



# Implications of the African Continental Free Trade Area for Trade and Biodiversity

Lead Author Roundtable



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# Background to the African Continental Free Trade Area Agreement

- The AfCFTA Agreement – a pan-African regional trade agreement (RTA) adopted in 2018 and in force since 30 May 2019 – is a major step forward for regional integration in Africa.
- It builds on the goal of creating an African Economic Community by 2028, first laid out in the 1991 Abuja Treaty adopted by the Organisation for African Unity (now the African Union). It aimed for gradual integration through the creation of regional free trade areas, followed by customs unions, common markets and monetary unions.
- Once ratified by all AU Member States, it will become the RTA with the greatest number of members globally, creating a single set of rules for trade and investment and providing legal certainty for the private sector through the harmonization of trade regimes.



# Background to the African Continental Free Trade Area Agreement

- ✓ Although the AfCFTA has entered into force and its Secretariat has been established, **many of its substantive aspects remain to be negotiated.**
- ✓ Article 4 of the Agreement commits State parties to a series of **actions to achieve the objective of trade integration** in Africa:
  1. the progressive **elimination of tariffs and non-tariff barriers to trade in goods;**
  2. the progressive **liberalization of trade in services;**
  3. cooperation on **investment, intellectual property rights, and competition policy;**
  4. cooperation on **all trade-related areas;**
  5. cooperation on **customs matters** and the implementation of **trade facilitation measures;**
  6. the establishment of a **mechanism for the settlement of disputes** concerning their rights and obligations; and
  7. the establishment and maintenance of an **institutional framework for the implementation and administration** of the AfCFTA.



# Background to the African Continental Free Trade Area Agreement

- ✓ **Phase I** of the negotiations is focused on tariffs, trade in goods and services, and trade facilitation
- ✓ **Phase II** will focus on, among other subjects, **investment, intellectual property, and competition.**
- ✓ **Phase III** will address issues related to **e-commerce.**
- ✓ A **trade and environment** instrument is not presently contained within the list of subjects now open for negotiation, but nothing prevents parties from negotiating and agreeing to one.
- ✓ It is important to note that the AfCFTA is nested in a broader policy framework: the African Union's **Agenda 2063** - an integrated 50-year plan for Africa's structural transformation and a shared strategic framework for inclusive growth and sustainable development that is linked to the SDGs.



# Trade and Environment in the AfCFTA

- Article 3 of the Agreement states that its general objective is to “promote and attain **sustainable and inclusive socio-economic development...**”, and the specific objective to “cooperate on all trade-related areas”
- Article 26 of the Agreement allows for the operation of the **African Nature Convention**, establishing the basis for trade in CITES-listed BioTrade products within Africa.
- The African Nature Convention calls for parties to “**regulate the domestic trade in, as well as the transport and possession of specimens and products to ensure that such specimens and products have been taken or obtained in conformity with domestic law and international obligations related to trade in species.**”
- It also calls on Parties to, where appropriate, “**collaborate through bilateral or sub-regional agreements with a view to reducing and ultimately eliminating illegal trade in wild flora and fauna or their specimens or products.**”





# Trade and Environment in the AfCFTA

- Text on environment and sustainable development does not appear in the preamble to the Protocol on Trade in Goods and is only indirectly referenced in its principal objective.
- The Protocol on Trade in Services, however, does address environmental and sustainable development issues in its preamble, recognizing the right “to regulate in pursuit of national policy objectives, and to introduce new regulations, on the supply of services, within their territories, in order to meet legitimate national policy objectives.”
- The AfCFTA Agreement also allows for the negotiation of additional instruments deemed necessary in furtherance of its objectives and scope. **These form an integral part of the AfCFTA Agreement once they are adopted.**



# Key Findings



- The AfCFTA Agreement recognizes the existing rights and obligations of parties with respect to one another under other agreement to which they are parties.
- These other agreements include the CBD, the Nagoya Protocol, CITES, the ITPGRFA and the African Nature Convention.
- The AfCFTA Agreement also reaffirms the right of Parties to regulate within their territories and the flexibility to achieve legitimate policy objectives in areas including environment and the promotion and protection of cultural diversity



# Key Recommendations

- Important to focus on generating synergies between existing international and regional MEAs, implementing existing commitments under the AfCFTA Agreement and negotiating future protocols under phase II of the negotiations.
- Specific trade and environment considerations and recommendations, including on the sustainable trade of biodiversity-based products and services, including BioTrade, need to be made explicit in subsequent phases of economic integration.
- This would enable African countries to seize the opportunities for local value addition while capturing the growing consumer preference for biodiversity-friendly products and services.