

Approval Of Draft Protocols On Investment, Intellectual Property Rights And Competition Policy



Brief Background

The Africa Continental Free Trade Agreement (AfCFTA) was adopted by the 10th Extraordinary Session of the Assembly of the African Union (AU) in Kigali, Rwanda on 21 March 2018 and entered into force on 30 May 2019. The Agreement paved the way for the commencement of the operational phase of the AfCFTA in July 2019. According to Article 23 of the consolidated text of the AfCFTA¹, protocols entered into force thirty days after the deposit of the twenty second (22nd) instrument of ratification.² The status of the AfCFTA at the time this article was written, is that 54 out of 55 member states have become signatories, while 46 out of the 54 signatory states having submitted their instruments of ratification to the AU. Recently, the AU approved the AfCFTA draft protocols on investment, intellectual property rights and competition policy for members which both constitute the near completion of phase two of the agreement establishing the AfCFTA with the exception of the protocol on women and youth in trade and digital trade scheduled for later in 2023. Phase one comprised of the approval of the drafts on the protocols on trade in goods, in trade in services and protocol on rules and procedures on the settlement of disputes and their respective annexes

What does this mean for the AfCFTA

Considering that the initial timeline for completion of the phases of implementation was delayed by two months because of the Covid-19 pandemic; the momentum for adoption among primary stakeholders is gaining traction. International investors, multinational organisations, and the private sectors of member states are keen with anticipation to leverage the trade channels the AfCFTA is set to facilitate. Some of the ways through which the AfCFTA intends to facilitate this trade is through the steady implementation of the operational phase through its five key instruments. They are as follows:³

The Rules of Origin: This is where negotiations between member state representatives hold over the conditions under which goods and services are to be traded across the region.

2. The Tariff Concessions: The goal under this instrument is for there to be a 90% tariff liberalisation. It is to progress over a 10-year period i.e., 2030 at the latest. There will be an additional 5 years to phase out tariffs on 7% of goods that are sensitive, while the outstanding will be exempt.

3. The Online Mechanism on Monitoring: It is a service dedicated to neutralizing the nontariff barriers, known as NTBs, such as the antagonistic behaviour of customs officials, poor physical infrastructure etc. as these situations are detrimental to the implementation of the AfCFTA. Through constant monitoring the AfCFTA can easily identify and effectively address any NTB among its member states.



¹ Agreement Establishing the African Continental Free Trade Area consolidated document.

² Tralac: Status of AfCFTA Ratification <https://www.tralac.org/resources/infographic/13795-status-of-afcfta-ratification.html> accessed on 02 May 2023 at 4:00 pm

³ Africa Union <https://au.int/en/articles/operational-phase-african-continental-free-trade-area-launched> accessed on 03 May 2023 at 2:00pm

The Pan-African payment and settlement system: It is financial infrastructure that is designed to settle payments among traders in their respective local currencies. By working through the central banks of all member states, the currency exchanges are expected to guarantee commensurate value and compensation for goods and services transacted.

The African Trade Observatory: This is designed as a primary point of reference for information to counter a lack of information about opportunities, updated trading statistics among other analysis within the Africa Single Market

Within context, the operational phase still remains at the rules of origin stage for the most part, given the recent completion of the drafts on the protocols on investment, intellectual property rights and competition policy. However, about eight (8) countries were selected to partake in a scheme designed to run as the pilot project of AfCFTA's trade operations. The project is called the Guided Trade Initiative (GTI)⁴

The GTI was specifically established to facilitate tangible commercial trading under the AfCFTA, to test both soft and hard infrastructure of the participating states under the trade policy environment of the AfCFTA and finally to serve as a morale booster to the African economic stakeholders. Since October 2022 it was launched and the countries partaking in the pilot project were announced as Cameroon, Egypt, Ghana, Kenya, Mauritius, Rwanda, Tanzania and Tunisia for as a collective they are representative of the five (5) regions of the African continent.⁵ There are specific goods selected to be traded under this initiative and they include ceramic tiles, batteries, tea, coffee, processed meat products, corn starch, pasta, glucose syrup, dried fruits among others. In order for these countries to qualify for participation, they were required to meet the minimum requirements of the AfCFTA tariff book and rules of origin.

Conclusion

The newly completed drafts of the protocols on investment, intellectual property and competition policy present a bit more clarity as to the rules of engagement pertaining to trade between member states as they commence trading under the AfCFTA. However, of the ratified member states, the first group to experience the immediate effects of the drafts in operation would be the eight (8) GTI trial states. The AfCFTA is charting new territory on the African continent with the single market, and the protocols are fundamental to its creation and operation. Adjustments will be made upon operation of either of the drafts, nonetheless, a pragmatic approach to problem solving will facilitate the single market's long-term establishment.

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