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2021 in Review: The African Continental Free Trade Area

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2021 was significant for Africa with respect to the African Continental Free Trade Area ('AfCFTA') and the Agreement establishing it. The aftermath of the COVID-19 pandemic generated a global economic crisis at a very critical phase of the AfCFTA and resulted in a delay in its implementation. This post seeks to place into perspective the developments that have occurred and traction gained since January 2021. This post also provides an outlook on the developments yet to come.

1. Commencement of Trading under the AfCFTA

The AfCFTA is a [flagship project](#) of [Agenda 2063](#), a focused plan by the African Union ('AU') which aims to transform Africa into a politically and economically independent continent and reposition the continent as a prominent force in the global trade arena. The AfCFTA aims to boost intra-Africa trade and utilise trade as a tool for the broader growth and development of the continent. The [Agreement](#) establishing the AfCFTA was signed in March 2018 and entered into force in May 2019 after 24 countries had deposited their instruments of ratification. While the Agreement had taken effect, and the intention was for trading under the Agreement to begin in July 2020, the outbreak of COVID-19 occasioned a [6-month delay](#) that resulted in the commencement of trading on 1 January 2021.

Thus, since 1 January 2021, African countries that had submitted their plans to reduce tariffs, or taxes on imported goods¹⁾ are able to trade goods under the AfCFTA Agreement. Indeed, the [first trade](#) using the trading preferences under the AfCFTA Agreement occurred a few days after its commencement. Many in the global trade community eagerly watched this initiation of trading as it marked a monumental step in support of AfCFTA and its stated goal. However, as trading began under the AfCFTA, negotiations on many issues were yet to be resolved and as such the Agreement was and is not still in a position to be fully functional. The commencement of trading on 1 January 2021 is at most a symbolic mark, as the full impact and implementation of the Agreement are expected to take awhile with predictions of its full effect being in place by 2035.

2. Tracking the Importance of Relevant Developments

To fully understand the developments that have taken place in lead up to the commencement of trade, and further developments since, a review of negotiations under the Agreement is helpful. Generally, the negotiations can be divided into three phases:

- Phase I – Trade in Goods and Services
- Phase II – Intellectual Property Rights (IPR), Investment and Competition Policy
- Phase III – E-commerce

Each is discussed in turn below.

a. Phase I Regarding Trade in Goods and Services

Prior to the commencement of trading, a major part of the negotiations of Phase I had commenced, however, not all have been concluded. Some of the vital components that are still outstanding include the Rules of Origin ('RoO'), tariff schedules, and specific commitments on trade in services.

In particular, a crucial part of these components is the negotiation of RoO, the importance of which lies in the determination of products that are to be categorised as "made in Africa" and eligible for tariff concessions. The negotiations of the RoO were expected to be concluded by [June 2021](#), however, as of 5 January 2022, negotiations were still ongoing and according to the Secretary General of the AfCFTA Secretariat, [the Parties had reached 87.8 per cent agreement on the rules of origin](#). As such, preferential RoO trade under the Agreement will be unable to take full effect until its conclusion.

b. Phase II Regarding IPR and Investment and Competition Policy

While negotiations regarding Phase I remain ongoing, Phase II negotiations, focusing on IPR and investment and competition policy, also commenced in 2021. These negotiations were initially scheduled to be concluded in December 2020 and then rescheduled to [conclude in December 2021](#). Indeed, [contrary to what was originally expected](#), the draft legal text of the Investment Protocol was not submitted to the January 2021 Session of the Assembly for consideration. In the meantime, on May 3, 2021, the [fifth meeting of the AfCFTA Council of Ministers responsible for Trade](#) took place in Accra, Ghana.

So far, there have only been speculations and recommendations on the proposed content of the protocols which are being negotiated, in particular concerning the Investment Protocol. It is expected that the Investment Protocol will bring with it a unique change to the investment disputes regime by [replacing existing African BITs with a single treaty](#), which would be a noteworthy development because quite a number of them are [yet to be ratified or utilised by African states](#).

In other innovative developments, it has been suggested that the Investment Protocol may impose standards on State parties to recognise and protect [indigenous people's resource rights and traditional knowledge](#). [Other contributors have suggested](#) that the Investment Protocol could be an important benchmark agreement to formulate and facilitate a common African approach to international investment policymaking. There are several calls for this African approach to depart

from the traditional ‘investment protection only’ model of investment agreement in favour of a more modern approach that would include [investment facilitation](#) and [sustainable development](#) as important goals.

However, the creation of a continent-wide African investment regime will require the careful consideration of [national, regional, and continental industrialization and economic development plans](#). It is yet to be seen how these objectives will be coordinated and adjusted in the near future. Meanwhile, Phase II negotiations will continue to be a subject of discourse and debate during 2022 until they are finalised.

c. Phase III Regarding E-Commerce

The interest in creating a protocol on e-commerce reinforces Africa’s intention to capitalize on digital trade to contribute to systemic transformation of African economies. The relevance of an e-commerce protocol cannot be more emphasised now in the wake of the COVID-19 pandemic.

Phase III negotiations were to commence immediately after the initially proposed conclusion of Phase II negotiations in December 2020. Like Phase II negotiations, the conclusion of Phase III negotiations was [rescheduled](#) to 31 December 2021. However, till date, there is yet to be any publicly-known information regarding substantive developments in this regard and it is unclear what will be featured in the protocol on e-commerce. It is the hope of some that the protocol will deal with [specific issues](#) such as data governance, electronic transactions and e-commerce taxation, among many others.

3. The Importance of Strategic Partnerships

In order to make the system operational, the AfCFTA is also relying on [strategic partnerships](#) with the African Development Bank (‘AfDB’), the United Nations Development Programme (‘UNDP’), the United Nations Industrial Development Organization (‘UNIDO’), and the International Trade Centre (‘ITC’).

These partnerships aim to support the [implementation](#) of the AfCFTA by engaging with the private sector to boost [trade](#) and [industrialization](#) at the continental, regional and sub-national levels. The main goal is to facilitate the ability of the African business community to access opportunities via a new single market.

4. AfCFTA’s Dispute Settlement Mechanism

From 26 to 28 April 2021, the [Inaugural Meeting](#) of the AfCFTA’s Dispute Settlement Body (‘the Dispute Settlement Body’) took place. The Dispute Settlement Body is one of the institutions that compose AfCFTA’s dispute settlement mechanism, along with Panels and the Appellate Body (‘AB’).

Inspired by the World Trade Organization’s (‘WTO’) dispute resolution system, the AfDB two-tier

dispute resolution system allows only disputes between and among the Member States. Similar to the WTO approach, in this State-to-State structure, private sector entities are expected to flag potential breaches of market access obligations by lobbying their Member State governments who may elect to adopt those concerns and raise them before the Dispute Settlement Body. Such disputes would be settled by panelists chosen from a list of candidates nominated by Member States and the AB would review panel decisions. Importantly, the mechanism also authorizes the use of arbitration, along with good offices, conciliation, and mediation.

Some suggest that the Dispute Settlement Body could learn from lessons arising out of the WTO's practice. As the AfCFTA regime will co-exist alongside FTAs of the Regional Economic Communities (RECs), and considering that the AfCFTA is designed to be a flexible arrangement, whether formal legal disputes will be declared and, in that case, how they will be settled are issues that remain to be seen.

5. 2022: Looking Ahead

As noted by the Secretary General of the AfCFTA Secretariat, there is much more to be achieved with AfCFTA. We must, however, recognize that the AfCFTA is a very ambitious project which, in spite of the pandemic that has hindered numerous global economic developments, is progressively moving to achieve its goal, albeit a little slower than predicted. Beyond the developments with ongoing negotiations as highlighted above, 2021 also saw an increase in the move towards ratification of the agreement by state parties. These include Malawi, Zambia, Algeria and Burundi who have all deposited their instrument of ratification of the AfCFTA Agreement; Tanzania which has ratified the Agreement but is yet to deposit its instrument of ratification; and Seychelles and Somalia who are both awaiting parliamentary confirmation of the ratification process. As of October 2021, a total of 41 countries of the 54 countries that signed the Agreement had complied with their domestic requirements for ratification of the AfCFTA Agreement and while a total of 38 countries had deposited their instruments of ratification.

These developments are alongside the Pan African Payments and Settlement System (PAPSS) which was launched by the AfCFTA Secretariat and African Export and Import Bank (AFREXIM) on 13 January 2022. PAPSS is expected to boost intra-Africa trade by transforming and facilitating payment, clearing and settlement for cross-border trade across Africa. In light of these various developments, 2022 presents yet another opportunity for a step in progressive developments for the AfCFTA and undoubtedly, there is a strong basis to anticipate success in the new year.

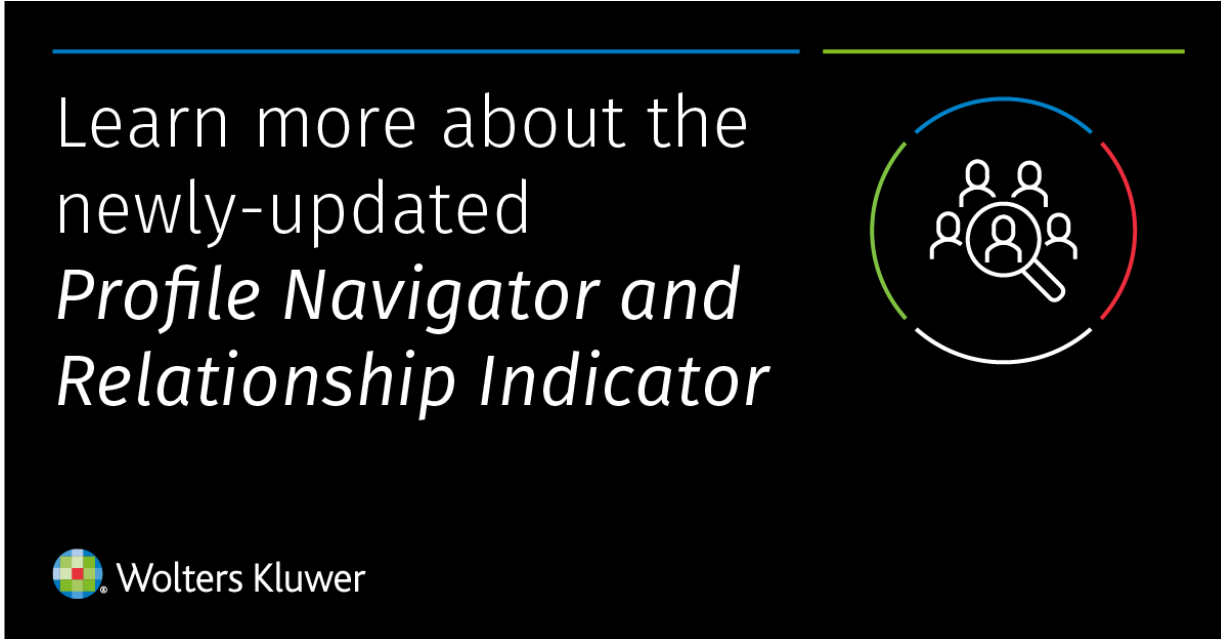
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References

- ?1 The Protocol on Trade in Goods obligates State Parties to progressively eliminate tariffs (trade liberalisation) and eliminate Non-tariff Barriers

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