

The African Continental Free Trade Area

A tralac guide

Updated February 2024



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Where does the AfCFTA fit in Africa's development agenda?



The Agreement establishing the African Continental Free Trade Area (AfCFTA) was signed at the 10th Extraordinary Summit of the AU Assembly on 21 March 2018 in Kigali, Rwanda. The AfCFTA Agreement entered into force on 30 May 2019. The AfCFTA is the continent's most ambitious integration initiative.



The main objectives of the AfCFTA are:

- create a single continental market for goods and services, with free movement of businesspersons and investments
- expand intra-Africa trade across the regional economic communities and the continent in general
- enhance competitiveness and support economic transformation
- promote industrial development



Agenda 2063 is Africa's framework for structural transformation. It builds on and aims to facilitate the implementation of existing continental initiatives (AIDA, PIDA, BIAT and CAADP). The AfCFTA, a single African air transport market (SAATM), and the free movement of people are Agenda 2063 flagship projects. The AU has adopted legal instruments for the effective implementation of these flagship projects. Importantly, the UN Agenda 2030's 17 Sustainable Development Goals (SDGs) are incorporated in the 20 goals of Agenda 2063. By implementing Agenda 2063, Africa will also meet its global commitments under the SDGs.





Source: <https://au.int/en/agenda2063/continental-frameworks> and <https://au.int/agenda2063/flagship-projects>



Architecture of the AfCFTA

The AfCFTA Agreement is a comprehensive legal compact which includes the Agreement establishing the AfCFTA, Protocols on Trade in Goods, Trade in Services, Dispute Settlement, Investment, Intellectual Property Rights and Competition Policy. Recently, Digital Trade and Women and Youth have been added to the negotiating agenda.

Phase 1 negotiations cover Trade in Goods, Trade in Services and Dispute Settlement. The Protocols on Trade in Goods and Trade in Services each have several Annexes covering substantive disciplines.

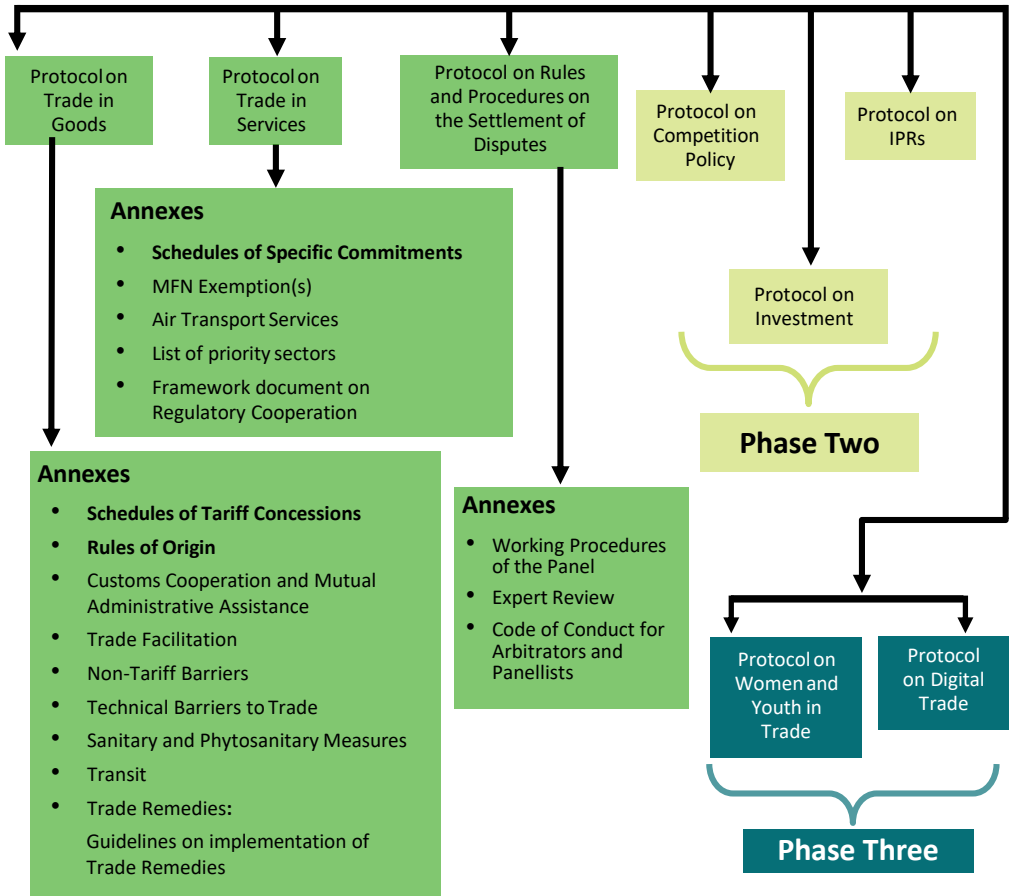
Negotiations on a number of issues (e.g., tariff concessions, rules of origin for goods and schedules of specific commitments for services) are still ongoing. The negotiations on the Protocol on Dispute Settlement have been concluded.

Phase 2 negotiations cover Investment, Competition Policy and Intellectual Property Rights. These Protocols will have Annexes, which are still to be negotiated.

Phase 3 negotiations cover Digital Trade, and Women and Youth in trade.



Agreement establishing the AfCFTA

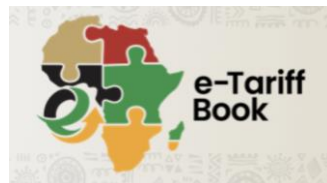


Trade in Goods: Tariff Negotiations

The Protocol on Trade in Goods nominally entered into force with the AfCFTA Agreement in 2019, although negotiations on some rules of origin and schedules of tariff concessions are still ongoing. The AfCFTA will see the progressive liberalisation of 97% of intra-Africa tariffs, 7% of which are categorised as sensitive products and will be liberalised over a longer time frame. The remaining 3% of tariffs may be excluded from liberalisation for reasons relating to food security, national security, fiscal revenue, livelihood, and industrialisation.

Tariff Elimination Modalities	Coverage (%)		Transition Period	
	Tariff lines	Import Value	non-LDCs	LDCs
General	90	90	5 years	10 years
Sensitive products	7		10 years	13 years
Excluded products	3	10	No liberalization	No liberalization

Forty-six State Parties have (as at February 2024) submitted offers of tariff concessions that have been verified by the AfCFTA Secretariat to be compliant with the negotiating modalities. These Provisional Schedules of Tariff Concessions are available in the e-Tariff Book (<https://etariff.au-afcfta.org/mapsearch>) and are applicable to trade under the Guided Trade Initiative.



Rules of Origin

Rules of Origin (RoO) determine the economic nationality of a product and hence its eligibility for preferential tariff treatment in a free trade area. The AfCFTA RoO include the 'wholly obtained' rule for agricultural and other primary products, and product-specific rules have been agreed on to encourage local value addition and transformation of inputs.

WHAT APPROACH DOES THE AFCFTA FOLLOW FOR DETERMINING ORIGIN STATUS ?



The AfCFTA RoO are essentially being negotiated on a sector by sector level, resulting in product-specific origin rules (rather than generic origin criteria that apply equally to all products). The advantage of this is that suitable criteria can be designed that better take account of the specific dynamics of each sector; however, this process also means that negotiations are more complex and time consuming. The general RoO provisions contained in the main RoO Protocol (Annex II) however apply equally to all products.

Rules of Origin for some clothing and textile and automotive tariff lines have not yet been agreed. For some clothing tariff lines, a double-transformation rule has been agreed for 5 years (when a review will take place). Some State Parties, including Botswana and Mauritius, has tabled requests for an exception to this rule.

The World Customs Organisation has prepared a guide to the AfCFTA Rules of Origin:

<https://www.wcoomd.org/en/topics/origin/instrument-and-tools/afcfta-rules-of-origin.aspx>





Phase II and Phase III Negotiations

The Protocols on Investment, Intellectual Property Rights (IPRs), and Competition Policy have been completed and adopted. Further negotiations are required for finalising the Annexes to the Investment and IPR Protocols.



Dispute resolution under the Investment Protocol

The Protocol on Investment provides for a dispute resolution mechanism that investors will have access to. Article 47 of the Protocol provides that in the event that an investor of a State Party and the Host State are unable resolve a dispute amicably, they may make use of the dispute resolution mechanism provided in the Annex (which is yet to be negotiated). While the Investment Protocol only applies to intra-Africa investment, U.S. firms that already have an established commercial presence in a State Party will be able to make use of the Protocol's dispute settlement mechanism.



The Phase III Protocols on Digital Trade and Women and Youth in Trade are in progress and negotiations are expected to be concluded in 2023, and to be adopted by the AU Assembly in early 2024. The Protocol on Digital Trade (which covers e-commerce) aims to support the Protocols on Trade in Goods and Trade in Services by promoting the sustainable and inclusive transformation of digital trade on the continent. The Protocol on Women and Youth is geared towards eliminating gender-specific barriers to trade and unlocking the potential of the continent's young population.



Dispute Settlement

The AfCFTA has a **Protocol on Rules and Procedures on the Settlement of Disputes** which was adopted during Phase I of the AfCFTA negotiations and has been in force since 30 May 2019. The AfCFTA's dispute settlement system is modelled on the Dispute Settlement Mechanism of the WTO. It consists of panels and an appellate body. **Only AfCFTA State Parties have standing to file claims** under this Protocol, which can be heard and decided by Panels and the Appellate Body of the AfCFTA. Since violations of obligations regarding trade in goods and in services in most instances impact private firms, it is for the national governments of the relevant countries (if they are members of the WTO or the AfCFTA) to litigate against States adopting and implementing measures in violation of their obligations.

Legal remedies for private parties

While companies do not have direct access to the AfCFTA's State-State dispute settlement mechanism, they can lobby the host government to take up a dispute on their behalf or approach the domestic courts to address a complaint.

They can also benefit from the application of trade remedies. Private parties who have been affected by unfair trade practices, such as the dumping of goods or subsidized imports, can request national investigating authorities to undertake the required investigations and impose anti-dumping duties, countervailing measures, or safeguard measures. Annex 9 of the Protocol on Trade in Goods provides for Trade Remedies and Safeguards.



Trade facilitation

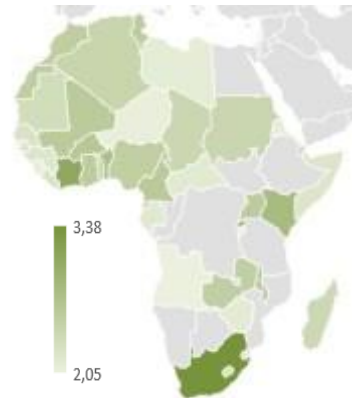
High transport costs, delays, port inefficiencies and cumbersome border procedures can have a more negative impact on the trade of goods than any tariffs.

Annex 4 of the AfCFTA Protocol on Trade in Goods sets out rules that seek to address specific procedural hurdles in order to facilitate trade procedures. This Annex presents a significant opportunity for State Parties to reap the economic benefits from improving the speed and efficiency of border procedures.

Logistics performance index

The World Bank **Logistics Performance Index (LPI)** is based on a survey of freight forwarders and express carriers. It ranks countries on customs, international shipments, quality and competence, tracking and tracing, timeliness and infrastructure. A higher score indicates higher performance.

South Africa, Ivory Coast, Egypt, Kenya, Benin and Mauritius are the best performing African countries. Angola, Burundi, Niger, Sierra Leone and Eritrea the lowest scoring African countries.



Source: World Bank



Institutions of the AfCFTA

The institutional framework for the implementation, administration, facilitation, monitoring and evaluation of the AfCFTA consists of the Assembly, the Council of Ministers, the Committee of Senior Trade Officials, and the Secretariat (Art 9 AfCFTA Agreement.) Decisions by AfCFTA institutions are taken by consensus, unless otherwise provided.

The **Assembly** of Heads of State and Government of the African Union (AU) provides oversight and strategic guidance on the AfCFTA, including the Action Plan for Boosting Intra-African Trade (BIAT).

The **Council of Ministers** (CoM) consists of the Ministers for Trade (or other designated Ministers) of the State Parties. The State Parties are the AU Member States that have ratified the AfCFTA Agreement or have acceded to it, and for whom this Agreement is in force. The CoM has authority to take all decisions as provided for in a rather wide mandate provided for in Article 11 of the AfCFTA Agreement. This includes the responsibility to ensure the effective implementation and enforcement of the AfCFTA Agreement. It also supervises the work of all committees and bodies established under the Agreement, considers reports of the Secretariat, makes regulations, issues directives, and makes recommendations. The CoM meets twice a year in ordinary session and may meet as and when necessary, in extraordinary sessions.

The **Committee of Senior Trade Officials** consists of Permanent or Principal Secretaries of the State Parties, or of other officials designated by them. It must implement the decisions of the CoM and is responsible for the development of programmes and action plans for the implementation of the AfCFTA Agreement. It may direct the Secretariat to undertake specific assignments.

The Regional Economic Communities (RECs) are not parties to the AfCFTA Agreement but shall be represented in the Committee of Senior Trade Officials in an advisory capacity. The REC Free Trade Areas are also the building blocks of the AfCFTA.

The **AfCFTA Secretariat** is the only permanent institution of the AfCFTA and is based in Accra, Ghana. It must implement instructions of the CoM and must provide technical assistance to the State Parties and AfCFTA institutions, as provided in the AfCFTA Agreement. The AfCFTA Agreement does not establish a new international legal person but does say the Secretariat “*shall be a functionally autonomous institutional body within the African Union system with an independent legal personality*”.

The **Dispute Settlement Mechanism** of the AfCFTA replicates, with the necessary adaptations, the WTO dispute settlement system. The relevant principles and procedures appear in a dedicated Protocol. The Dispute Settlement Mechanism has its own institutions, such as the Appellate Body and the Panels. Only State Parties may bring disputes against other State Parties. Natural or legal persons has no standing to bring applications for the settlement of AfCFTA related disputes.

Assembly



Council of Ministers



Committee of Senior Trade Officials



Dispute Settlement Body



Panels



Appellate Body



AfCFTA Secretariat





AfCFTA Committees

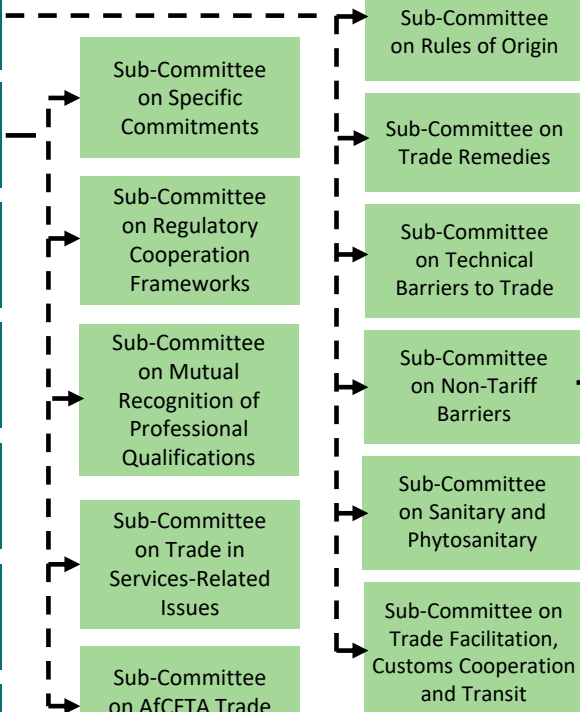
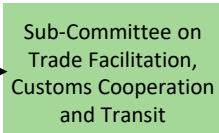
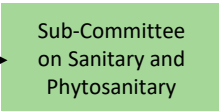
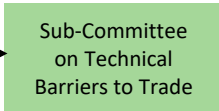
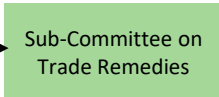
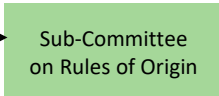
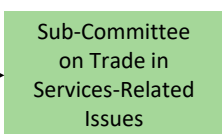
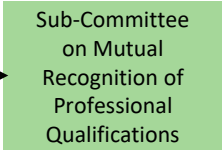
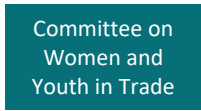
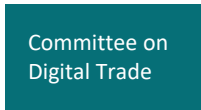
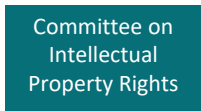
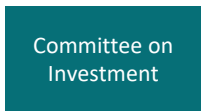
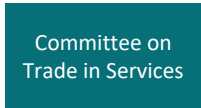
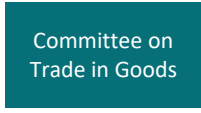
The Protocols and Annexes to the Protocols to the AfCFTA Agreement establish various technical committees to assist with the implementation of the Agreement. The committees will comprise designated representatives from State Parties.

The Committee on Trade in Goods will facilitate the operation of the Protocol on Trade in Goods. The Committee has established Sub-Committees responsible for the operationalisation of the annexes of the Protocol on Trade in Goods.

The Committee on Trade in Services will facilitate the operation of the Protocol on Trade in Services. The Committee has established Sub-Committees responsible for the operationalisation of specific areas the Protocol on Trade in Services.

During its 5th Meeting held on 3 May 2021, the AfCFTA Council of Ministers established the Committees on Investment, Competition Policy, Intellectual Property Rights, Digital Trade, and Women and Youth in Trade to facilitate the negotiations in these areas and assist with the implementation of the Protocols thereof.



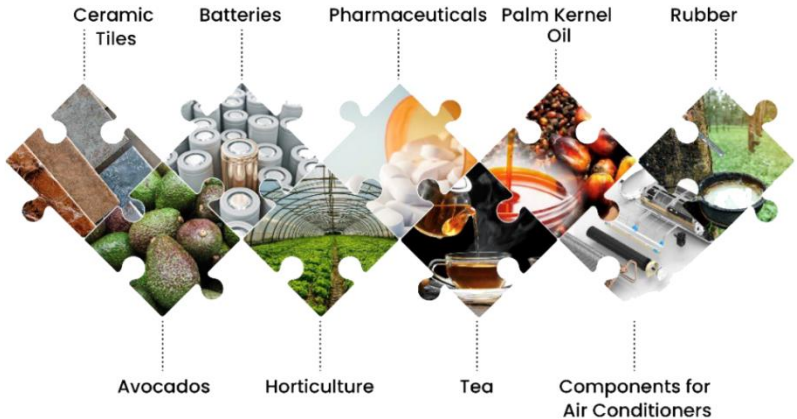




Guided Trade Initiative

At the 9th Meeting of the Council of Ministers (25-26 July 2022), H.E. Wamkele Mene, AfCFTA Secretary General presented the AfCFTA Secretariat's proposed Guided Trade Initiative. The initiative was launched in Accra, Ghana on 7 October 2022. EIGHT (8) State Parties are participating: Cameroon, Egypt, Ghana, Kenya, Mauritius, Rwanda, Tanzania and Tunisia. Others, who have had their Provisional Schedules of Tariff Concessions verified, may join. The interested State Parties represent 5 African regions. Products being traded include ceramic tiles, batteries, horticulture products and flowers, avocados, palm oil, tea, rubber, components for air conditioners. A Committee has been established to coordinate and operationalize trade transactions, and Ad Hoc Committees have been established in the participating State Parties.

Products





The objectives are to:

- test the operational, institutional, legal and trade policy environment under the AfCFTA;
- allow commercially meaningful trading under the AfCFTA; and
- send a positive message to African economic operators about the AfCFTA.



The ultimate objective of the initiative is to ensure that the AfCFTA can be fully operational and implemented by State Parties in order to achieve increased inter-regional and intra-Africa trade.



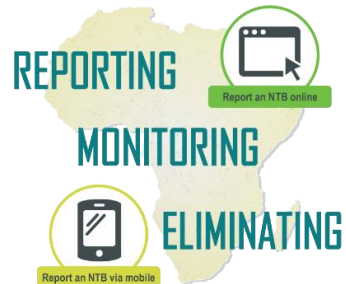
South Africa began trading under the GTI on 31 January 2024, with two consignments of goods departing from the port of Durban bound for Kenya and Ghana. South Africa can currently trade with the following countries under the GTI: Algeria, Cameroon, Egypt, Ghana, Kenya, Rwanda and Tunisia (these countries have implemented Provisional Schedules of Tariff Concessions).





Other AfCFTA initiatives

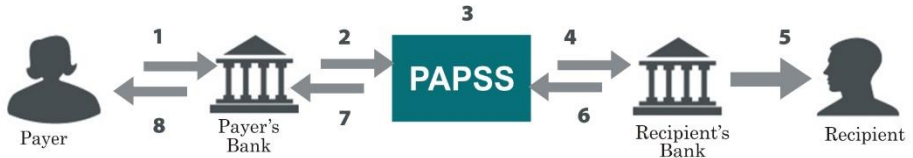
- **African Trade Observatory***: the African Trade Observatory (ATO) aims to create a continent-wide trade information portal to facilitate intra-African trade and to support the roll-out of the AfCFTA. The ATO collects trade-related data from member states with the aim of providing trade intelligence to both market players and governmental and non-governmental agencies. The ATO includes services trade, exchange rate and competitiveness indicators, internal tax data and foreign direct investment data. Available at <https://ato.africa/en/>
- The **AfCFTA Online Mechanism for Reporting, Monitoring and Elimination of NTBs*** provides a facility for online reporting of identified non-tariff barriers (NTBs) including for reporting via SMS. Reported NTBs and the status of their resolution can be accessed on the public domain. NTB notifications will be received by the focal points of the reporting country, the responding country and the AfCFTA Secretariat for processing. In a non-public space, the system then allows information exchange between the concerned State Parties to monitor and resolve NTBs. Available at <https://tradebarriers.africa>
- The **AfCFTA e-tariff book** is a digital platform containing the tariff schedules and applicable tariff rates for all the AfCFTA State Parties based on the WCO 6-digits Harmonized System (HS). Available at etariff.au-afcfta.org



Pan-African Payment and Settlement System

The Pan-African Payment and Settlement System (PAPSS), developed by the African Export Import Bank (Afreximbank) in collaboration with the African Union and AfCFTA Secretariat, is a cross-border, financial market infrastructure for enabling payment transactions across Africa. PAPSS allows for payment and settlements using local currencies.

How does PAPSS work?



1. Payer sends payment instruction in local currency to their bank or payment service provider
2. Payer's bank sends a message to PAPSS with all the payment details
3. PAPSS validates the payment
4. Payment instruction is sent the Recipient's bank to validate the details of the recipient account
5. The payment instruction is forwarded to the beneficiary's bank or payment service provider.
6. PAPSS changes the status of the transaction to final
7. The Payer's bank is notified of the outcome of the transaction
8. The Payer is notified of the outcome



Regional Economic Communities & the AfCFTA



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 eight recognised RECs, as well as other trading arrangements such as the Southern African Customs Union (SACU) and the Tripartite Free Trade Area (TFTA), shall be maintained.

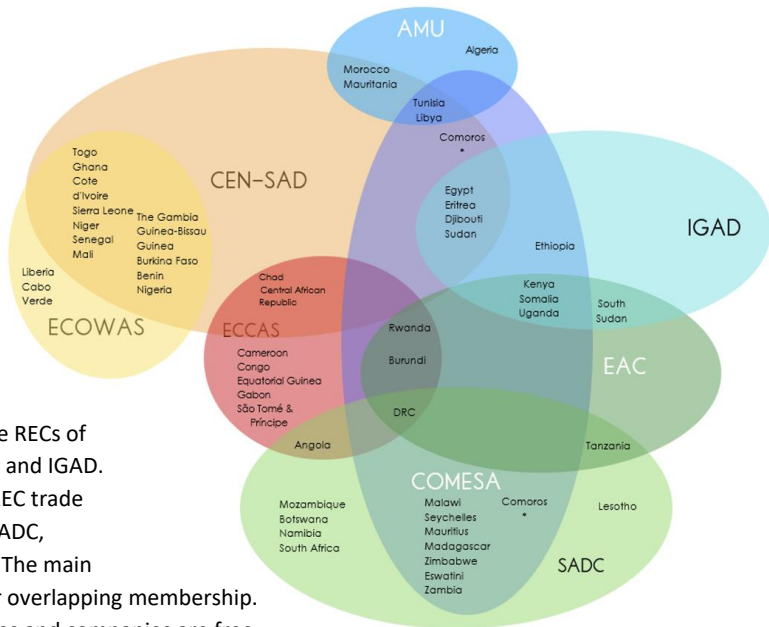
See also Art 8(2) of the AfCFTA Protocol on Trade in Goods

Source: African Union

Given that the RECs will remain in place and implement their own regional agendas, **trade among members of an existing REC trading arrangement (FTA or customs union) will continue according to this trade regime.**

Regional Economic Communities

The African Union recognises eight Regional Economic Communities (RECs) as building blocks for the AfCFTA.



There is no tariff liberalisation under the RECs of AMU, CENSAD, ECCAS, and IGAD. The majority of intra-REC trade takes place between SADC, COMESA and the EAC. The main feature of RECs is their overlapping membership. In many cases, countries and companies are free to decide which provisions to apply. Many African countries also have bilateral FTAs and investment agreements between them.

Note: The EAC recently gained two new members: the Democratic Republic of Congo (DRC) and Somalia acceded to the EAC in 2022, and 2023, respectively.



AfCFTA: a framework for Africa's industrialisation



The AfCFTA has become a framework for Africa's industrialization with a strong focus on regional value chain development. Under the AfCFTA Secretariat's Private Sector Engagement Strategy, four priority value-chains have been identified for development:



1. Agro-processing
2. Pharmaceuticals
3. Transport and logistics
4. Automotive



As a part of this agenda, the AfCFTA has partnered with the African Export-Import Bank (Afreximbank) to establish the **Automotive Fund**. Afreximbank has committed a US\$1 billion facility available to any investment that seeks to pursue local content development in the automotive value chain. The funding will also be used for ensuring access to consumer finance as part of the creation of demand and associated insurance products.



Afreximbank has also established the **Fund for Export Development** in Africa (FEDA) to support intra-African trade growth, value-added export development, and industrialisation. FEDA was created to address the US\$110 billion equity financing gap on the continent.



RECs also have regional industrial strategies – with focus on regional value chain development (there are overlapping value chain priorities across RECs and the AfCFTA)



Value chain opportunities for African and global investors

African countries have hitherto specialised as resource exporters, with some mostly internally-focused (import replacing) industrialisation.

Africa has, however, been experiencing premature deindustrialization since the 1990s.

One of the 4 main objectives of the African Continental Free Trade Area (AfCFTA) is to promote industrial development in Africa, the others relating to trade, integration and competitiveness.

For the AfCFTA to be a facilitator of trade-driven industrialisation, it has to meaningfully impact tariff and non-tariff barriers and therefore improve intra-African market access. However, logistics and border challenges must also be solved (practical issues)

Value-chain driven industrialisation is a special case of trade-driven industrialisation where the production chain is fragmented across several countries, permitting specialisation and the development of country and regional competencies and competitiveness in designated industrial sectors.

There are opportunities to participate in continental value chains for African and global investors. Once a global investor establishes a commercial presence in one of the AfCFTA State Parties, it has access to trade opportunities under the AfCFTA. This makes the AfCFTA a very important vehicle to attract foreign direct investment from outside the continent. This is part of the explanation for the global interest in the AfCFTA.

About tralac

The Trade Law Centre (**tralac**) is a public benefit organisation based in South Africa. We develop technical expertise and capacity in trade governance across Africa.

We are committed to the principles of rules-based governance at the national, regional and international levels. We believe that better governance and strong institutions are essential elements for inclusive and sustainable growth. tralac's activities are anchored on three pillars:



INFORM

Publications
Daily news service
Trade data
Infographics



CAPACITATE

Training programs
Internship program
Trade law and policy
advisory services



EMPOWER

Policy dialogue &
forums
Policy dialogue
contributions

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