

NATIONAL CENTRES BRIEFING ON THE AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA) AGREEMENT TRADE UNIONS AND TRADE

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THE AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA)

AN UPDATE ON NEGOTIATIONS

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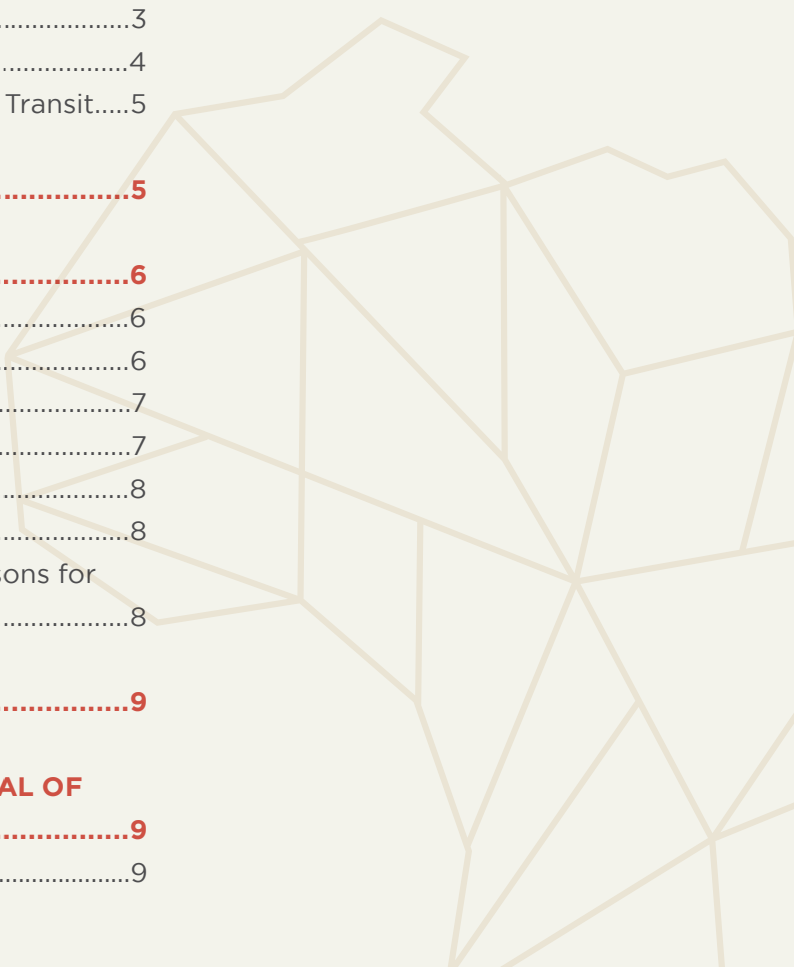
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TERMS AND ABBREVIATIONS

AfCFTA	African Continental Free Trade Area
AI	Artificial Intelligence
AU	African Union
CHAPTER	A Chapter is a 2-digit number in the Harmonised System (See HS). This is the broad categorisation of a traded good.
GTI	Guided Trade Initiative – Preferential trade supported and facilitated by the AfCFTA Secretariat and other role-players.
HEADING	A Heading is a 4-digit number in the Harmonised System (See HS). With the addition of each number in the Harmonised System, the description of a good becomes more detailed and precise.
HS	Harmonised System - A standardised numerical method of classifying traded products.
NEDLAC	The National Economic Development and Labour Council - A statutory social dialogue structure in South Africa made up of representatives from government, organised business, organised labour and community constituencies.
RoO	Rules of Origin – Rules that determine where a good or service is produced, for the purpose of applying preferential trade rules as part of a free trade agreement.
SACU	Southern African Customs Union – A customs union is a free trade area with a common external tariff. In other words, every country in the customs union levies the same tariffs on imported goods.
VNOM	Value of Non-Originating Material – The value of inputs to traded good which originate outside of a free trade area, generally expressed as a proportion of the total value of the good or service. This measure is used in determining whether a good qualifies for preferential treatment according to the rules of origin (See RoO).

STATUS OF RATIFICATION OF THE AGREEMENT ESTABLISHING THE AFRICA CONTINENTAL FREE TRADE AREA (AfCFTA)

54 of the 55 African Union (AU) member states have signed, and 47 of these Members have ratified.

UPDATE ON THE AfCFTA NEGOTIATIONS



1. UPDATE ON TRADE IN GOODS NEGOTIATIONS

Market Access/ Tariff Offers

Preferential trade under the AfCFTA was launched on 1 January 2021 subject to the finalisation of the necessary legal requirements (domestic legislation and tariff phase down schedules) on products where there are agreed Rules of Origin (RoO).

Forty-eight (48) tariff offers on trade in goods have been submitted by individual State Parties and collectively as part of Customs Unions (CEMAC, EAC, ECOWAS and SACU). The tariff offers for the Union of Comoros, Republic of Malawi and Ethiopia were approved by the Executive Council and the 2024 AU Summit of Heads of State and Government in February 2024. As of February 2024, 45 of the 48 submitted tariff offers have been verified by the AfCFTA Secretariat to be in accordance with the agreed modalities for tariff liberalization.

The Provisional Schedules of Tariff Concessions are available in the e-Tariff Book¹ and are applied to trade under the Guided Trade Initiative (GTI).

The tariff offers of Angola, São Tomé and Príncipe and Zimbabwe are being reviewed by the Secretariat. Djibouti, Libya, Mozambique, Somalia, the Saharawi Republic and Sudan are still to submit tariff offers.

Fourteen (14) countries have gazetted their Provisional Schedule of Tariff Concessions (Category A - 90%). They are Algeria, Cameroon, Egypt, Mauritius, Tanzania, Ghana, Kenya, Rwanda, Tunisia, Morocco, South Africa, Eswatini, Lesotho and Botswana.

Final implementation of the Schedules of Tariff Concessions will be undertaken when the remaining 10% category of the tariff books (7% sensitive products subject to a longer period of liberalisation and 3% excluded products) have been finalised. The 12th Council of Ministers of Trade directed that the tariff offers covering the 7% and 3% should be submitted by September 2024 to enable the necessary bilateral negotiations.

Update on the Guided Trade Initiative (GTI)²

Starting in September 2022, the African Continental Free Trade Area (AfCFTA) Secretariat launched its Guided Trade Initiative (GTI), which is part of its efforts to initiate commercially meaningful trade under the AfCFTA.

Seven countries were selected to provisionally start trading goods under the AfCFTA on a pilot basis. Those countries were Rwanda, Cameroon, Egypt, Ghana, Kenya, Mauritius, and Tanzania. The AfCFTA Secretariat chose these countries because their tariff offers on goods had been fully approved and officially published.

The Secretariat has assisted these countries to test AfCFTA trading documents and procedures on pre-selected shipments of goods among themselves. The GTI helped to guide these shipments through customs clearance, including reduced tariff treatment under the AfCFTA in the receiving AfCFTA countries. Examples of the types of goods that were traded include coffee, ceramic tiles, electric components, dried fruits, tea and processed meat.

¹ <https://etariff.au-afcfta.org/mapsearch>

² International Trade Administration, Department of Commerce, United States of America

In 2023, the AfCFTA Secretariat broadened its outreach on GTI to expand the scope of coverage, both in terms of countries and products. It announced that in 2024, an additional 24 African countries will be covered by the GTI and start preferential trade under the AfCFTA. Those 24 countries are expected to include many of the following AfCFTA Parties.

- **East Africa Region:** Uganda.
- **Central Africa Region:** the Democratic Republic of the Congo (DRC), Burundi, Gabon, the Republic of Congo, Chad, Central African Republic and Equatorial Guinea.
- **North Africa Region:** Algeria, Tunisia and Morocco.
- **Southern Africa Region:** Angola, Botswana, Namibia, South Africa, Zimbabwe, Malawi, Lesotho and Eswatini.
- **West Africa Region:** Côte d'Ivoire, Nigeria, Senegal, Sierra Leone and Togo; and
- **Island States:** Cape Verde, Comoros, Madagascar and Seychelles.

The launch of preferential trade under the AfCFTA by South Africa in January 2024 is a notable milestone given its large market size. South Africa gazetted the Southern African Customs Union (SACU) Provisional Schedule of Tariff Concessions on 26 January 2024 and launched the start of preferential trade under the AfCFTA on 31 January 2024 at the Port of Durban. South Africa exported its first shipment of goods to Ghana and Kenya under the African Continental Free Trade Area Agreement (AfCFTA). The products included fridges, and home appliances and mining equipment, amongst others.

The AfCFTA Secretariat is expanding the scope of products traded under the initiative to include mushrooms, flowers, bio pesticides, powdered milk, fish oil, frozen tuna, mineral and chemical fertilizers, essential oils, packaged moringa, fortified maize porridge, honey, nut butters, fruit jams, tea, coffee, meat products, beverages, flour and maize meal, pasta, and fabric.

The production in GTI participating countries of these goods can benefit from tariff reductions if they meet the product-specific rules of origin under the AfCFTA. Our understanding is that these tariff reductions would also apply to production by companies owned by interests outside of Africa, if they meet the rules of origin criteria.

Rules of Origin (RoO)

The agreed Rules of Origin amount to approximately 92.4%, with 7.6% of rules of origin remain outstanding. Textile and Clothing and Automotive products are two key sectors where rules of origin are still to be finalised.

The member States of the AfCFTA have adopted a strategy for the expansion and development of the African automotive manufacturing sector and have established an auto sector taskforce within the AfCFTA to facilitate that strategy. The taskforce seeks to balance a continental development agenda with national interests and existing production capacity in Africa. In the case of both the clothing & textile and automotive sectors the challenge is to consolidate existing productive capacity, while creating space for the entry of new players into regional and continental value chains.

The 13th meeting of the Council of Ministers adopted the terms of reference of the AfCFTA Automotive Task Force. The Ministers also directed the Secretariat to re-circulate the request for the Submission of State Party Representatives to the AfCFTA Automotive Task Force.

The rules of origin that have been negotiated for the automotive sector to date, reflect the character of the sector and an effort by member states to balance different national and regional interests. The general chapter rule requires 40% African content and no more than 60% inputs from outside the continent (Value of Non-Originating Material (VNOM)). In heading 8709 (product line) the rule is for 35% African content.

The AU Summit adopted certain rules of origin for clothing in Chapter 61, 62 and 63 of the tariff book. The chapter rule for chapter 61 and 62 is a double transformation/process rule³ for articles of apparel and clothing, with some exceptions in agreed on synthetic and man-made fibres in Chapter 62. The exceptions in Chapter 61 are still under consideration. Chapter 63 prohibits preferential trade in second-hand clothing between AfCFTA members.

The Member States directed that the finalisation of the remaining outstanding Rules of Origin for the automotive and textiles sectors be

concluded by June 2024. This timeframe has not been met and negotiations are still underway.

Trade Facilitation, Customs Cooperation and Transit

The sub-committee on Trade Facilitation, Customs Cooperation and Transit is considering outstanding issues on transit, including the regulatory framework for an AfCFTA Transit Guarantee Scheme and the AfCFTA Transit Document (AfCFTA-TD) as well as AfCFTA E-Certificate of Origin System.

³ A double transformation/process rule means that a good must undergo at least two levels of value add within the free trade area (in this case the AfCFTA). This generally means that the manufactured good will pass through two major HS codes.



2. STATUS OF TRADE IN SERVICES

48

Countries submitted
initial services offers

48 Member States have submitted initial services offers in the 5 priority sectors (financial, communications, transport, tourism and business services). Out of these initial offers, 22 draft Schedules of Specific Commitments⁴ were adopted for provisional implementation by the Extra-Ordinary Summit on the AfCFTA held on 25 November 2022.

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Adopted draft
Schedules of Specific
Commitments

The 2024 AU Summit commended the five East African Community (EAC) Partner States (Burundi, Kenya, Rwanda, Uganda and United Republic of Tanzania) for gazetting their adopted Schedules of Specific Commitments in the five priority sectors.

⁴ Djibouti; Democratic Republic of Congo; Eswatini; Lesotho; Namibia; Malawi; Mauritius; Seychelles; Zambia; Zimbabwe; the combined schedules of the East African Community (Burundi, Kenya, Rwanda, Uganda, Tanzania) and the Central African Economic and Monetary Community (Gabon, Cameroon, the Central African Republic (CAR), Chad, the Republic of the Congo and Equatorial Guinea)



3. PHASE II AND III PROTOCOLS

Competition, Investment, Intellectual property rights, Women and youth in trade and Digital trade

The AU Summit held on 18-19 February 2023 in Addis Ababa adopted the Protocols on Competition Policy, Investment and Intellectual Property Rights, with a built-in agenda of negotiations on their Annexes and outstanding provisions.

The Protocol on Investment



The Protocol on Investment was adopted by the 36th Ordinary Session of the African Union (AU) Assembly of Heads of State and Government in February 2023. The articles that were referred back (articles 19 and 21 on expropriation) were adopted by the 37th Ordinary Session of the AU in February 2024.

The Assembly also directed the Council of Ministers to conclude the outstanding work on the development of the Annexes to the AfCFTA Protocol on Investment. This includes the Rules and Procedures governing Dispute Prevention, Management and Resolution of Disputes covered by this Protocol, as well as the Annex on the appropriate governance and administrative structures, functions, as well as rules and procedures for the administration and operation of the Pan-African Trade and Investment Agency.

The Protocol on Intellectual Property Rights



Following the adoption of the Protocol on Intellectual Property Rights by the 36th Ordinary Session of the African Union Heads of State and Government in February 2023, the Secretariat has commenced preparations for the negotiation of the various Annexes. The zero draft Annexes will be available to Member States as they are developed.

Negotiations on the Annex on Copyrights and related rights, Patents and Utility Models and other remaining Annexes will begin in 2024.

The Protocol on Women and Youth in Trade



The 12th AfCFTA Council of Ministers held in December 2023 approved the draft Protocol on Women and Youth in Trade and recommended it for adoption by the AU Assembly of Heads of State and Government in February 2024. The Protocol was approved and adopted by the Executive Council and the 2024 AU Summit of Heads of State and Government.

The Protocol on Digital Trade



The 13th Council of Ministers held in Durban, South Africa from 30-31 January 2024 considered the revised draft Protocol on Digital Trade and recommended it for submission to the Heads of State and Government. The Protocol on Digital Trade was adopted by the AU Assembly in February 2024. South Africa offered to co-sponsor the role of Champion of Digital Trade with the Republic of Kenya and the AU Summit subsequently endorsed this offer.

This is a future-facing topic and the technologies involved hold enormous potential for growth, development and disruption. There is an added difficulty in that this topic is emergent and relatively complicated. The trade union movement, as a major organ of civil society, would do well to develop coherent positions on digital trade over time.

It is our opinion that the Protocol should support Africa's developmental priorities and promote digital industrialisation of the continent, failing which, Africa will continue to participate on the periphery of the digital economy as end users of products produced elsewhere.

The Protocol includes a ban on levying customs duties on digital trade in the AfCFTA. This mirrors the status quo at the WTO, although South Africa (along with India and Indonesia) is opposed to the extension of the e-commerce moratorium at the WTO. The annex on Rules of Origin in the AfCFTA provides some protection

against the trans-shipment of digital products and content digitally from anywhere (eg. US and China) from one member state to other member states in Africa. The protocol on digital trade seeks to reserve the non-imposition of customs duties for digital products that originate in Africa, African carriers and the African content.

Member states agreed to develop an Annex on Rules of Origin which will set out the criteria for determining African origin. Preparations are underway for the commencement of the negotiations on the various Annexes, specifically:

- (a) Rules of Origin
- (b) Digital Identities
- (c) Cross Border Digital Payments
- (d) Cross Border Data Transfers
- (e) Legitimate and Legal Public Interest Reasons for Requesting Source Code
- (f) Online Safety and Security
- (g) Emerging and Advanced Technologies
- (h) Financial Technology

Following the stakeholder engagements and the 5th Committee on Digital Trade, organised by the AfCFTA Secretariat in April 2024, the Zero Drafts were circulated to Member States on the 10th of May 2024. Updated drafts were circulated in early June. The 6th meeting of the Digital Trade Committee was held from 10 - 14 June 2024. This was a consultative meeting and in terms of the outcomes, State Parties must submit their written proposals on the Zero Draft by 28 June 2024. The Secretariat will then circulate Draft 1.0 by 5 July 2024. Substantive negotiations will commence at the next meeting of the Digital Trade Committee.

It is worth pointing out that global rules covering all aspects of digital trade are still emerging and this is therefore a greenfield policy space to be watched closely. One such space is the joint initiative on e-commerce at the WTO. It is also fair to say that the uneven development of African infrastructure and capacity that underpin digital trade, will also influence the shape of the final protocol.

On Rules of Origin

It is our understanding that developing rules of origin for digital trade in the AfCFTA would be groundbreaking. It is also our intuition that it will be enormously challenging to apply the kinds of rules that have applied to physical goods to digital services. To say that it will be conceptually and technically challenging to develop rules of origin for digital trade is not to argue against the merit of the undertaking. In fact, whatever the outcome, it is this kind of enquiry that will contribute to the ability of African countries to unravel the many tensions that seemingly borderless digital trade will give rise to in the future.

On Cross Border Data Transfers

The default position appears to be that there will be a free flow of data across borders. A separate Annex on Cross-Border Data Transfer will be negotiated and it will, inter alia, set out legitimate public policy objectives, how data may be used, restrictions on sharing data with third parties, including data protection regulations and restrictions that may be applied by regulators. There will be a particular emphasis on the protection of personal data.

On Legitimate and Legal Public Interest Reasons for Requesting Source Code

Governments are accountable in ways that private providers of technologies are not and the vast majority of stakeholders, and even role-players, are not experts in digital trade and its underlying technologies.

In a context where algorithm-assisted decision-making is becoming increasingly integrated into private and public life, it is ethically important to be able to assess algorithms and artificial intelligence (AI) for fairness and non-discrimination.

While the default position in the Protocol appears to be to not require disclosure, the idea is that provisions should be made for the sharing of source codes where there is a legitimate public interest.

The issue is likely more complicated than merely source code. Machine learning is currently the dominant subset of artificial intelligence and it underlies generative AI systems like ChatGPT. There are three components to machine learning: an algorithm or a set of algorithms, training data and a model.⁵

Is the sharing of algorithms, large data sets and models feasible, technically and politically? Frankly, it is difficult to imagine the technical and conceptual frameworks required for the regulation of AI, especially for non-experts.

A further complication is so-called “black box” algorithms. A black box algorithm is one where the actual decision rule used by the algorithm in each instance cannot be known. It seems ethically prudent to consider prohibiting or limiting the use of “black box” algorithms, certainly in the public sector.

The need for some of regulation of AI is unavoidable. Regulating AI is technically challenging, ethically important and politically charged. This should motivate Member States and the trade union movement alike to develop a deeper understanding of the terrain and the policy positions that are required to guard the public interest at continental and national level. There is an enormous amount of work to be done to bring the member states and their social partners up to speed on developments in the domain of digital trade and technologies.

⁵ Bagchi, S, 2022



4. REVIEW OF THE AfCFTA AGREEMENT

The month of May 2024 will mark the fifth year since the Agreement entered into force on 30 May 2019. This means that work towards the review of the Agreement is expected to commence in due course, in line with the provisions of Article 29 of the Agreement on Amendments.

Article 28 of the Agreement establishing the African Continental Free Trade Area stipulates that *“This Agreement shall be subject to review every five (5) years after its entry into force, by State Parties, to ensure effectiveness, achieve deeper integration, and adapt to evolving regional and international developments”*.

In order to facilitate the effective review and implementation of the Agreement, the Assembly decided to recognise the AfCFTA Council of Ministers of Trade as a policy organ of the African Union and established the AfCFTA Sub-Committee of Heads of State and Government to monitor the implementation of the Agreement and address any related matters.

Given that very little trade has proceeded under the AfCFTA up until now, there will not be much to review. Even so, it is an opportunity for the trade union movement to reflect on what has been negotiated thus far, and to reflect on its own trade policy orientation and positioning.



5. RE-ELECTION OF THE SECRETARY-GENERAL OF THE AfCFTA



H.E. Mr. Wamkele Mene

The 12th AfCFTA Council of Ministers held in December 2023 in Dar es Salam, Tanzania recommended the reappointment of the current Secretary-General for a four-year term.

The Assembly unanimously supported the extension of the appointment of Mr. Wamkele Mene for a four-term from 2024 – 2028.

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