



REALIZING THE DREAM OF UNFETTERED TRADE IN A POST-COVID19

**ALLOWING TRADE TO FLOW UNDER THE FIRST STAGE OF THE
AFCFTA IN 2021**

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Over twenty-five years experience in regional integration.

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Mr Mwencha served as the Deputy Chairperson of the African Union Commission in January 2008 to 2017 prior to which he served as the Secretary General of COMESA for nearly ten years. During his time at the AUC, he oversaw the administration and finance of the Commission as its Controlling Officer, supervised the development of two AUC Strategic Plans (2009-12) and (2012-17) and participated in the development of Africa's long-term vision of Agenda 2063. As the Secretary General of the Common Market for Eastern and Southern Africa (COMESA) from May 1998 to April 2008, Mr Mwencha was instrumental in leading COMESA into becoming the first regional body on the continent to achieve a Free Trade Area (COMESA FTA).



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AFRICA CONTINENTAL FREE TRADE AGREEMENT

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The positive economic stimulus and psychological impact of a critical mass of countries implementing the AfCFTA cannot be overestimated. No other step would provide the wherewith to spur African recovery from COVID-19 than the AfCFTA trade agreement being implemented in the next six to twelve months. It will spur the development of intra-African supply chains as a substitute for the expected reduction in demand for African components of global supply chains as third world countries strive for greater self-sufficiency. It would reduce and eventually eliminate discrimination in Africa under which imports from one African country to another are at a competitive disadvantage to imports from third countries under FTA regimes. Together with the Heads of State who engineered the 2019 launch of its operational phase, the AfCFTA Secretariat should announce a schedule to complete each of the steps required to implement in the next 6 and in case later than 12 months.

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TENTATIVE PRACTICAL STEPS TO ACHIEVE THE AFCFTA



Announce Schedule by July 31, 2020 to Implement the AfCFTA by January 1 or July 1, 2021 with specific dates for achieving intermediary milestones;

Complete AfCFTA Ratifications by September 30, 2020 or as soon thereafter as COVID-19 allows National Assemblies to meet on the matter;

Complete and Notify AfCFTA Tariff Schedules by October 15, 2020;

Complete the Origin Rules by October 15, 2020;

Complete the Scrub of the Tariff Notifications by November 15, 2020;

Announce the Launch the AfCFTA at Special AU Summit on November 30, 2020;

Disseminate Rules & Regulations for AfCFTA by November 30, 2020 Key Milestone AfCFTA Trade Begins to Flow Jan 4th, 2021. Monday after New Years.

Some dates may slip to first six months of 2021 due to inability to schedule parliamentary ratification votes, negotiating sessions and the pre-Launch Summit. Implementation date would be July 1, 2021.

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SUMMARY



News on an infamous global pandemic continues to make headlines across the world. The pandemic has touched the lives of each and every one of us. Commercial activity has, ostensibly, come to a standstill. Everyone can see the deep trough out of which Africa must climb. While some may say that COVID-19 has exposed all manner of mismanagement on the continent, (a) credit must go to those African countries whose management of the crisis has, thus far, staved the spread of the pandemic, and (b) these difficult times present Africa with an incredible opportunity to regain the pre-COVID-19 momentum around the AfCFTA.

This paper describes how implementing the first stage of the African Continental Free Trade Agreement (AfCFTA) would be a concrete step to realizing the dream of unfettered trade; from the Cape and onto the Mediterranean, and everywhere else in between. Implementing the AfCFTA during these dark times should help Africa avoid the fate of the Free Trade Area of the Americas (FTAA). In the case of the FTAA, the agreement entered the dustbin of history because there was a loss of momentum, leading hemispheric trade ministers to fail to reach an agreement. On top of suggesting ways that Africa can avoid the fate of the FTAA, this paper suggests a number of creative ways for strategic stakeholders to achieve a host of mutually beneficial results. If continued dislocations caused by COVID-19 prevent timely technical or negotiating sessions this year, a slippage of six months until June 30, 2021 would still be an amazing feat -- only a 12-month delay in implementation caused by a most internationally disruptive pandemic.

INTRODUCTION

Our good friends Trudi Hartzenberg and Gerhard Erasmus are not the sort of people with which one should argue – especially on things akin to Africa’s economic integration. They have argued that it may be foolhardy to regain momentum on setting deadlines for when Africa can start to trade under the AfCFTA. They present sound reasons. After all, who does not know that African countries face urgent socio-economic challenges caused by COVID-19? In the same vein, we all understand that when resources are stretched thin, no one should rush into intense negotiations.

However, we must ask an important question: when was Africa not faced by all manners of exigencies? This is less a testament to mismanagement and more to do with the reality that African governments operate in some hostile environments for trade. Equally, my new friend Wamkele Mene, Secretary-General of the AfCFTA Secretariat points out that one can repurpose current COVID-19 commercial activity to garner momentum towards the AfCFTA.

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Secondly, if essential goods and food are rapidly finding their way through borders to landlocked countries, is it too difficult to use AfCFTA exceptions to achieve what both UNECA's Vera Songwe and the African Union's Albert Muchanga want? Both agree there is a way for the region to claw itself back into the better and more economically sound territory.

One way to gain even greater support for this effort is to focus on implementation of duty-free treatment for PPE products. Under the current proposal, no duties would be eliminated in a period shorter than five years; why not agree to immediate duty-reductions PPE products to have an immediate impact? This would not only make a real contribution to the recovery from COVID-19 disruptions but also address the danger that current producers in developed and more advanced countries might limit shipments in any worsening of the ongoing COVID-19 situation or the next pandemic.

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Thirdly, this treatise is not another call for prompt AfCFTA implementation without describing concrete steps must be taken to achieve it. Throughout this paper, the key thesis is that if the AfCFTA is to remain a credible possibility for the continent, everyone's focus during this pandemic should be to push for a preferential final agreement by July 1, 2021, with specific milestones announced for this to be accomplished. This should not be that arduous a task. It is important to note that all African countries belong to one or more regional economic communities, and the key communities have already implemented or are well on the way to implementing duty-free trade; in fact, most intra-African trade in African products already take place free of duties. What needs to happen now is for the small amount of trade between countries belonging to different RECs to be covered by a free trade agreement. This should occur as early as January 1st and no later than July 1st of next year. One should bear in mind that by drawing on the REC experiences, 54 of the 55 countries agreed to the AfCFTA protocol in May, 2019--less than four years after the negotiations were begun in June, 2015 and only a few steps remain for trade under AfCFTA provisions to actually begin to flow.

KEY OBSERVATIONS:

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Invariably, two conditions must exist AfCFTA to be launched as a credible initiative meaning that it must cover a large percentage of intra-African trade not covered by preferences under the RECs.

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CUSTOMS UNIONS

i. Each of Africa's three customs unions - Southern African Customs Union (SACU), the East African Community (EAC), and Economic Community of West African States (ECOWAS) - must agree upon and notify their AfCFTA tariff schedules to the AfCFTA Secretariat on a timely basis. Since individual members of the customs union should not impose duties that differ from their customs external tariff (CXT), all the members of the customs union must accept a single notification^[1]. The AfCFTA tariff schedule must be incorporated into the CXT. If this does not happen, the integrity of the CXT would be compromised.

Most customs union members have ratified the AfCFTA. Specifically, three of the five members of each SACU and the EAC, and ten of the 15 ECOWAS member states have notified their ratifications. Only Botswana and Lesotho in SACU, Burundi, South Sudan and Tanzania in the EAC, Benin, Cape Verde, Guinea-Bissau, Liberia, and Nigeria in ECOWAS have failed to notify.

[1] A free trade agreement only requires duties to be eventually phased on all or most trade among the members. However, unlike a customs union who does not require the countries to apply the same duty schedule against third country imports. Countries belonging only to an FTA can maintain different tariff schedules applicable to third country imports.

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TARIFF SCHEDULES

ii. To be credible, products covered by AfCFTA preferences should cover at least 50% of current intra-African trade outside of the RECs. This condition will be fulfilled if after each customs union member submitted ratifications and the customs unions agreed on their AfCFTA tariff schedules and notified them to the Secretariat. In fact, the expectation is that all countries which have already ratified the AfCFTA will submit tariff schedules on a timely basis and thus allow trade to flow under AfCFTA tariff schedules next year not only between customs union members but non-customs union members as well. To be specific, with the exception of North African countries, this would mean the first stage of AfCFTA provisions will apply to exports and imports from the top twenty African countries ranked by GNP—quite an impressive critical mass. North African countries like Morocco and Tunisia would also ratify the AfCFTA.

Most countries not initially implementing AfCFTA would be under pressure to do so when their own exporters realize that they are at a competitive disadvantage to exporters from AfCFTA member countries in key African countries. Almost all the intra-African trade not covered by the RECs would be covered by AfCFTA provisions once implemented. Duty-free trade would be in place except for excluded tariffs which for most countries would not exceed three percent of their tariff lines.

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A CLEAR AND PRESENT OPPORTUNITY

On May 22, 2020, the Brookings Institution suggested that immediately implementing the AfCFTA would mitigate the decline of Africa's COVID-19 induced GNP (currently expected to be down from 7.9% to 5.2%). The casual reader would be alarmed by a one-third drop in GNP. With the knowledge that the AfCFTA has lost earlier momentum and will miss its original launch target of July 1, 2020, some may have begun believing that the AfCFTA will suffer the fate of the Free Trade Area of the Americas (FTAA) and become a forgotten footnote in trade negotiations.

But that is not what is happening. In fact, listening to public statements, there is a greater chance that AfCFTA trade will begin to flow next year rather than be forgotten. This is especially true when one considers the uncanny ability of dedicated trade negotiators to patch together pragmatic agreements under what outsiders would consider impossible circumstances. In fact, as demonstrated by this Made in Africa initiative around the AfCFTA, the continent is particularly fortunate to have such skillful negotiators; in fact, only a catastrophe like COVID-19 could have caused this delay.

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We argue that a combination of the African negotiators' experience and creativity in overcoming obstacles to conclude the key parts of the AfCFTA in a relatively short period and the realization that COVID-19 recovery will be assisted by implementation of the first stage of the AfCFTA should allow that the AfCFTA trade will begin to flow by the end of the year and in no case later than June 30th unless Covid 19 returns or a new crisis seized the continent. In this case, Africa would be a shining light to the rest of the world. The breadth of the agreement and the speed at which duty reductions are implemented will create numerous economic opportunities. Africa will move from being on the fringes of investor interest to its center stage. In fact, the excitement generated among investors for African pursuits will contrast favorably with other parts of world which will be struggling with recovering from serious dislocations during the epidemic unstable political situations caused by the pandemic, mushrooming protectionism, and unbelievable inflationary pressure from unprecedented government deficits.

Also, the need for a regional supply chain for integrating products is becoming increasingly apparent as developed and advanced developing countries outside of Africa are increasingly striving to narrow their reliance on offshore production. There is already legislation in countries to promote self-sufficiency of a wide range of products particularly a wide range of Personal Protective Equipment (PPE), including such textiles and apparel

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products as surgical gloves, gowns, and fabric masks in many developed and advanced developing countries. These measures may result in a decline in the demand for offshore manufacturing and thus undermine current and future exportation of African products to be incorporated into global supply chains. This makes it even more imperative for Africa to develop the type of African supply chains promoted by the AfCFTA. Thus, Africa must focus on the development of continental supply chains to substitute for shrinking global ones. Thus, the message must be disseminated and accepted that the launch of trade even on a select basis under the AfCFTA is an integral part of African recovery from COVID-19.

Penultimately, with pending Kenya/US FTA negotiations, pending EU/EPA pressure, and a post-Brexit UK decision, it is crucial that Africa protects its interest by having an operational AfCFTA. If not, these countries could well force African countries to enter into or begin implementing agreements which would provide more favorable treatment for third country imports than provided under AfCFTA for African products and create new obstacles to continental free trade. Even if there was no desire to force African countries to enter, the threat that preferential treatment would end or be significantly curtailed and that continental integration was on hold, would force African countries to enter into such FTAs.

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LAUNCHING THE FIRST STAGE OF THE AfCFTA; ALLOWING TRADE TO FLOW IN 2021



- i. Cease all negotiating efforts for new FTAs with third countries.*
- ii. Freeze implementation of existing free trade agreements.*
- iii. Roll back any provision already in effect which provides importers from third countries more favorable treatment than that provided under the tariff provisions of the AfCFTA. Instead of bilateral negotiations, African countries will only negotiate with third countries as a group as is done by the European Union. Unfortunately, this is not possible, given the current pressures described above and the fact that African countries will not be ready for some time to enter into such negotiations.*

Our suggestion is that U.S., EU, and Great Britain - as well as any other entity - should agree that when entering into negotiations with Africa, they will not require more favorable treatment for their importers than that provided for African importers under the AfCFTA. Also, no agreement be implemented with a customs union member until all members of the customs union agree to respect the integrity of its CXT by incorporating the FTA tariff preferences into a CXT.

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REQUIRED STEPS TO MEET THE AFCFTA GOALS OF UNFETTERED TRADE

From this perspective, it should be within the AfCFTA Secretariat's purview to:

A. ANNOUNCE THE SCHEDULE FOR RATIFICATION BY THE END OF THE YEAR

During the June 26th Session of the Corporate Council on Africa Leadership Summit, AfCFTA Secretary General, Wamkele Mene announced that there was a developing consensus amongst the African countries to complete requisite AfCFTA first-stage steps so that trade could actually flow by January 1, 2021. The worst-case scenario was that trade would start to flow by June 30, 2021. Hon. Mene intimated that there is already an agreement that an AU Summit will be held in November of this year with the expectation that this summit would agree on a 2021 launch, hopefully by the first of the year.

Overall, the need to have everything in place for the launch by the date of Summit should serve as an action-enforcing event for preliminary milestones to be achieved. Of course, if the continued dislocation from COVID-19 prevents this preliminary work from being completed on a timely basis, it may be necessary to postpone the pre-launch Summit until May 2021 and the actual launch until July 1, 2021. Dislocation would be due to an inability to hold the required technical meeting and negotiations in 2020 as well as to convene parliamentary sessions required for the remaining ratifications.

We note that the original plan to hold a Summit the past May to allow a July 1st launch was abandoned due to COVID-19. However, the idea of scheduling a launch Summit thirty to sixty days before the actual launch is still solid and should be applied again. It is the best way to maintain pressure to complete the required milestones.

B. COMPLETE RATIFICATIONS[2]

It may be too ambitious to include all fifty-five AU countries in the group of countries initially implementing the AfCFTA. Please note that although one could choose to focus on a critical mass of 28 countries, we should consider 32 countries. This is the calculation: (a) with an aim to maintain the integrity of the common external tariffs, 26 of the 27 members of the existing customs union should ratify as a prerequisite for the customs unions submitting their AfCFTA tariff schedules (An exception could be made for South Sudan since it only joined the EAC in 2016); (b) thus far, 15 customs union countries have already ratified the AfCFTA, and (c) the priority, therefore, should be on ensuring that the 11 countries belonging to SACU, EAC, and ECOWAS ratify the treaty in the immediate term[3].

Fortunately, although Nigeria and Tanzania are outliers, healthy debate is still on-going in the other 9 countries. Our observation is that inertia plays a bigger role than political opposition in delaying ratification efforts. Conversely, political concerns in Nigeria could be assuaged by a slightly-easier-to-use escape clause rules and the type modification of origin rules described in (d) below[4].

[2] In order to promote ratification of the WTO Trade Facilitation Agreement by a sufficient number of countries for the agreement to go into effect, the WTO carefully monitored the ratification process. Possibly the AfCFTA Secretariat should do the same as a way to promote the enthusiasm required for the process of ratification process to be completed on a timely basis.

[3] We would also mention that one must create supporting mechanisms with designated funding and expertise to provide technical support to those countries that need such assistance. Given the support both in and outside of Africa and the fact that this issued has already been considered, and it should, thus, be possible to have this assistance mechanism in place by next year to coincide with the AfCFTA launch.

[4] Please note that of the top ten exporting African countries, South Africa, Nigeria Ghana and the Ivory Coast belong to customs unions. Of the remaining six, one could exclude Angola and Libya since they have not attained an optimal level of diversification. Egypt must be included since it is a leading force for integration. Of the three North African countries in the top ten, one should only include Morocco since it is a prospective member of ECOWAS.

C. COMPLETE AND NOTIFY AfCFTA TARIFF SCHEDULES

Following ratifications, the next step is for the customs unions and countries notifying on their own to notify their AfCFTA schedules to the AfCFTA Secretariat. This should not be that difficult. Much work has already gone into preparing the AfCFTA tariff schedules and more effort could ensue while ratifications procedures are taking place. The task should be even easier when one realizes that most of the member states in intra-African trade are with fellow members of a REC and such trade is already almost completely duty-free^[5]. Even where there is only a tentative agreement on specific tariff reductions since nothing can be formalized until all members of the RECs have ratified, a tariff schedule could be submitted with an asterisk – allowing the Secretariat to review the schedule for technical coherence on an expedited basis. Hopefully, the asterisk will be removed before trade flows or shortly thereafter.

[5] A suggested modification to the current template for reducing duties is to provide duty-free treatment immediately on PPE products as a way to incorporate this effort into efforts to deal with COVID-19. The significance of this change is that whereas under the current plan the AfCFTA would take at least five years to see the elimination of duties on any product, this would see duties in COVID-19 related products eliminated immediately.

D. COMPLETE THE ORIGIN RULES

The good news is that origin rules for about 90% of the products in the tariff schedule have been completed. Those products for which specific origin rules cannot be agreed upon could be treated with these presuppositions:

- (i) The majority of trade would be between members of the same RECs and thus be governed by the REC rules;
 - (ii) One must therefore look at those traded products between countries that are not members of the same REC;
 - (iii) in the case of (ii), exclude these products from AfCFTA and other preferences; thus these will trade under normal MFN tariffs, and
 - (iv) trade between countries belonging to different RECs, to enter under the rules in effect in the importing country.
- Eventually, the same origin rules would apply to more and more products as additional common rules are agreed on in negotiations after the first phase is implemented.

E. SCRUB THE TARIFF NOTIFICATIONS

Allow one month for the AU Secretariat to (a) review each of the submissions to ensure that they meet the tariff reduction requirements of the AfCFTA protocol, (b) ensure that the tariff nomenclatures are consistent among AfCFTA members to allow trade to flow between them, and (c) that these tariff nomenclatures in (b) are consistent with the requirements of the World Trade Organization (WTO). Donors, particularly international experts in the WTO, the United Nations Conference on Trade and Development (UNCTAD) and the World Customs Organization (WCO) should be on hand to assist the Secretariat as it carries out these tasks. Please note that although one month is, ostensibly, a short time period, a three-month period option should also harness advanced submission of asterisked tariff schedules.

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F. THE AU SUMMIT SHOULD AGREE TO LAUNCH

The Summit should approve the preparatory steps described above and announce the official launching of the Dream on January 1, 2021. A six-month delay until July 2021 would be acceptable.

The launch of a trade agreement covering 54 or 55 countries would bring into force the world's largest FTA; larger than any combination of three trade agreements already in existence. Remarkably, success would have been achieved in 6 short years, since negotiations were launched in June 2015.

G. DISSEMINATE THE RULES AND REGULATIONS FOR AFCFTA:

Fortunately, both the AU and AfCFTA Secretariats appreciate the importance of having information available to municipal public and private sectors about the rules and regulations for taking advantage of the AfCFTA and there is already an exchange of information with national and REC customs authorities and key private sector players like potential producers, importers/exporters of products expected to be traded under the AfCFTA as well as required service providers. Dissemination to the whole private sector and other civil society participants are required but can wait until the launch. However, given their specific challenges, on-going dissemination efforts must be augmented by additional effort must go to ensuring that woman and SMEs are part of this trade policy process.

H. CELEBRATION: TRADE UNDER AFCFTA PROVISIONS BEGINS TO FLOW MONDAY, JANUARY 4TH.