

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

FIRST EDITION

2023



A BRIEFING ON PROGRESS IN THE TRADE NEGOTIATIONS OF THE AFRICA CONTINENTAL FREE TRADE AGREEMENT TO THE AFFILIATES OF THE ITUC AFRICA.

ITUC AFRICA SUMMER SCHOOL | LOMÉ | TOGO

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RATIFICATION

54

Members of the African Union (AU) have signed the African Continental Free Trade Area (AfCFTA) agreement and

44

Member States have ratified the agreement.

Mozambique has confirmed that they concluded their national ratification processes and is expected to deposit their instrument of ratification with the African Union Commission as soon as possible. This would make Mozambique the 45th State Party.



TRADE IN GOODS

46

Member States

Forty Six (46) Member States of the AU including those in four (4) Customs Unions (namely, the East African Community (EAC), the Central African Economic and Monetary Community (CEMAC), the Southern African Customs Union (SACU) and the Economic Community of West African States (ECOWAS) have submitted their initial tariff offers on the 90% level of ambition (Category A: 90% of tariff book).

4

Customs Unions

90%

Tariff book

Algeria, Angola, Democratic Republic of Congo, Egypt, Madagascar, Malawi, Mauritius, Mauritania (submitted as part of ECOWAS), Morocco, Seychelles, Sao Tome and Principe, Tunisia, Zambia, Zimbabwe, Republic of Congo, Chad, Cameroon, Central African Republic, Equatorial Guinea, Gabon, South Africa, Botswana, Namibia, Eswatini, Lesotho, Benin, Burkina Faso, Cabo Verde, Cote D'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo, Burundi, Kenya, Rwanda, South Sudan, Uganda and Tanzania.

38 of these offers have been verified by the AfCFTA Secretariat to be in accordance with the agreed modalities for tariff liberalization. Algeria, Democratic Republic of Congo, Egypt, Madagascar, Malawi, Mauritius, Seychelles, Tunisia, Zambia and Zimbabwe.

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 and Mauritania.

EAC: Kenya, Rwanda, Burundi, Tanzania, Uganda and South Sudan.



GUIDED TRADE INITIATIVE

7

The GTI is a pilot project amongst seven (7) of the verified and adopted tariff offers on the 90% category to allow preferential trade under the AfCFTA, for selected products and countries.

90%

Preferential trade under the AfCFTA was launched on 1 January 2021 in accordance with the decision of the Extra-ordinary AfCFTA Summit of African Union Heads of State and Government held on 5 December 2020. Preferential trade commenced between Ghana, Kenya, Mauritius, Egypt and Rwanda under the AfCFTA Guided Trade Initiative (GTI) in October 2022. The GTI is open to all State Parties with verified and adopted offers.

The following countries have commenced with preferential trade; Cameroon, Egypt, Ghana, Kenya, Mauritius, Rwanda and Tanzania.



RULES OF ORIGIN

88.03 %

AfCFTA agreed tariff lines

11.7%

Outstanding tariff lines

10%

Remaining tariff lines

The AfCFTA agreed Rules of Origin cover 88.03% of tariff lines. The remaining 11.7% of tariff lines include Textiles and Clothing as well as Automotives. Negotiations are underway to finalise the Rules of Origin on these sectors. The 11th AfCFTA Council of Ministers held in Gaborone, Botswana from 11-12 February 2023 agreed on a process towards the finalisation of the outstanding rules of origin, including the development of a targeted strategy for the development of regional value chains, improvement of productive capacity and dedicated consultations on the rules that would support Africa's industrialisation in these sectors.

7%

Sensitive tariff lines

3%

Excluded tariff lines

Once the outstanding rules of origin are settled, work will start on the remaining 10% of tariff lines, where 7% are listed as sensitive and 3% are excluded.



SPECIAL ECONOMIC ZONES

During the negotiations on the Protocol on Trade in Goods, provision was made for Special Economic Zones (SEZs) to trade preferentially under the AfCFTA. However, an agreement could not be reached on the conditions to be applied to the products emanating from SEZs. Most Member States concur that products from SEZs should benefit from preferential treatment under the AfCFTA provided that they conform with the agreed rules of origin. However, other Member States (specifically Tanzania and Senegal) proposed that the non-originating elements of the products of SEZs be subjected to taxation and customs duties to mitigate the advantage over products produced outside of SEZs.

The 11th Council of Ministers of Trade held in Gaborone, Botswana, from 11-12 February 2023

agreed on the Ministerial Regulation on SEZs to open the African market for goods made in SEZs in Africa to be traded preferentially as long as they meet the agreed Rules of Origin. To address the concerns raised by Tanzania and Senegal in respect of unfair competition between products manufactured in SEZs and those outside of SEZs, the 11th Council of Minister agreed on the following additional provision:

"In order to safeguard the domestic market from unfair competition, provisions under the Annex on Trade Remedies, the Competition Policy Protocol, and the Infant Industries Protection provision shall be applicable to the Goods from the special economic zones. Any state party shall have the right to regulate Special Economic Zones (SEZs) in accordance with their domestic laws."



TRADE IN SERVICES

47

Submitted
services offers

47 Member States have submitted initial services offers in the 5 priority sectors (financial, communications, transport, tourism and business services).

21

Adopted
services offers

Out of these initial offers, twenty-one (21) draft schedules were adopted for provisional implementation by the Extra-Ordinary Summit on the AfCFTA held on 25 November 2022.

The following submitted services offers: 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).



PHASE II NEGOTIATIONS

Negotiations on the Phase II Protocols on Intellectual Property Rights, Competition Policy and Investment have been finalised and legally vetted by the AU Specialised Technical Committee on Justice and Legal Affairs in January 2023. It is expected that these Protocols will be adopted by AU Summit in February 2023, with a built-in agenda of negotiations on their Annexes. These Protocols will require ratification prior to entry into force.

Preparations for the negotiations on remaining Phase II issues, namely Digital Trade and Women and Youth in Trade commenced in December 2022 with the expectation that these draft Protocols will be finalised by July 2023. The 11th Council of Ministers of Trade adopted the Terms of Reference, roadmap and guiding principles for the negotiations for the two Committees.



DISPUTE SETTLEMENT MECHANISM

Following country nominations and an extensive selection process by the Dispute settlement Body, the 11th Council of Ministers of Trade recommended five individuals as members (including one South African) for the Appellate Body of the AfCFTA Dispute Settlement Mechanism. According to the Agreement, the Appellate Body will consist of seven (7) permanent members. Since only 5 members have been recommended, the Ministers also agreed to open a new call for nominations to all regions except the Central region and countries already represented on the list to fill the two outstanding positions.



POLICY SPACE

A senior trade negotiator for South African believes that policy space has been conserved in the protocols of the AfCFTA thus far, and that member states retain significant rights to regulate for the purposes of industrialisation and development.

Of course, industrialisation, development and pro-social outcomes are not guaranteed to flow from the AfCFTA. It is our responsibility to shape the character of this agreement. We are required to hold our members' interests in mind and to hold national interests in mind. We are asked to hold the interests of the African working class in mind and the interests of our continent in mind. This is no small task.



CIVIL SOCIETY

The AfCFTA will not attempt to dictate how member states conduct consultations and will therefore not carve out space for civil society formations to make themselves heard. The trade union movement would do well to engage at the national level. It may also be possible to build sector-specific national and regional approaches in order to influence the terms of the AfCFTA.

We are political, but we are also relatively uninformed about trade as a domain of knowledge. We have no choice but to develop competencies in trade and to build alliances that contribute to our ability to make the working class heard in the negotiations and subsequent review cycles of the AfCFTA.

The ITUC Africa and the Labour Research Service are working to support you in this. We invite you to think about who you will put forward to participate in these activities, who is best positioned to have an effect back in their union and in their country in the years to come.



MIGRATION

The movement of business people is negotiated under Mode 4 of the services commitments under the AfCFTA. Migration is not directly negotiated under the AfCFTA.

There is a protocol on the movement of persons – a separate instrument under the AU. Migration per sé, does not fall within the scope of AfCFTA. The African Union protocol on the free movement of persons has been signed by 32 member states, but only four have ratified the protocol (Rwanda, Niger, São Tomé & Príncipe and Mali), whereas 15 are needed for the protocol to enter into effect.

IF NOT THE AfCFTA, THEN WHAT?

Much of the world did not anticipate that Africa would even establish the Africa Continental Free Trade Area. There are critics both inside and outside Africa who do not believe that the AfCFTA will change Africa for the better, that it will reproduce under-development and benefit the few rather than the many.

Regardless, the AfCFTA has the potential to establish a lasting framework for developmental regionalism. If this free trade agreement were to facilitate African industrialisation and development, it could shift the continent's global trade patterns. An industrialised Africa is less dependent on the rest of the world. This is a goal worth pursuing.



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AfCFTA**

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