy
- Comparative advantage, specialization, global supply chains
- World consist of sovereign States --- jurisdiction over own territory
- Trade therefore requires Int. legal instruments (Treaties)
- Must be negotiated, signed, ratified, enter into force & be implemented
- Negotiations are about securing reciprocal market access - with certainty and predictability. (Offensive & defensive trade interests)
- Trade Agreements must also protect legitimate national needs (e.g. health, environment, remedies etc)
- Treaties not directly applicable – Parliamentary approval & domestic implementation

Why & How do Nations Trade?...cont'd

- States (not Governments) are the Parties to Treaties....
- But private sector the main traders
- Trade, Investment & Commerce: Essentially re private sector
- What about private needs & rights?
- Governments: Provide enabling environment & certainty
- Trade is not an end in itself: Development, industrialization
- This requires a complete policy cycle & proper regulation
- Which goes beyond national jurisdiction
- What happens at borders? Who *polices* borders? Why?
- What is a tariff? What is a tariff book?
- What are non-tariff barriers & Trade Facilitation?
- How is trade in services regulated?
- What happens when a State belongs to several trade agreements/regional arrangements?

Trade in the 21st Century

- Rules-based Int. trade under the WTO (since 1995)
- Trade in goods now linked to global & regional trade (including trade in intermediates such as South Africa's participation in the global automotive value chain)
- Trade in services (including e-commerce (digital trade), South Africa's services suppliers in the rest of Africa)
- Trade facilitation & non-tariff barriers particularly important
- Trade policy instruments & trade governance more important: Tariffs and non-tariff barriers, quantitative restrictions, trade remedies & safeguards, standards (sanitary and phyto-sanitary measures, technical barriers to trade)
- Trade in services: Regulators & regulations impacting on different modes of services supply

Trade Policy Instruments

Trade in goods – tariffs and non-tariff barriers, quantitative restrictions, trade remedies and safeguards, standards (sanitary and phyto-sanitary measures, technical barriers to trade)....

Trade in services: regulations impacting different modes of services supply e.g. number of licences that the communications regulator can issue will limit market access (as well as the number of domestic firms that can supply e.g. mobile services)

Who makes Trade Policy and How?

What is a successful trade policy cycle? What/who is relevant? How is trade policy embedded in the National Development Plan?

Note, trade policy linkages with.....

- Industrial policy
- Fiscal policy
- Services sector policies
- Investment
- Competition
- Education, Labour



How do we ensure that competitiveness issues and the Impact of new Technologies are addressed in trade policy?

Multilateral Trade Governance

- Post World War II: GATT, IMF and World Bank created. To do what? How?
- GATT functioned from 1947 to 1994 -- regulated trade in goods only
- Market access – non-discrimination – concessions – reciprocity – Rounds
- WTO established after Uruguay Round (1 Jan. 1995)
- Brought rules-based trade via GATT, GATS, TRIPS, Dispute Settlement Understanding
- Contains a single undertaking & compulsory dispute settlement
- Member driven. Secretariat not a policeman
- Further liberalization through Rounds (Doha Round not concluded)
- Dispute Settlement Understanding: Panels, Appellate Body & DSB
- Reversed consensus for dispute rulings
- Exceptions allowed but only as provided (e.g. re Anti-dumping)
- WTO faces a crisis. (US - China trade war) What can/should be done?

Domestic Trade Governance

- Trade Agreements applied on inter-State & intra-State levels
- For Trade in Goods disciplines there must be national Laws and State Organs (Customs, permits, standards bodies etc.)
- Tariff = important instrument of Industrialization in RSA
- Tariff admin, rebates, tariff adjustments, trade remedies via CET of SACU. ITAC acts on behalf of SACU
- Administrative Justice requirements & Transparency
- For trade in services/service providers: Regulators & Regulations (Banking, transport, communication, tourism etc)
- Investment: Attracting, promoting & protecting Investments and Investors. BITs re-invented
- For Trade Remedies: Admin Law and WTO Trade Remedies (Anti-dumping, ITAC) Poultry dispute with EU under EPA
- Trade administration not to be divorced from trade policies & Int Obligations. (Note Immigration)

Regional trade agreements, Economic Partnership Agreements....

- Free Trade Areas (reduce tariffs, need rules of origin, no CET) Members can **independently** conclude trade agreements with other trading partners
- Customs Union (common customs territory & CET) Members cannot, **on their own**, enter into trade agreements with other partners
- Common market (liberalise goods, services, capital & labour)
- New generation Partnership Agreements - Economic Partnership Agreements, Where do they fit in?
- What is the EU and what makes it unique?

Regional Trade Governance & Integration

WTO allows FTAs & CUs – but under certain conditions

What about GSP (Generalised System of Preferences), EBA (Everything but Arms) and AGOA (Africa Growth and Opportunity Act)? These (non-reciprocal) require a waiver in the WTO

Why does regional integration make sense for Africa?

- Access to larger markets, supply chains, global integration (66% of intra African trade in SADC region)
- Political objectives (Abuja Treaty, RECs, TFTA , AfCFTA)
- Promotes compliance, monitoring etc with effective institutions

Problems of overlapping membership

- Separate jurisdictions mean duplication + costs...
- Fragmentation versus common policies & standards

Regional Trade Governance & Integration ...cont'd

- African regional Integration makes sense
- Also driven by solidarity concerns – Abuja Treaty
- TFTA launched in 2015 – awaiting 14 ratifications
- AfCFTA launched in 2018 – in force from 30.5.2019
- But trade only possible in 2020 (perhaps)
- AU recognizes 8 RECs as building blocks of AfCFTA
- Art 19 AfCFTA Agreement: RECs shall continue
- SADC Tribunal abolished in 2011 after Zimbabwe ruling
- RSA Const. Court ordered withdrawal of President's vote
- Private party litigation in EAC, COMESA & ECOWAS
- African governments never litigate over trade disputes

Tripartite Free Trade Area (TFTA)

TFTA was launched in June 2015, but negotiations are still ongoing



- i) Tariffs (SACU – EAC: tariff negotiations completed in July 2019; SACU – Egypt – no progress in last few years)
- ii) Rules of origin – ongoing

Note: Existing RECs continue to exist and trade according to their trade regimes (acquis)

14 ratifications are needed for entry into force. 5 Member States have ratified (South Africa, Egypt, Uganda, Rwanda, Kenya)

Work programmes on:

- i) Industrial development
- ii) Infrastructure
- iii) Trade facilitation

Tripartite Transport & Transit Facilitation Programme (TTTFP)



Expected results are:

Result 1: Tripartite Vehicle Load Management Strategy Implemented

Result 2: Harmonised Tripartite vehicle regulations and standards implemented

Result 3: Preconditions for an operational EA-SA transport registers and information platform and system implemented

Result 4: Efficiency of regional transport corridors improved

Link to WTO Trade Facilitation Agreement commitments?

Barriers to intra-Africa trade: Border post congestion - Lusaka Times 3 December 2018



File: Trucks waiting to be cleared at Kasumbalesa border

Towards a single African market

A stylized map of the African continent is the central focus, filled with various vibrant, traditional African geometric patterns. The patterns include repeating star shapes in yellow and purple, circular motifs in pink and purple, and diamond shapes in purple and teal. The map is divided into several regions, each featuring a different pattern. In the bottom left corner, there is a small, faint line drawing of a tree.

AfCFTA

Entry into force:
30 May 2019

Find out more:



Continental Free Trade Area (CFTA)

55 Member States of the African Union



Key objective: boost intra-Africa trade

Focus: industrial development

Regional economic communities will continue to exist

Agenda - Phase 1

- trade in goods (tariffs, rules of origin – still being negotiated)
- trade in services (

Agenda - Phase 2

- intellectual property
- investment
- competition policy

CFTA will be launched in December 2017

(Framework Agreement, negotiations will continue)

African Continental Free Trade Area

- What is the African Continental Free Trade Agreement (AfCFTA)?
- Boosting intra-Africa trade – AfCFTA as a flagship African Union project *AND* a free trade area
- Extra-ordinary Summit 21 March 2018 – AfCFTA Agreement presented for signature -
- What has been achieved?
- Important question: ***When can we start trading under the AfCFTA?***

Reality Check: i) trade and tariffs vs non-tariff barriers

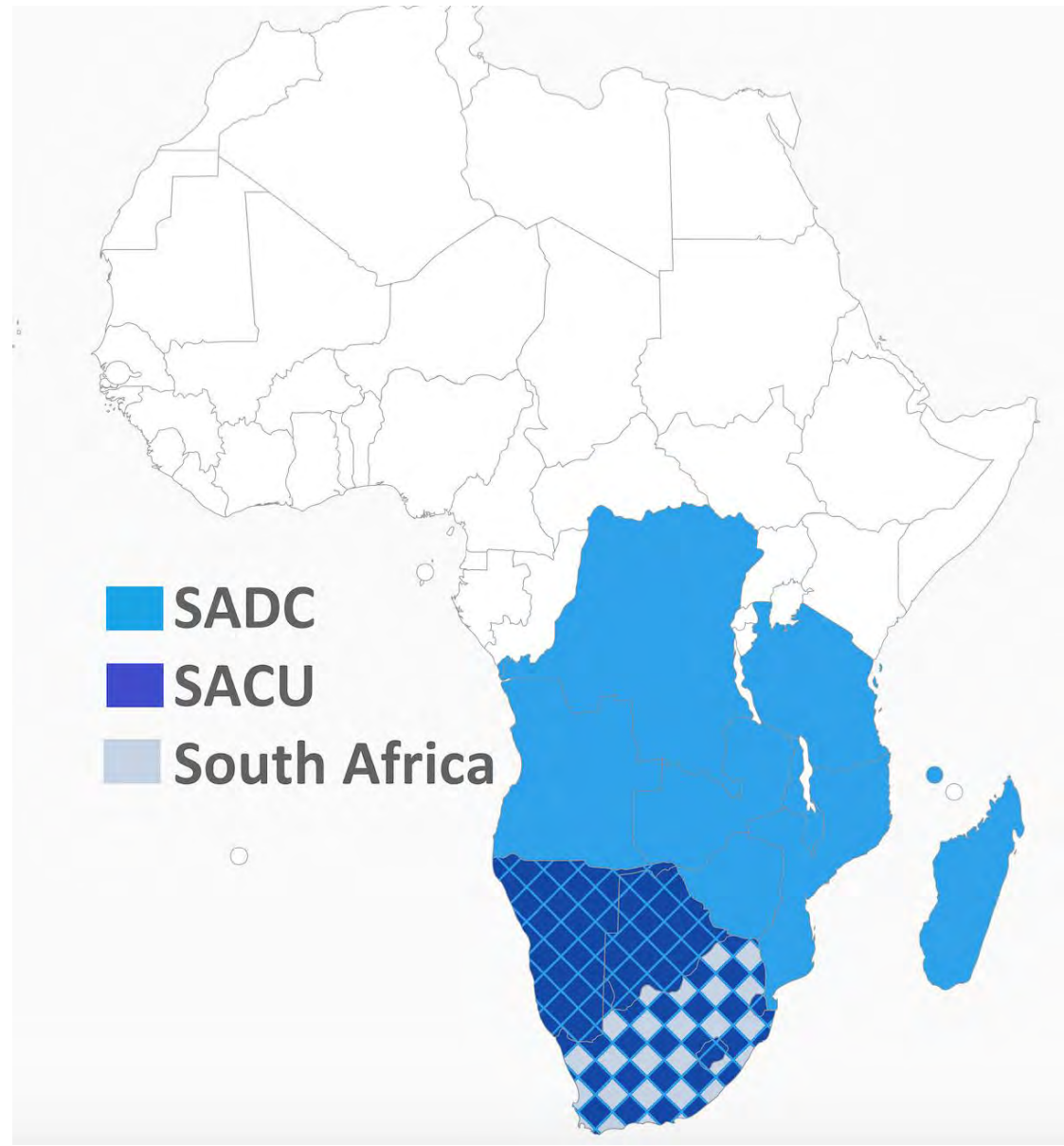
ii) more than 50% of intra Africa trade is in SACU



Intra-Africa trade – highly concentrated

More than
50% of
intra-trade
takes place
in SACU

More than
65% of
intra-trade
takes place
in SADC



AfCFTA

Launch of the operational phase

7 July 2019

The African Continental Free Trade Area (AfCFTA) Agreement entered into force on 30 May 2019 for the 24 countries that had deposited their instruments of ratification with the African Union Commission (AUC) Chairperson. On 7 July 2019, at an Extraordinary Summit of the African Union, the operational phase of the AfCFTA Agreement was officially launched. Trading under the AfCFTA will begin on 1 July 2020.

AfCFTA Ratification Barometer



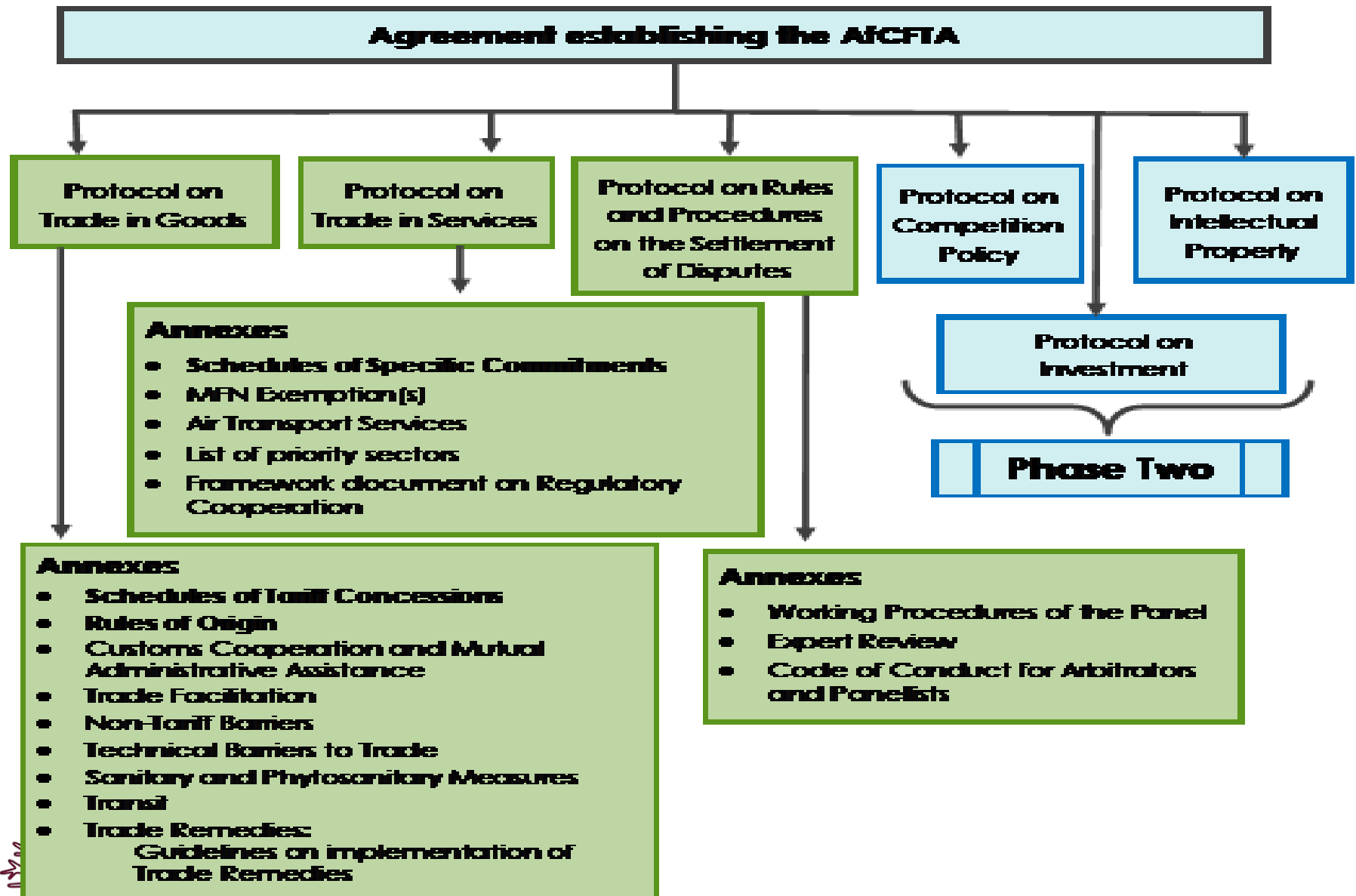
What is the AfCFTA - where do we stand?

- Comprehensive agenda (more than a traditional free trade agreement)
- Aim: Boosting intra-African trade, Integration & development
- Negotiations under AU Commission - but are Member-driven
- Two phases of negotiations: (i) Goods and services - priority sectors - financial services communication, transport, tourism, professional services
(ii) Investment, Competition & Intellectual Property
- No supra-national institutions -- but a unique Secretariat (to be hosted by Ghana)
- Regional Economic Communities (EAC, COMESA, ECOWAS, SADC...) & existing trade regimes (Tripartite FTA) **continue as before**



Implementation involves legal obligations between & within the State Parties

AfCFTA Design



Current Trade Negotiations Overview

- RSA cannot negotiate goods agreements unilaterally (SACU membership)
- SACU a very important destination of SA goods & services
- AfCFTA: Still to complete Negotiations re Tariffs & RoO
- TFTA: Tariff offer only from Kenya
- TFTA acquis preserves REC obligations & TFTAs
- Ditto in AfCFTA
- AfCFTA Phase II in 2020: Invest, IP, Competition
- WTO: Doha Round in limbo, Trade Facilitation Agreement in force, Fisheries subsidies, next Ministerial in Kazakhstan, E-commerce is controversial, Consensus rule revisited?
- Brexit: Roll-over agreement with UK on 12 Sept. 2019
- EFTA review
- SACU review?

What happens after Brexit and AGOA?

- The roll-over Agreement with UK (12 Sept 2019) secures uninterrupted SADC EPA preferences for goods
- It contains 2 scenarios --- not new benefits
- What will happen on 31 oct. 2019 re Brexit?
- Hard Brexit: Tough trade conditions under WTO rules
- An orderly Brexit provides 2 years transition, no disruption & time to strike a long-term deal
- AGOA preferences are not reciprocal and vital for many
- AGOA ends in 2025
- US wants specific bilateral trade agreements in Africa

Resources

- AfCFTA Booklet

<https://www.tralac.org/documents/resources/booklets/2757-tralac-afcfta-booklet-march-2019/file.html>

- Trade Explainer - print copies provided (all trade acronyms are included)