Implications of AfCFTA on International Businesses

Dode Seidu, Frontier Market Advisors

March
2022

Outline

- Context of Intra-Africa Trade
- AfCFTA Background
- Overview of AfCFTA
- Status of Implementation
- Origin Rules
- Implications for International Businesses

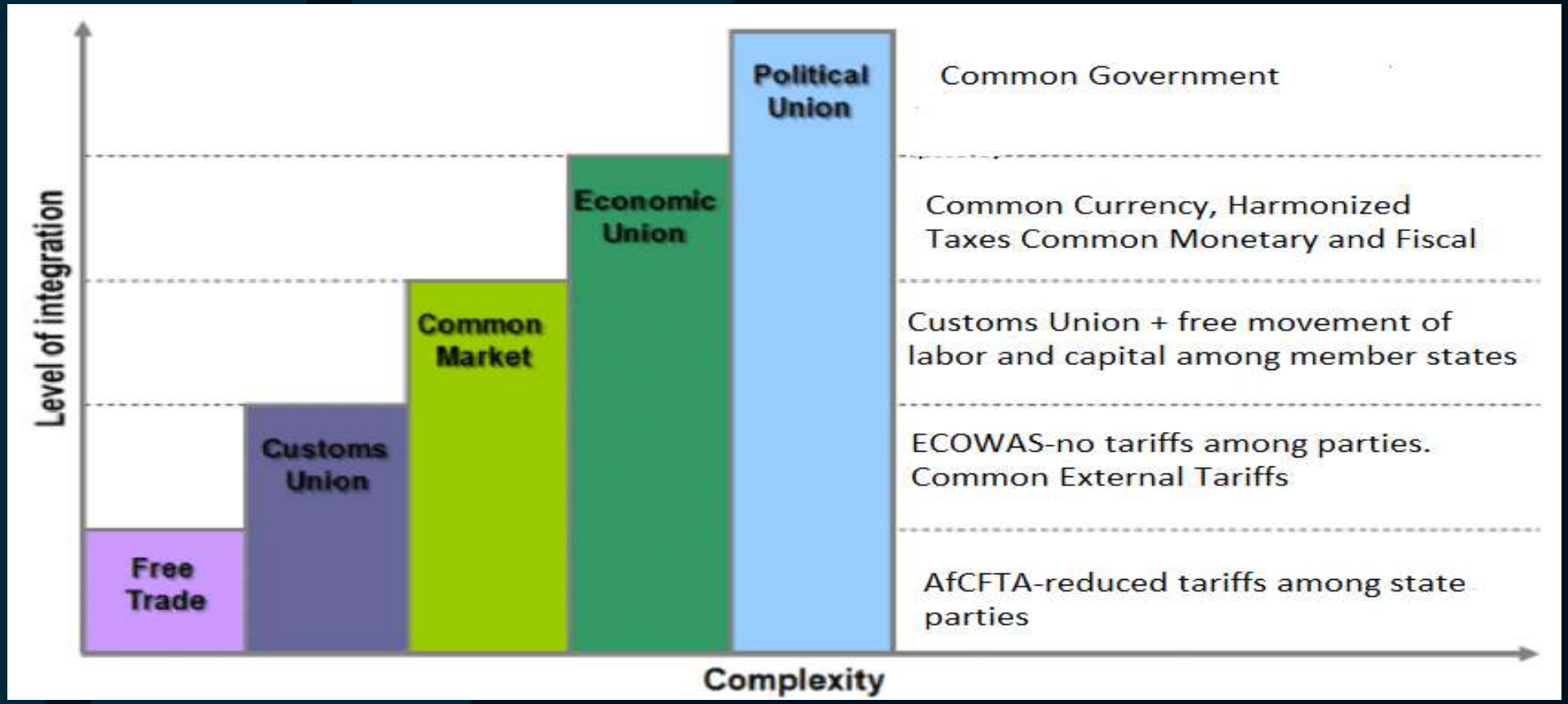


Context of Intra-Africa Trade

- Africa has been pursuing continental integration post independence-OAU established in 1963
- After unsuccessful continental integration efforts progress has been made at regional integration
- Regional Integration efforts established Regional Economic Communities- legal and institutional frameworks for cooperation in:
  - Overcoming barriers to the flow of goods, services, capital and people across borders,
  - Managing shared resources, and/or
  - Achieving peace and security in the region.



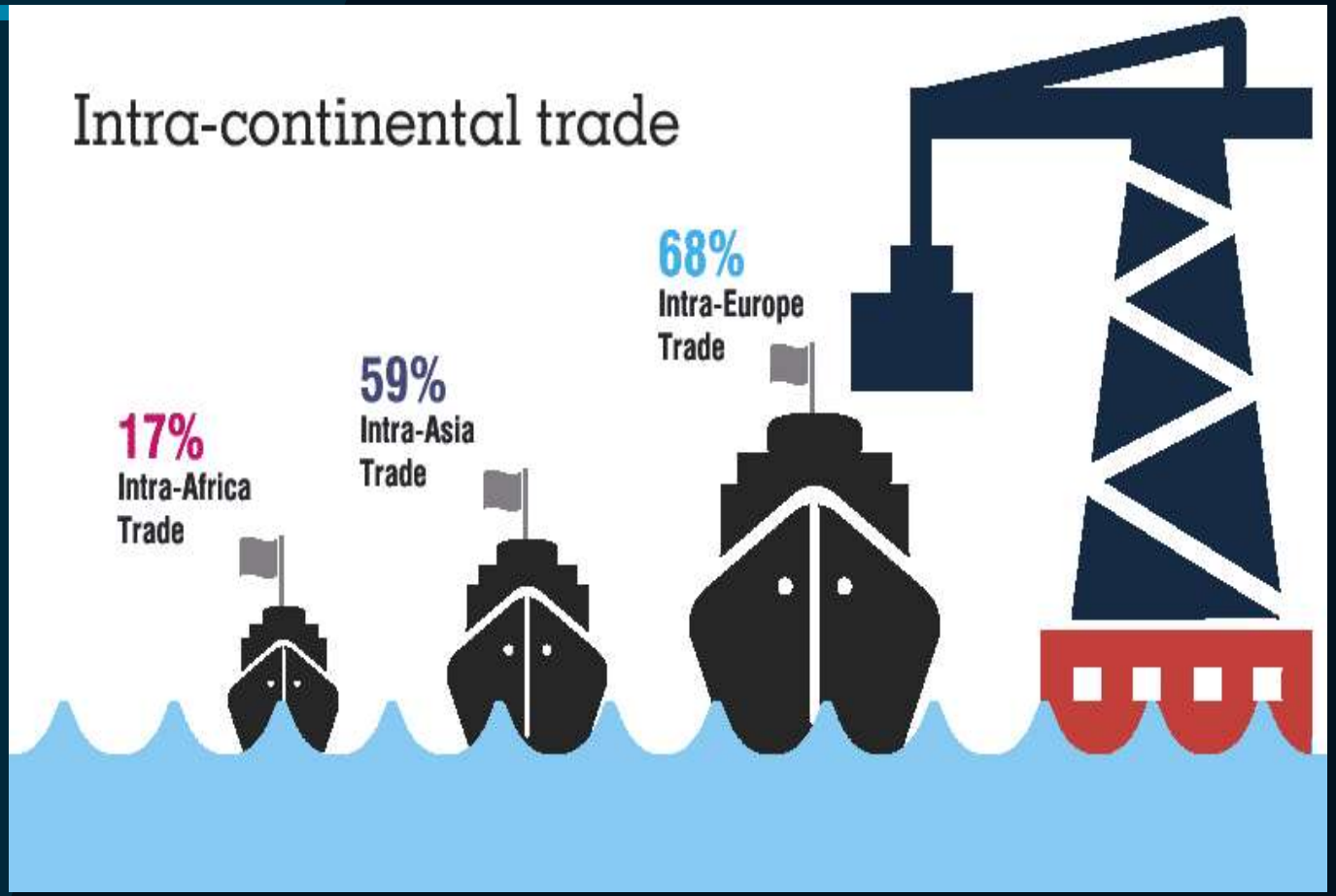
Context of Intra-Africa Trade



Context of Intra-Africa Trade

Intra-Africa trade

- Accounts for 17% of the continent's total trade in 2019.
- Europe and Asia are 68% and 59%, respectively
- Africa exports more diversified goods within Africa and exports more raw materials outside the continent
- Manufactured goods – such as machinery and mechanical appliances, vehicles, electrical equipment and plastics – remain key components of intra-African trade, accounting for around 20%.
- Most intra-Africa trade is among member countries the same **regional economic community (REC)**



Context of Intra-Africa Trade

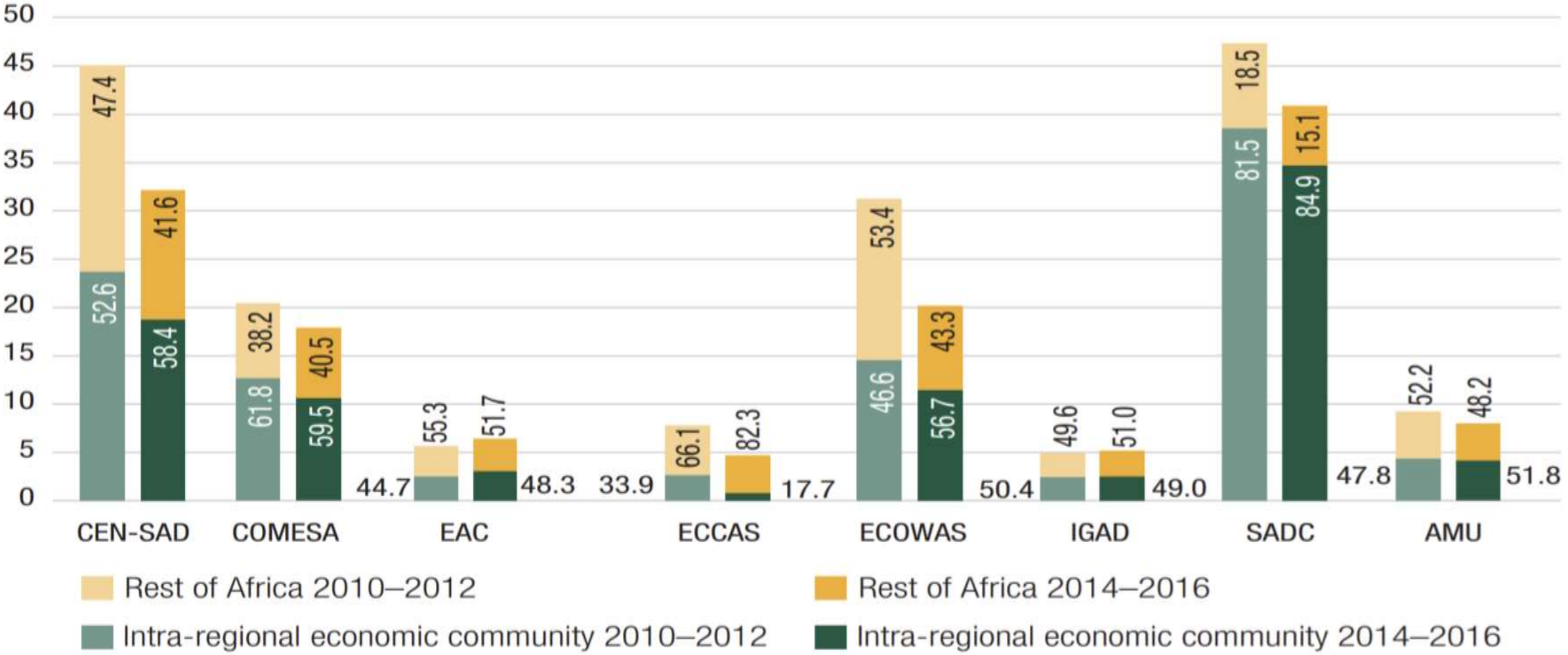
Barriers to Intra-Africa Trade

- High Levels of Informality
- High prevalence of non-tariff barriers
- Variations in currencies, language and legal regime
- Security
- Corruption at the border
- Differences in stages of integration



Intra-regional economic community trade in Africa, 2010–2012 and 2014–2016

(Billions of dollars and percentage of total African trade)



Source: UNCTAD calculations, based on data from Harvard University, 2018.

Journey to the Establishment of the Continental Free Trade Area

- The Abuja Declaration of 1991 of the Authority of Heads of States of the OAU envisioned the establishment of a

  "**Continental Economic Community so as to ensure the economic, social and cultural integration of the African Continent"**

- A committee was established made up of the Secretary Generals of the OAU and RECs to follow-up and monitor the implementation of the African Economic Community with technical support from the ADB, ECA and UNDP.
- In 2011 in Accra the African Union Conference of Trade Ministers in decided to establish the Continental Free Trade Area
- In 2012, the AU Summit in Ethiopia formally endorsed the establishment of AfCFTA



Journey to the Establishment of the Continental Free Trade Area (cont'd)

- The AfCFTA became one of the flagship initiatives of the AU Agenda 2063-a shared framework for inclusive growth and sustainable development for Africa to be realized in the next fifty years.
- Pan-African Vision of **"An integrated, prosperous and peaceful Africa"** enshrined in Agenda 2063
- Aspiration 7 of Agenda 2063: "**By 2063 Africa will have emerged as a united, strong, sovereign, independent and self-reliant continent that realizes full economic and political integration."**
- The AU Summit in Kigali on March 2018 formally concluded the Phase 1 of negotiations for the AfCFTA
- At that Summit 44 member states signed the AfCFTA agreement.
- The agreement entered into force on May 2019 after ratification by 22 Member



Overview of the AfCFTA



- The AfCFTA is a free trade agreement among 54 of the 55 AU nations.
- The AfCFTA connects 1.3 billion people across Africa with a combined GDP of US$3.4 trillion.
- The AfCFTA has the potential to lift 30 million people out of extreme poverty.
- The AfCFTA is the largest in the world in terms of participating countries since the formation of the World Trade Organization.
- The AfCFTA builds on the integration already achieved RECs.
- Promote and attain sustainable and inclusive socio-economic development, gender equality and structural transformation of the State Parties;

General Objectives of the AfCFTA



- Create a single market for goods and services, facilitated by movement of persons to deepen the economic integration of the African continent
- Create a liberalised market for goods and services through successive rounds of negotiations
- Contribute to the movement of capital and natural persons and facilitate investments building on the initiatives and developments in the State Parties and RECs

General Objectives of the AfCFTA



- Lay the foundation for the establishment of a Continental Customs Union at a later stage
- Enhance the competitiveness of the economies of State Parties within the continent and the global market
- promote industrial development through diversification and regional value chain development, agricultural development and food security; and
- Resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes.

Specific Objectives of the AfCFTA

01 Progressively eliminate tariffs and non-tariff barriers to trade in goods

02 Progressively liberalise trade in services

03 Cooperate on investment, intellectual property rights and competition policy

04 Cooperate in all trade-related areas

05 Cooperate on customs matters and the implementation of trade facilitation measures

06 Establish a mechanism for the settlement of disputes concerning their rights and obligations

07 Establish and maintain an institutional framework for the implementation and administration of the AfCFTA

Principles Governing the AfCFTA

The AfCFTA implementation is governed by the following principles:

- **Driven by Member States of the African Union** that have ratified the AfCFTA and deposited ratification instruments (State Parties)
- **Variable Geometry/Speed-** a strategy that allows negotiations of one or more particular issues to lead to an agreement that is not, binding on all of the parties to the agreement
- The 8 RECs Free Trade Areas (FTAs) are the building blocs for the AfCFTA
- **Flexibility, Special and Differential Treatment**: AfCFTA contain special provisions which give Developing Countries and Least Developing Countries special rights and allow other members to treat them more favourably

Principles Governing the AfCFTA (cont'd)

The AfCFTA shall be governed by the following principles:

- Transparency and disclosure of information
- **Preservation of the Acquis:** RECs that have attained higher levels of liberalisation (higher than the 90% aimed for in the AfCFTA) shall 'maintain, and where possible improve upon' these levels of liberalisation.
- **Most-Favoured-Nation (MFN) Treatment:** requires a country to provide any concessions, privileges, or immunities granted to one nation in a trade agreement to all other members of the that trade agreement. it denotes the equal treatment of all countries.

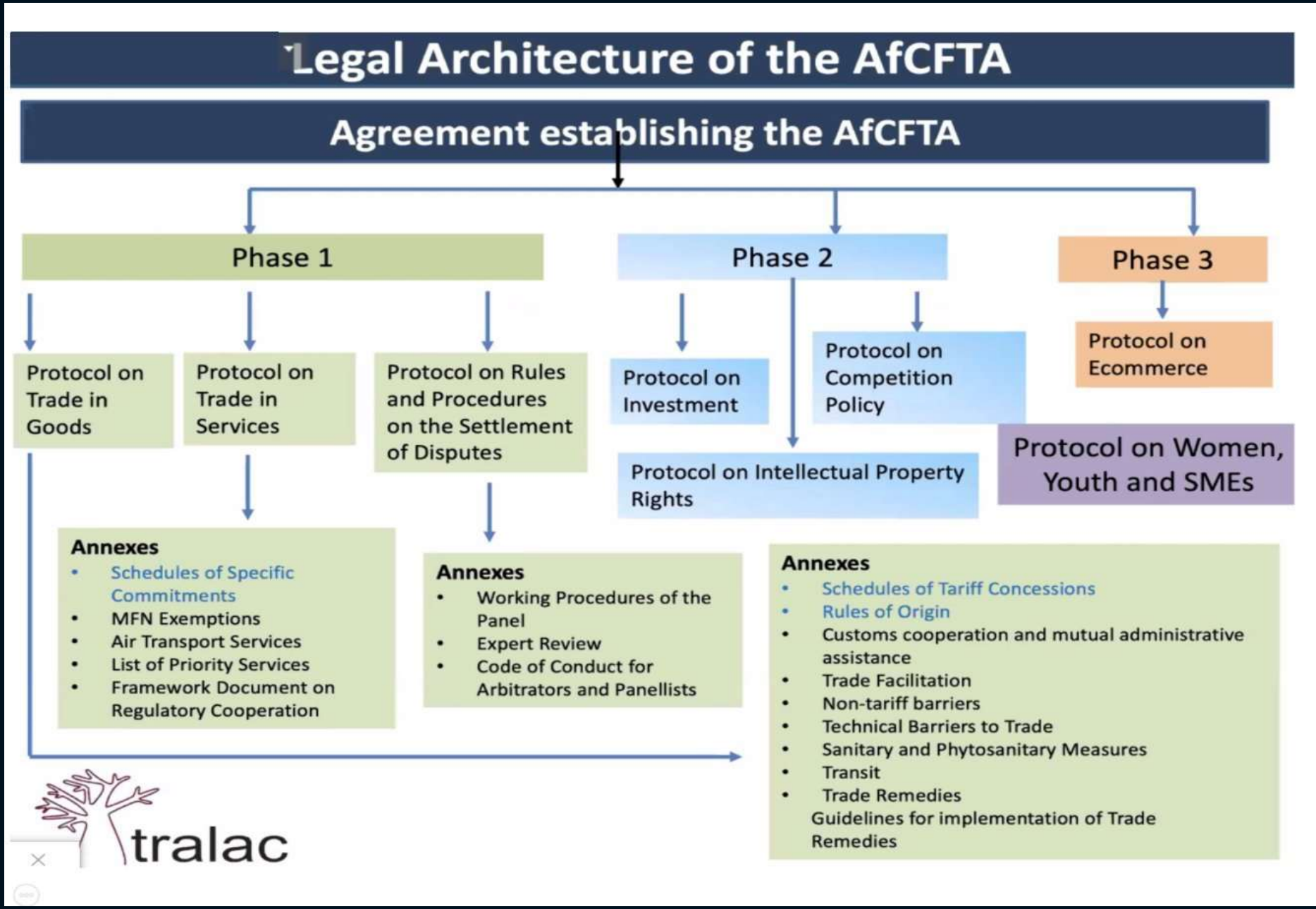
Principles Governing the AfCFTA (cont'd)

The AfCFTA shall be governed by the following principles:

- **National Treatment:** imports must be treated no less favourably than the same or similar domestically-produced goods once they have passed customs
- Substantial liberalisation
- Consensus in decision-making
- **Reciprocity:** the granting of mutual concessions in tariff rates, quotas, or other commercial restrictions.
- Best practices in the RECs, in the State Parties and International Conventions binding the African Union

Architecture of the AfCFTA

- AfCFTA is a framework agreement covering:
  - **Trade in Goods**
  - **Trade in Services**
  - **Dispute Settlement Mechanism**
  - **Investment**
  - **Intellectual Property Rights**
  - **Competition Policy**
  - **E-Commerce**



AfCFTA Implementation Progress



Conception
The AfCTA was born in January 2012 during the 18th Ordinary Session of the Assembly of Heads of State and Government of the African Union in Addis Ababa, Ethiopia.

Agreement
The Agreement establishing the AfCFTA was opened for signature on 21 March 2018 and currently 54 (except Eritrea) out of the 55 African countries have signed the AfCFTA Agreement.

Ratification and Operationalization
The AfCFTA entered

Secretariat
The AfCFTA secretariat was Commissioned in Accra and the first Secretary General, H.E Wamkele Mene, was appointed

Official Trading
Trading under the AfCFTA regime began on 1 January 2021.

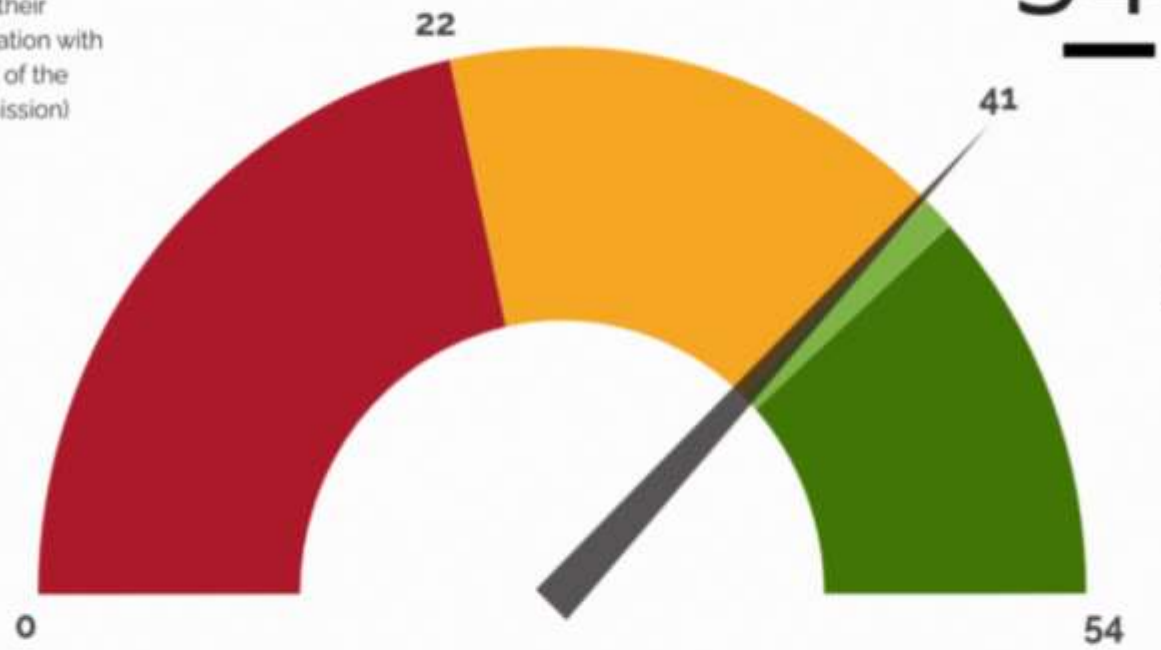
AfCFTA Ratification Barometer

41 No. of countries

that have deposited their instruments of ratification with the depositary (Chair of the African Union Commission)

54 No. of signatories

(countries) that have signed the consolidated text of the Agreement Establishing the AfCFTA



42 countries have complied with their domestic requirements for ratification of the AfCFTA Agreement

1 country (of the 55 AU member states) has yet to sign the AfCFTA Agreement - Eritrea

tralac

Last updated: 7 February 2022

© tralac, 2022

Number of ratifications deposited

Legal Architecture of the AfCFTA

Agreement establishing the AfCFTA

Phase 1

- Protocol on Trade in Goods
- Protocol on Trade in Services
  - **Annexes**
    - Schedules of Specific Commitments
    - MFN Exemptions
    - Air Transport Services
    - List of Priority Services
    - Framework Document on Regulatory Cooperation
- Protocol on Rules and Procedures on the Settlement of Disputes
  - **Annexes**
    - Working Procedures of the Panel
    - Expert Review
    - Code of Conduct for Arbitrators and Panellists

Phase 2

- Protocol on Investment
- Protocol on Competition Policy
- Protocol on Intellectual Property Rights
- Protocol on Women, Youth and SMEs

Annexes

- Schedules of Tariff Concessions
- Rules of Origin
- Customs cooperation and mutual administrative assistance
- Trade Facilitation
- Non-tariff barriers
- Technical Barriers to Trade
- Sanitary and Phytosanitary Measures
- Transit
- Trade Remedies

Guidelines for implementation of Trade Remedies

Phase 3

- Protocol on Ecommerce

tralac

Protocol on Trade in Goods

- The principal objective of this Protocol is to create a liberalised market for trade in goods.
- The specific objective of this Protocol is to boost intra-African trade in goods through:
  - Progressive elimination of tariffs
  - Progressive elimination of non-tariff barriers
  - Enhanced efficiency of customs procedures, trade facilitation and transit
  - Enhanced cooperation in the areas of technical barriers to trade and sanitary and phytosanitary measures
  - Development and promotion of regional and continental value chains
  - Enhanced socioeconomic development, diversification and industrialization across Africa



Tariff Concessions and Liberalization Schedules

- Schedules of Tariff Concessions are to be developed in accordance with the approved modalities for tariff liberalisation.

Table 1: Modalities of tariff liberalisation under the AfCFTA

	Least developed countries (LDCs)	Non-Least developed countries (non-LDCs)
Full liberalisation	90% of tariff lines	90% of tariff lines
	10-year phase down	5-year phase down
Sensitive products	7% of tariff lines	7% of tariff lines
	13-year phase down (current tariffs can be maintained during first 5 years – phase down starting in year 6)	10-year phase down (current tariffs can be maintained during first 5 years – phase down starting in year 6)
Excluded products	3% of tariff lines	3% of tariff lines

Source: Adapted from AU Decision on the African Continental Free Trade Area Assembly/AU/Dec.714(XXXII)

Tariff Concessions and Liberalization Schedules

- 28 countries have made Tariff Offers which have been certified by the AfCFTA Secretariat as having met the minimum threshold requirement of 90% of the tariff lines and ready to commence trading under AfCFTA for tariff lines up to 90%.

1. DR Congo;
2. Egypt;
3. Madagascar;
4. Malawi;
5. Mauritius;
6. Seychelles;
7. Zambia;
8. Gabon;
9. Cameroon;
10. Central African Republic;
11. Chad;
12. Republic of the Congo;
13. Equatorial Guinea;
14. Benin;
15. Burkina Faso;
16. Cabo Verde;
17. Co^te d'Ivoire;
18. The Gambia;
19. Ghana;
20. Guinea;
21. Guinea Bissau;
22. Liberia;
23. Mali;
24. Niger;
25. Nigeria;
26. Senegal;
27. Sierra Leone; and
28. Togo,

Protocol on Trade in Services

- The principal objective of this Protocol is to create a single liberalised market for trade in services
- The specific objectives of this Protocol are to:



Trade in Services

- Enhance competitiveness of services through: economies of scale, reduced business costs, enhanced continental market access, and an improved allocation of resources including the development of trade-related infrastructure
- Promote sustainable development in accordance with the SDGs
- Foster domestic and foreign investment
- Accelerate efforts on industrial development to promote the development of regional value chains
- Progressively liberalise trade in services across the African continent by eliminating barriers to trade in services

09.03.2022

Protocol on Trade in Services



Trade in Service

- Services are supplied in four modes:
  i. **Cross-Border Supply:** A mode of service supply or trade where services are supplied from the territory of one member of a trade agreement into the territory of another.
     An example is architectural design services, supplied, by an architect in one country by post or electronic mail to consumers in another country
  i. **Consumption Abroad:** A mode of service supply or trade where services are supplied in the territory of one member of a trade agreement to the consumers of another. This mode of supply requires that the consumer of services move abroad.

     An example is the traveling abroad to receive: medical treatment or to enroll in an education program

Protocol on Trade in Services

Services are supplied in four modes (cont'd):

iii. **Commercial Presence:** where services are supplied through any type of business or professional establishment, i.e. foreign direct investment, of one member of the agreement in the territory of another. *An example is the establishment of a branch of a foreign bank or of a franchising outlet in a foreign location*

iii. **Natural Persons:** where services are supplied by nationals of one member of a trade agreement in the territory of another, requiring the physical presence of the service provider in the host country.

This mode includes both independent service providers as well as employees of the services providers of another member. Examples include consultants, teachers and actors of one country supplying services through their physical presence in a member country, or the managers of a multinational enterprise.

Trade in Service

09.03.2021

Protocol on Trade in Services

- Services trade liberalisation will only occur when State Parties offer schedule of specific commitments
- Sectors of focus now for liberalization in AfCFTA are:
    - Business services (professional services)
    - Communication services
    - Financial services
    - Tourism and travel
    - Transport
- Next Phase of Services Negotiations will cover:
    - construction,
    - education,
    - health and social,
    - recreational and cultural,
    - distribution,
    - environment and
    - other services
- Each State Party lists each sector that they are committing under the AfCFTA.

Trade in Service

Protocol on Trade in Services



Key Elements for Successful Implementation of Protocol on Trade in Services:

- Schedule of Commitments for Sectors
- Regulatory Cooperation
- Mutual Recognition of qualifications, educational standards, licenses or certifications granted in another country.

Operational Instruments of the AfCFTA

The AfCFTA is governed by the following operational instruments:

The Rules of Origin: rules that determine the economic nationality of a product

AfCFTA Adjustment Facility: to support countries adjust to fiscal losses from removal of tariffs

The online tariff negotiating forum



AfCFTA Online Mechanism for monitoring and eliminating NTBs: a facility for online reporting of identified NTBs including for reporting via SMS

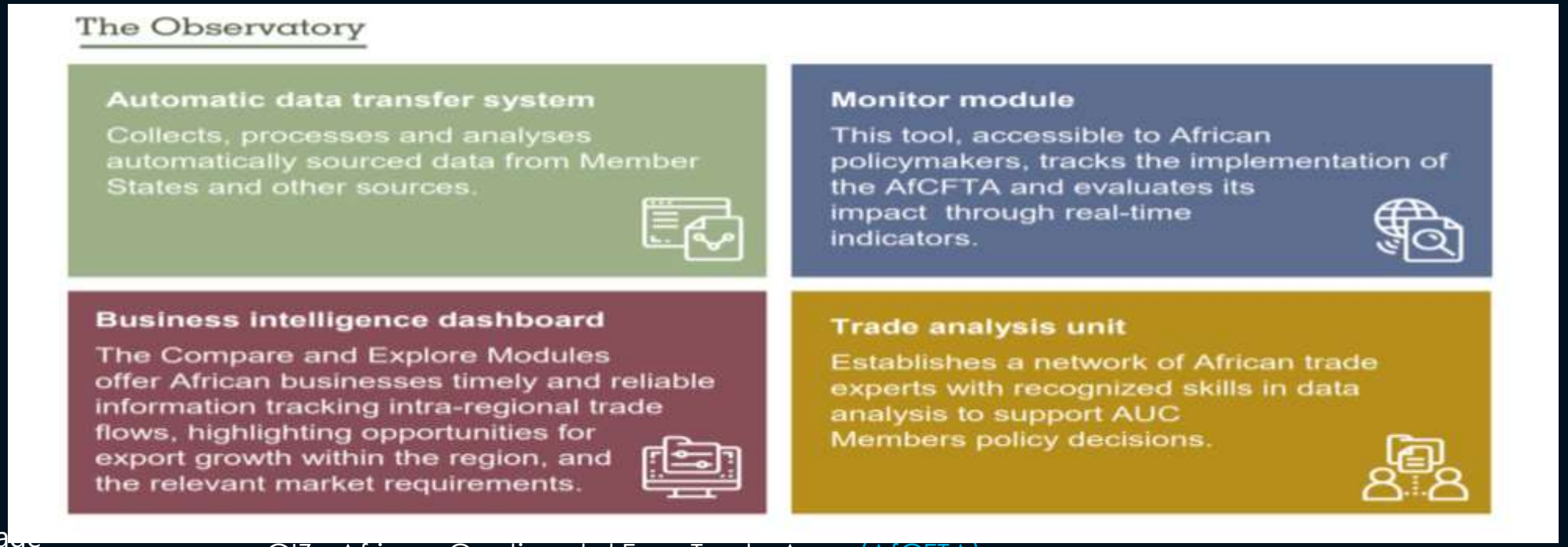
Pan-African Payment and Settlement System (PAPSS)

MANSA Repository Platform

The African Trade Observatory: an information portal to facilitate intra-African trade and to support the roll-out of the AfCFTA.

Africa Trade Observatory (https://ato.africa/en)

- The Observatory is a system that strengthens trade information across the continent in four dimensions:
- The ATO will provide updated and reliable data to inform business and policy decisions and to monitor the implementation process of the AfCFTA and its impact.
- It will be the source of real-time African trade and market information – spanning countries, products and markets – all in one place.



AfCFTA Adjustment Facility



- With the full implementation of the AfCFTA, fiscal revenue losses from reduction in trade tariffs are expected-estimated to be over US$ 4.1 billion in the short term.
- Afreximbank and the AU Commission has established a $5 billion AfCFTA Adjustment Facility—a compensation mechanism—to help AfCFTA member countries better adjust to the fiscal and other impacts of the trade agreement.
- The Facility will cover the short-term fiscal losses and support medium-to-long term adjustments of production activities in African countries to enable them take advantage of the opportunities arising from the AfCFTA.

Online Tariff Negotiating Forum



- Negotiating at the scale of the AfCFTA involving 8 RECs and 54 countries requires an online platform to facilitate and accelerate the harmonization of data
- The online tool allows parties to run negotiations simultaneously, with instant interactions among counterparts, either single countries or regional economic groups, and without the necessity of in-person meetings.
- The Online Negotiating Platforms helps trade negotiators in the preparation and submission of offers based on countries' priorities linked to sensitive criteria such as minimizing tariff revenue loss, temporarily protecting infant industries, and ensuring food security.

Pan-African Payment Settlement Systems (PAPSS)



- It is estimated that Africa looses about US$5 billion in payment transaction costs each year.
- PAPSS is a continent-wide, centralised payment and settlement system for for the processing, clearing and settling of intra-African trade and commerce payments
- It is an alternative to current high-cost and lengthy correspondent banking relationships to for payments among African countries.
- PAPSS was commissioned on September 29 after successful pilot phase in the countries of the West African Monetary Zone (WAMZ), with live transactions done in an instant.
- The West Africa Monetary Institute (WAMI) collaborated with Afreximbank in launching the system in the WAMZ.

What are Rules of Origin



- Tariffs (duties) are applied on merchandise imported into a territory.
- Tariffs are usually applied on most favoured nation (MFN) basis
- However under a free trade agreement (FTA), Duty Concessions/preferences are usually applied to imports
- Duty Concessions are required to be extended only to imported goods which are ‘made in’ the exporting country or meet origin requirements
- FTAs prescribe the criteria that must be fulfilled for goods to attain ‘made in’ in the importing country.
- Rules of Origin are the set of criteria and requirements for determining the geographic and economic origins of a product.

What are Rules of Origin?

- “…laws, regulations and administrative determinations of general application applied by any Member to determine the country of origin of goods provided such rules of origin are not related to contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond the application of paragraph 1 of Article I of GATT 1994.”-WTO Agreement on Rules of Origin

What are Rules of Origin?

X “Rules of Origin” are the specific provisions, developed from principles established by national legislation or international agreements ("origin criteria"), applied by a country to determine the origin of goods” -Revised Kyoto Convention- Specific Annex K

Why are Rules of Origin Important-For Government & Customs

- **For Governments & Customs**

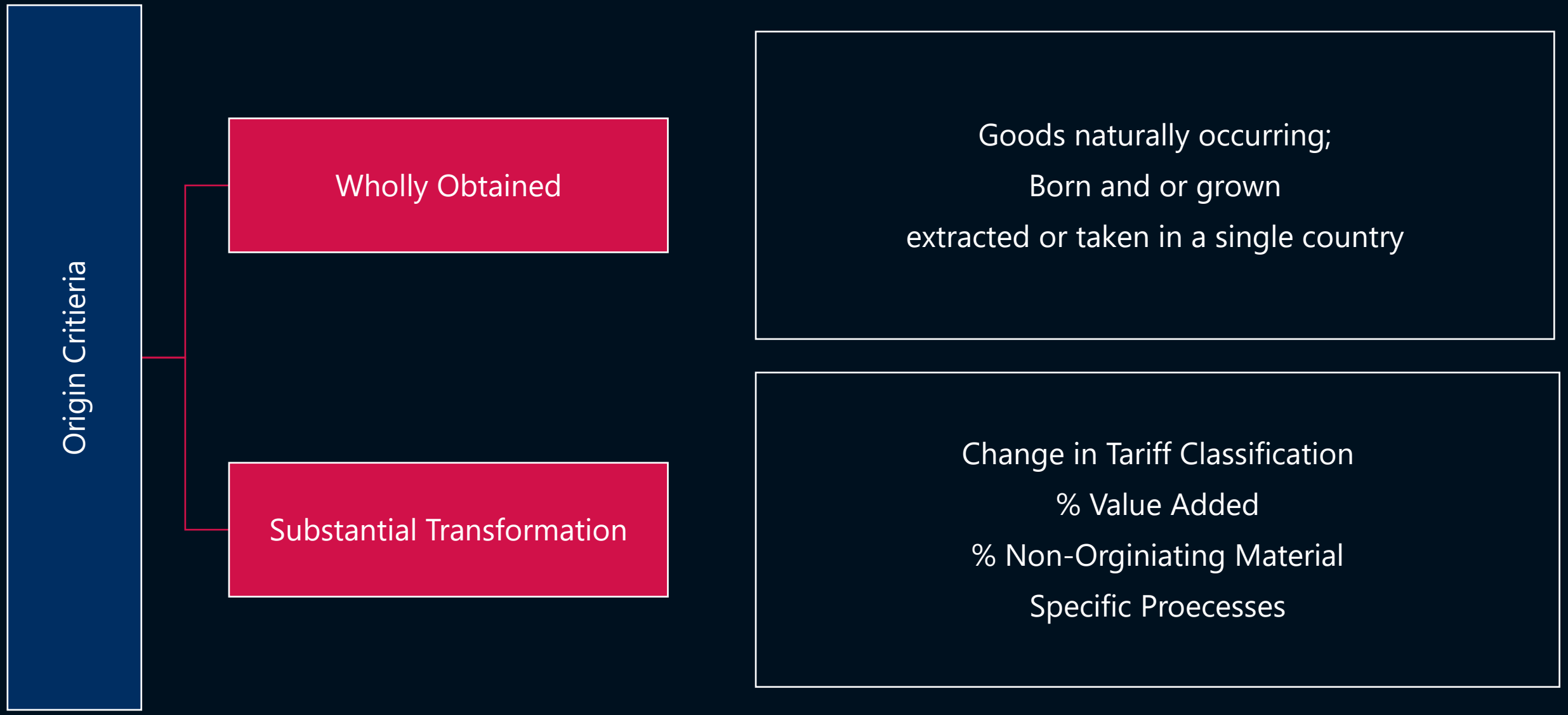
- ❑ Rules of Origin are the criteria by which a product traded between state parties can be eligible for preferences:
  - ❑ reduced import duty
  - ❑ No import duty
- ❑ Rules of Origin are also used to determine the application of other trade policy measures:
  - ❑ Quantitative Restrictions
  - ❑ Anti-Dumping and Countervailing Measures
  - ❑ Safeguard Measures
  - ❑ Origin Marking
- ❑ RoO is to prevent trade deflection and transshipment.
- ❑ To promote economic diversification industrialization & value addition

Why are Rules of Origin Important-For Businesses



- RoO are designed to ensure that only businesses located in countries/regions party to a given agreement can benefit from reduced tariffs.
- RoO are important for businesses in international trade as it enables them to source inputs to enable them benefit from tariff preferences in destination countries.
- Tariff preferences can provide an advantage and make products more competitive with other similar products in destination markets.
- Businesses may not use preferential RoO is they are a burden (cost and time) to trade
- RoO provide a basis for businesses to invest in specialized value addition activities that will help them benefit form trade preferences.
- RoO provide a basis for businesses to invest in regional value chains

Origin Criteria



AfCFTA Implications for Businesses



- Reduction or no tariffs on goods [gradual phase out of tariffs by member states depending on developmental status of each member state]
- Removal of non-tariff barriers to access the market.
- The progressive elimination of unnecessary and unjustifiable technical barriers (i.e. technical standard, technical regulations) to trade.
- Establishment of a continental framework for trade in goods and services
- Employees of businesses will have free movement within AfCFTA .
- Free movement of capital (transfer of funds).
- Investment protection under the Protocol on Investment.
- Liberalised policies on competition and intellectual property, e-commerce.

AfCFTA Implications for Businesses



- Service suppliers will have access to the markets of all African countries on terms no less favourable than domestic suppliers.
- Mutual recognition of standards, licensing and certification of service suppliers will make it easier for businesses and individuals to satisfy the regulatory requirements of operating in each other's markets
- The creation of regional value chains in which inputs are sourced from different African countries to add value before exporting
- Recourse to trade remedies to ensure that domestic industries are safeguarded, if necessary
- A dispute settlement mechanism provides a rule-based avenue for the resolution of any disputes that may arise between State Parties in the application of the agreement;