

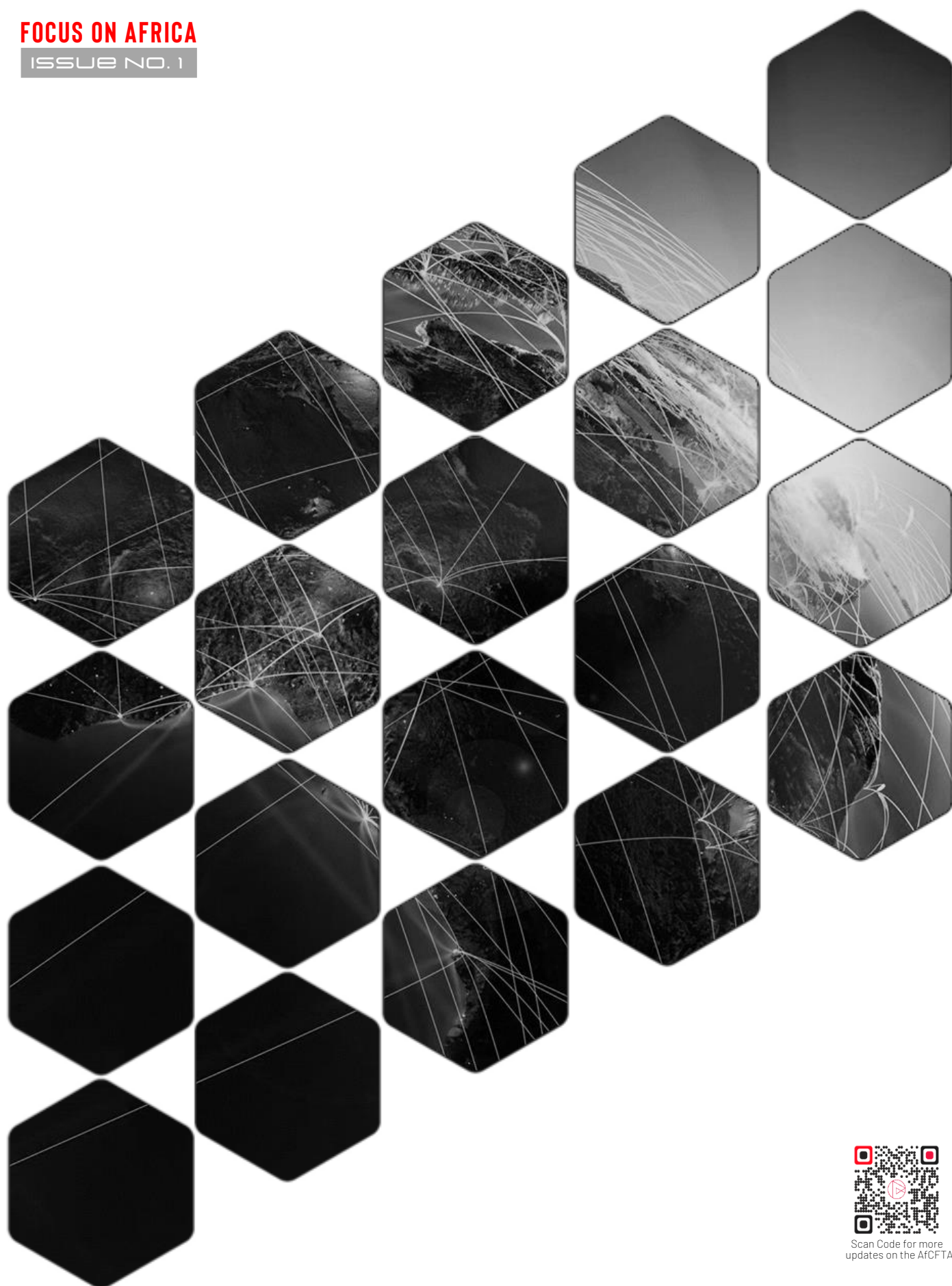
**FOCUS ON AFRICA**

# **The Promise of the African Continental Free Trade Area (AfCFTA) to East African States**

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In a continent roiled in political upheavals, graft, and poor fiscal policies, there is hope that a common market may be the spark to ignite a new dawn

**FOCUS ON AFRICA**  
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The AfCFTA is taking shape, but is the private sector within the EAC ready to shape its destiny?



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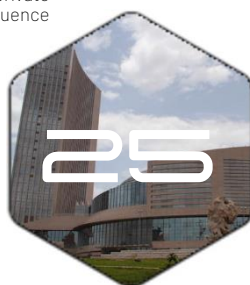
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The AfCFTA is likely to spur economic growth across the African continent. However, policymakers must involve the Private Sector as a key stakeholder.

# Introduction

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**...the AfCFTA is primarily aimed at removing tariff and non-tariff barriers to trade across the continent of Africa, the private sector in East Africa must claim their stake in the deliberations**

If you are like us, you probably spend a lot of time thinking about the future of the private enterprise as a significant chauffeur of economic growth. Such thoughts are even more relevant at a time when the East African region is posting a remarkable growth and enjoying, perhaps the longest streak of political stability. Well not quite, the situation in South Sudan, Somalia, and Burundi seems precarious – with the enduring threat that occasional flares are inescapable owing to the fragility of their democracies.

For the private sector, there is an eagerness to understand how the confluence of regional and international trends will impact their businesses in the short and medium term. Perhaps the most significant development is the emergence of the Africa Continental Free Trade Area (AfCFTA). There is a need for eloquent discussions on the role of the private sector in steering their governments towards institutional shifts that will allow them to reap from the promise of the AfCFTA and at the same time, mitigate its undesirous effects.

Whilst the negotiations surrounding the implementation of the AfCFTA are the purview of state operatives, there is rightness in considering a more imposed role of the private sector. The rationale is simple – private sector stands to gain from such deal making. Yet, the intricacies of operationalizing the AfCFTA calls for an understanding of how the huge disparities affect the key actors.

In this publication, we have highlighted the key areas that the private sector must seek to be heard. Considering that the AfCFTA is primarily aimed at removing tariff and non-tariff barriers to trade across the continent of Africa, the private sector in East Africa must claim their stake in the deliberations. Issues such as Competition, Rules of Origin, Intellectual Property, Investments will likely impact – one way or another – the emerging vibrancy of the manufacturing.

While it is still early to postulate whether the AfCFTA will go against the global trend of nationhood instead of integration, those that are likely to be affected must nevertheless envisage the promise and prepare for the perils. This publication is by no means comprehensive, please let us know what you think.



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# AN EMERGING ECONOMY?

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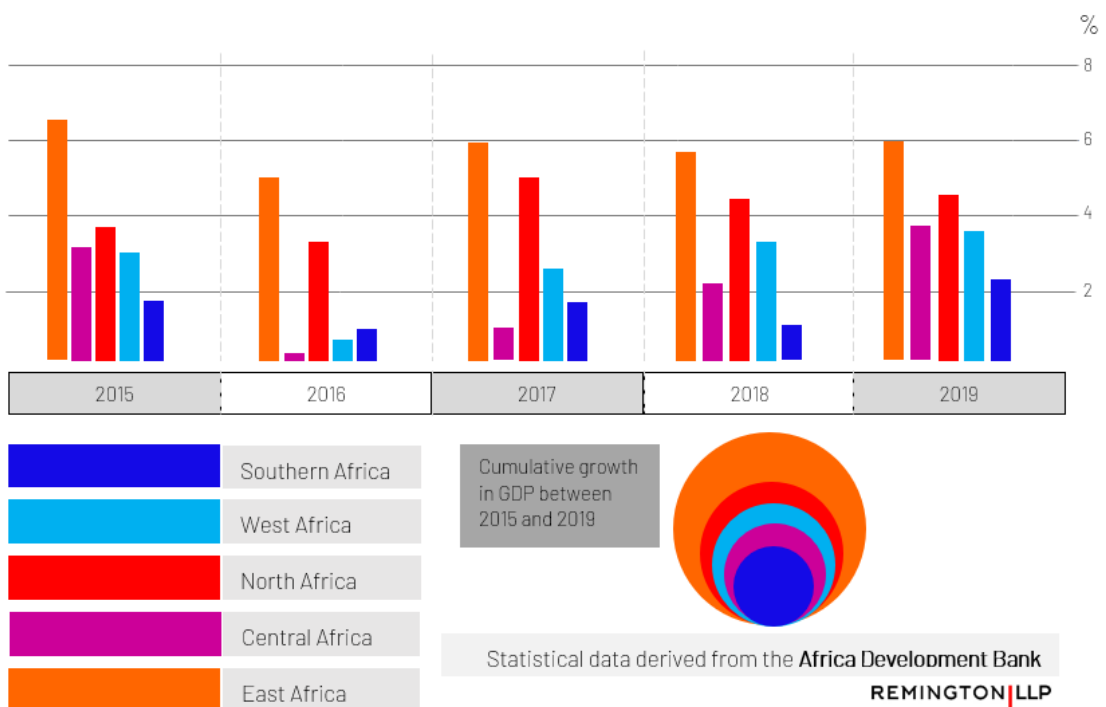
Is East Africa really on a path to economic prowess across Africa? Statistics, particularly in the past three years, seem to agree. At a robust 5.9 percent economic growth in 2019, the East African region has maintained a significant lead across the five regional economic blocks in Africa. Based on recent data from the African Development Bank the East African block is soaring economically and has improved on the figures it posted in 2018. During that year, the overall GDP of the East African region stacked at 5.7 percent – ahead of other regional economic blocks in the North, West, Central, and Southern African. Each of these other regions only managed a growth of 4.9 percent, 3.3 percent, 2.2 percent, and 1.2 percent respectively (Mpoke-Bigg, 2019).

Within the greater East African region, each state is earnestly jostling for the apex. In 2019, Ethiopia recorded the most momentous economic growth, at approximately 8.0 percent (The World Bank Group, 2019). Other regional states such as Kenya, Tanzania, Uganda, and Rwanda equally posted growth of

at least 5.0 percent. The economic emergence of the region, coupled with relative political stability within the last two years, has moulded the region into a budding destination for investment. Between 2017 and 2018, Ethiopia, Kenya, Tanzania, and Rwanda were ranked highly by the South Africa's Rand Merchant Bank in its Investment Attractiveness Index – pointing to their increasing draw as investment termini (Anyanzwa, 2019). In early 2020, Kenya became the largest economy in East Africa, at the expense of Ethiopia and likewise climbed to the apex as the most attractive investment destination in the region. Suffice it to say, there is a growing promise that the East African region, led by its three key Regional Economic Communities (RECs) – COMESA, IGAD, and EAC could very well lead the way to an eventual economic transformation of the continent.

However, such imposing figures operate as a mask to the reality that the overall real GDP of the region still falls below that of Nigeria, South Africa, and Egypt – whose cumulative real GDP constitute at least 50 percent of the

Exhibit 1 GDP growth across the economic regions in Africa between 2015 to 2019



gross GDP of the entire continent. While the region's economic prospects insinuate a sustained effort towards growth, there are several systemic risks lurking within the figures. The remarkable data outlined above conceal a number of raw, but disconcerting facts about the economy of the region. For instance, a substantial portion of the growth in Kenya and Tanzania came from the agricultural sector, which is susceptible to the vagaries of nature and the growing threat of climate change (African Development Bank Group, 2019). Also, like most countries in Sub-Saharan Africa, these two countries rely heavily on primary commodity exports, which generally do not attract high returns and highly susceptible to price fluctuations. In Rwanda and Ethiopia, the industrial and service sectors have been the key drivers of growth, with other sectors contributing marginally.

Overall, the GDP of the region is composed of the service sector at about 59.0 percent, followed distantly by the agricultural sector at 25.7 percent.

Notably, industry and manufacturing account for a dismal 15.0 percent and 14.6 percent respectively. In essence, the region is yet to experience any meaningful structural transformation to enable it to diversify its economy or to escalate instances of value-addition as a basis for competitive industries. Pitted against some of the leading economies in Africa, the East African region is still reliant on primary commodities as exports, with most countries having to borrow heavily to meet their fiscal deficits (Signé, 2018). Such borrowing, especially from China and its EXIM Bank and a growing appetite for external bonds has led to colossal increases in external indebtedness and perennial current account deficits.

Furthermore, a number of countries within this region still have significant portions of the population mired in poverty. According to a 2016 World Bank report, the strong economic growth in recent years has not had a substantial effect on poverty reduction, unemployment, and general inequality. Poverty is rampant in countries across the EAC, but

#### Box 1 Summary Economic Growth within EAC member-states\*

The growth in the overall GDP in Eastern African was boasted by a general advance across the EAC member-states. Such growth, particularly in 2018, was underpinned by a significant rebound of agriculture in Kenya, Uganda and Rwanda in the wake a devastating drought in 2017.

Real GDP in Kenya expanded by **6.3 percent** in 2018, significantly higher than the 4.9 percent posted in 2017. This growth came in the wake of increased agricultural output, intensification of manufacturing activities, growth in transportation and a burgeoning service sector. Inflation stood at 4.7 percent in 2018, lower than the 8.0 percent recorded in 2017, due mostly to a remarkable decline in food prices.

Rwanda had the highest growth in real GDP, at **8.6 percent** –motivated largely by a strong progress within the nation's industrial and service sectors. At the same time, a reduction in the cost of food and non-alcoholic beverages led to a decrease in inflation from 4.8 percent in 2017 to 1.4 percent in 2018. The current account deficit expressed as a percentage of the GDP increased from 6.8 percent in 2017 to 7.8 percent in 2018, owing to a deterioration in trade.

Uganda had a real GDP growth of **6.2 percent** in 2018, slightly higher than the 5.0 percent posted in 2017. Uganda's growth within this period was fuelled largely by massive investment in public infrastructure alongside an invigorated service and industry sectors. However, current account deficit as a percentage of the GDP also rose to 6.8 percent in 2018 – due mostly to importation of capital goods.

On the back of a resurgent service sector and private investments, Tanzania's economy expanded by **6.6 percent** in 2018, slightly lower than that in 2017, which was 6.8 percent. The current account deficit as a percentage of GDP increased from 3.3 percent in 2017 to 3.7 in 2018 –due largely to more imports in 2018 of transportation equipment, materials for building and construction.

Burundi had a real GDP growth of **0.1 percent** in 2018. At the same time, current account deficit expressed as a percentage of the GDP has widened to 13.4 percent within the same time.

Source: Economic Survey 2019, Kenya National Bureau of Statistics and East Africa Economic Outlook 2019, Africa Development Bank  
Data covers duration between 2017 and 2018. Information from South Sudan not included.



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extremely high in Rwanda and Burundi. On the strength of the various socioeconomic indicators, states like Rwanda, Burundi, and Southern Sudan could very well be deemed as Least Developed Countries.

Even so, key multilateral organizations and economic institutions postulate that a well-oriented structural transformation will offset some of pronounced systemic vulnerabilities (Bicaba, Brixiova, & Ncube, 2018). The preponderant unanimity is that the East African region is yet to deplete its reservoir of economic potential. The most cited illustration of such potential, according to the African Development Bank (AfDB) is the extent of intra-regional trade, which is still below the anticipated optimum. Policymakers across the three main RECs must expand their capacity to create institutional interventions to pave way for an enhanced private sector interaction across the region.

While it is incumbent upon states to overhaul ineffectual macroeconomic factors in the quest for the highest forms of integration, healthful economic growth will remain inaccessible if the microeconomic aspects that are valuable to the private sector – particularly its informal part (DFID, 2008). As noted in the AfDB's Private Sector Development Strategy, 2013-2017, the bureaucrats laden with the responsibility of intensifying intra-regional trade, the private sector should be of significant concern; for the reason that it is by far the biggest contributor to real GDP in virtually all the countries within East Africa. In Kenya, one of the leading economies in the region, recent

surges have been intimately interlaced with the growth of the private sector.

Like in many states in the sub-Saharan Africa, the private sector in East Africa is enormous in terms of its contribution to real GDP opportunities for employment, but structurally opaque. It is primarily bifurcated into two – the formal, which is comprised of large and healthy enterprises and the informal, which is unstructured and often-time poorly understood (African Development Bank Group, 2013). And yet, it is the informal section that employs a considerable majority. Data from the International Labour (ILO) estimates that the informal economy in sub-Saharan Africa accounts for at least 40 percent of the region's cumulative GDP. In Kenya, at least 8 out of 10 workers earn a living from this sub-sector, a trend that is replicated across most of the states within the EAC.

However, despite the fact that private sector development holds the key to unlocking the full capacity for intra-regional trade and the overall transmutation of several households into the middle-class, policy intervention necessary for such regeneration is still insufficient.

Even supposing that the EAC is the most integrated RECs in the continent, there is still a large portion of cross-border trade that is informal and therefore only mildly understood. This makes it difficult to find ways to systematize the sub-sector without introducing bottlenecks to its vibrancy. The effect of this conundrum is that the EAC's collaborative efforts with the East Africa Business Council (EABC) and other such entities is restrained in terms of its level of representation. This not necessarily disastrous, but such consultative frameworks must seek ways of shaping the informal sector towards decorousness without disrupting its substructure. With a more engaged private sector, the EAC can then embark on the full implementation its objective of creating the East African Monetary Union, which will equally lead to enlightened deliberations in the quest for a functional Africa Continental Free Trade Area (AfCFTA).

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**Policymakers across the three main RECs must expand their capacity to create institutional interventions to pave way for an enhanced private sector interaction across the region**

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# AfCFTA FRAMEWORK

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In the wake of the signing of the Treaty establishing the African Continental Free Trade Area (AfCFTA) on 21 March 2018, states across the continent have expressed, at least in principle, an eagerness to pursue the prerequisite adjustments to make the institution work (Erasmus, 2020). When considered from the perspective of numbers, the annual combined GDP of African countries is well over 2 trillion dollars and a population of at least 1.2 billion (Cofelice, 2018). Considerably, the emergence of the AfCFTA represents the most ground-breaking event since the founding of the World Trade Organization.

However, it is not lost on unimpassioned observers that the emergence of the AfCFTA is in sharp contrast to the prevailing paradigm across the globe – where states are considering or pursuing trade-restrictive measures consequent to a growing apathy towards regionalism. According to Cofelice (2018), it remains to be seen if the ambitious ideals of the AfCFTA will swing African states in the opposite direction.

Moreover, a number of experts have disputed the stats and figures often bandied as evidence of the formidable potential of the free trade area (Matheson, 2019). For instance, Kwemu's (2019) article argues that the notions that consumer spending will increase to approximately 6.7 trillion dollars by 2030 or that intra-African trade will be boosted by 52 percent by 2022 are largely contingent on the extent and pace of the implementation of the AfCFTA.

In principle, the removal of tariffs and non-tariff barriers to the trading in goods and services will assumably increase intra-African trade and espouse other gains such as the enhancement of a continent-wide value chains. With an increase in intra-regional trade, the continent is also likely to harness a stronger bargaining power within the global economy. There is an extensive accord among experts that if the vision of the AfCFTA is realized, the continent will ultimately realize a remarkable growth in industry and manufacturing, and tourism.

According to United Nations Economic Commission for Africa (UNECA), the AfCFTA is expected to raise intra-Africa trade by about 25 percent, from the current 15 percent (\$70 billion from \$50 billion) by 2040. The IMF likewise projects that the continent of Africa will raise its ranking on the Global Competitiveness Index as the AfCFTA heralds the production of sophisticated goods and services and the emergence of a highly-developed labour market.

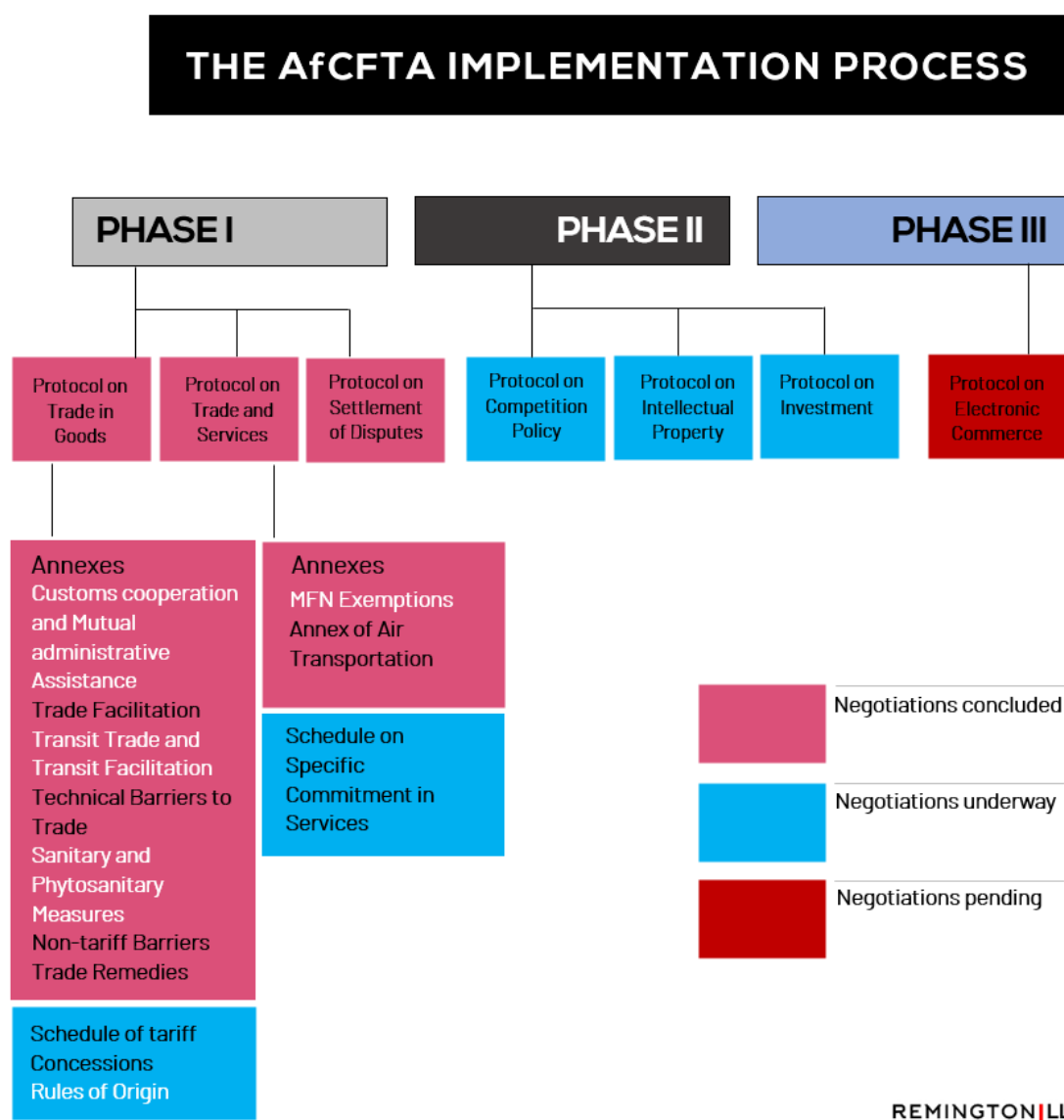
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**The AfCFTA is expected to raise intra-Africa trade by about 25 percent, from the current 15 percent (\$70 billion from \$50 billion) by 2040**

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With a broader market, businesses across the continent will encounter positive competition, which will sequentially give them the convenience of exploiting economies of scale and the prospect of efficient resource allocation.

On 21 March 2018 – after 10 rounds of negotiations, 44 states, out of the 55 African Union members – signed the Agreement Establishing the AfCFTA, apace with its Protocols on trade in goods and services, dispute settlement procedures, and their various annexes (Cofelice, 2018). These annexes cover Customs Cooperation, Trade Facilitation, Sanitary and Phytosanitary Measures, and Rules of Origin. In the understanding that the AfCFTA framework is unique in many ways, the frame of implementation envisaged two Phases, with a third phase on e-commerce recently adopted for negotiations once Phase II is concluded. Phase I anticipate the signing of the AfCFTA treaty and agreements on its Protocols and their Annexures. The initial 10 rounds of negotiations yielded consensus on a considerable portion of Phase I motions, save for agreements on tariffs, rules of origin, specific commitments on trade in services (Erasmus, 2019).



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Source: *The African Continental Free Trade Area Agreement – what is expected of LDCs in terms of trade liberalisation?* Trudi Hartzenberg, Trade Law Centre; *Conditions for Success in the Implementation of the African Continental Free Trade Agreement*, African Union Development Agency-NEPAD (AUDA-NEPAD)

Axiomatically, the AfCFTA took effect on 30<sup>th</sup> May 2019 after the 22<sup>nd</sup> instrument of ratification was deposited. To date, 29 countries have both signed and ratified the AfCFTA Agreement. Incidentally, out of the 55 AU member-states, only Eritrea has yet to sign, which is a demonstration of the fervour surrounding this treaty. Be that as it may, negotiations, concessions, and agreements must be reached on the outstanding Phase I motions and the Phase II motions ahead of 1<sup>st</sup> July 2020, the appointed date for the commencement of preferential trade under the AfCFTA. It is noteworthy to point out that

all the instruments deposited so far will remain inexecutable until all the outstanding issue in Phase I are resolved.

Phase II of the implementation constitutes negotiations on the essential adjustments in respect of regulatory issues behind the borders. Three core Protocols on Competition Policy, Intellectual Property, and Investment should be concluded under Phase II deliberations (International Trade Centre, 2018). Though there is no precise reference or requirement for the creation of a Protocol on e-commerce, there is a general belief that member-states ought to consider this notion,



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given its vast promise as a source of revenue. In their study published by McKinsey Global Institute, Manyika, et al. (2013) projected that the growing investment in Internet infrastructure across Africa will assumably propel e-commerce, with a potential revenue of approximately \$75 billion for the continent. However, the ambiguity surrounding the taxation of the digital economy (Olbert & Spengel, 2019) makes it imperative for African states to contemplate such a Protocol to further the objectives of AfCFTA.

For the private sector, discussions under Phase II should be of greater interest. As states-parties embark on statutory and institutional adjustments to cause the requisite realignments under the AfCFTA, businesses are bound to be disrupted.

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**AfCFTA framework is unique in many ways, the frame of implementation envisaged two Phases, with a third phase on e-commerce recently adopted for negotiations once Phase II is concluded.**

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In readiness for enhanced intra-regional trade, state-parties will have to upend their tariff books and to create custom systems, and create new laws/regulations that will have some repercussion. Such frightful externalities must be tempered and alleviated. With the goal of the AfCFTA being the elimination of tariffs and non-tariff barriers to trade, it will be important for the private sector to understand the extent such liberation and to understand the possible remedies should there be a dispute (Mudenda, 2020). Moreover, there is a likelihood of an upswing in imported or dumped goods, without any regard to the threat posed on domestic industries. It will be vital for the private sector within the EAC to engage with policymakers on issues such as the legitimate protection of interest, be they national or private, the capacity of domestic

or regional machineries to perform thorough investigations under Trade Remedies and Safeguards, based on the relevant WTO principles.

All in all, the AfCFTA provides an opportunity for the continent to boost intra-African trade and cooperation by several factors. Through the AfCFTA, the 52 countries that form the African continent have a means of linking their meagre and interspersed economies into a continental behemoth. However, the roadway to this vision is paved with several tests. Each state must commit to the negotiations and make the necessary chronometric adjustments. Notably, policymakers must commit to listening to all stakeholders – particularly the private sector – in their quest for the most optimal adjustments necessary for the implementation of the AfCFTA and the protection of susceptible businesses. However, it is important to point out that the constitutive documents – the various Protocols, Annexes, and Schedules are too dense. The following sub-section is summary of the core provisions of the AfCFTA.

### **The Protocol on Trade in Goods**

The preeminent objective of this Protocol is the progressive elimination of tariffs and non-tariff barriers to trade; the enhancement of customs procedures, trade facilitation, and transit; enhancement of cooperation in the areas of technical barriers to trade and sanitary and phytosanitary measures; development and promotion of continental value chains; and the enhancement of socioeconomic development, diversification, and industrialization across Africa.

The Protocol on Trade in Goods is also framed to harmonize trade institutions and arrangements across Africa to improve the flow of trade and its flow within the continent. The hope that is that a doubling of intra-African trade in goods will promote industrialization through the creation cross-border value chains in a myriad of sectors. Ultimately, the continent will be able to draw larger and sophisticated industries, which will sequentially escalate employment, consumer

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choices, and socioeconomic advancement. In line with the principle of *acquis*, the legal construction of this Protocol is to be moulded along the guiding rules under the RECs. Though this Protocol has several annexes, most of which were bundled alongside the AfCFTA when it was opened for signing, there are two outstanding issues – Schedules of Tariff Concessions and Rules of origin – which we now discuss pithily.

### Key Tariffs Concessions

Presently, AfCFTA member states are yet to make any meaningful progress in the negotiations for tariff concessions. In the years since the Agreement was signed in 2018, state parties have been unable to agree within the proposed deadlines. Some of the issues that have remained quite emotive under this Protocol include the extent of tariff lines to be designated as sensitive or excluded. In order to avert further divergence on this issue, the AfCFTA Negotiating Forum and the AMOT ventured into hybrid forms of categorization to assuage the various states, especially those under the LDC category that still rely heavily on tariffs as a source of revenue and as a means to protect fragile industries.

At the behest of the heads of states and government, who have championed for the highest degree of liberation, a new modality for tariff concession was adopted, underscored by the principle of variable geometry. All member states will strive to attain the same level of tariff lines liberalization of at least 90 percent (Hartzenberg, 2020). However, the negotiations framed to take distinct approaches for the LDC and non-LDC countries. For the former, each state will have 10 years to attain the entrenched 90 percent level of tariff liberations, but the latter will only have 5 years to attain the same level of tariff liberation.

For both rank of countries, the remaining 10 percent of tariff line will be divided into two classes – each state will have the liberty to designate 7 percent of its goods as sensitive products with the remaining 3 percent of the

tariff lines relinquished entirely from liberation. For the goods designated as sensitive, LDCs will have 13 years to attain full liberation and may maintain their present tariff regimes for 5 years and then backload liberalization within the next 8 years. The non-LDCs will have 10 years to phase out tariffs on their pool of sensitive products, but may also retain the current level degree of tariffs for the next 5 years after the commencement of the AfCFTA.

Equivalently, both the LDCs and non-LDCs retain the right to exclude 3 percent of their tariff lines, but any products so excluded shall account for no more than 10 percent of their total trade. Previously, the modalities had contrived a longer phase down period of 15 years for Ethiopia, Madagascar, Malawi, Sudan, Zambia, and Zimbabwe – the so called G6 – that had argued that they are faced with specific developmental challenges. Fortunately, the G6 have recently withdrew their reservation in the interest of solidarity and unanimity in respect of the applicable modality for tariff concessions.

Based on an earlier agreement, tariff negotiations are between Member States and RECs or Customs Union that have no pre-existing preferential trade arrangements. Such negotiations are to be conducted in confidence until an agreement is reached. The recent development in which the G6 withdrew their reservations marks a significant milestone for businesses that could have been affected by disparate modalities and pliable exclusion criterion.

### Rules of Origin

The criteria to be relied upon for the determination of the nationality of products will play a significant role in promoting value addition. In a report published on 29 October 2019, the United Nations Conference on Trade and Development (UNCTAD), the intergovernmental body underscored the significance of rules of origin in promoting trade under the AfCFTA. It was observed in this report that such rules should be simple, transparent, predictable, and business friendly (UNCTAD, 2019).

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For the private sector, especially within the manufacturing sub-sector, access to concessionary arrangements under the AfCFTA will depend on their ability to meet the minimum levels of value addition under the agreed rules of origin. In principle, such rules can be placed within a spectrum of two extremes – highly flexible and exceedingly restrictive. Considering the level of industrial development in Africa, adopting a restrictive approach could stifle intra-Africa trade and create an impediment to the objectives of the AfCFTA.

There is still a lingering debate on the issue of rules of origin. During the 33rd Ordinary Session of the Assembly of the African Union, the Assembly impressed upon the various Ministers of Trade to facilitate the systems of decision making by the AMOT to conclude deliberations on several areas including rules of origin. Though some of the specific terms are yet to be concluded, Annex 2 of the Protocol on Trade in Goods is instructive on the applicable concepts. What is important to note is that goods will be broadly categorised as “wholly obtained” under Article 5 of Annex 2 or “sufficiently worked or processed” under Article 6 of Annex 2. The rules of conferment of “original status” are discussed in Article 7 of the same Annex.

In general, the objective of Annex 2 is to ensure that “actual” value addition is achieved before a product is conferred with an originating status. Due to the limits in time and space, the specifics of Annex 2 have been left out and it would be advisable for businesses to seek professional advice on how the various Articles and the ongoing negotiations on this issue will affect their capacity to sell their products in other RECs or Member States.

### Protocol on Trade in Services

Traditionally, cross-border trade is exemplified by plenitude of stacked containers stacked at the port or under transshipments, which simply denotes trade in goods. Trade in services (TiS), which is just as significant is rarely fancied. Services, though less palpable, is huge business.

On average, the service sector accounts for at least 54 percent of the total GDP of the Africa and at least 75 percent of the Greenfield Foreign Direct Investment (Keller, 2019). However, the levels of TiS in Africa are relatively low compared to that in advanced economies.

Within the EAC, the percentage contribution of TiS towards the GDP of State Parties is generally less than 50 percent, which is below the continental average. Nonetheless, the service sector has been on the ascendance as source of employment in sub-Saharan Africa. In fact, given the scarcity of data on the services sector, especially its informal component, it is likely that the official figures are grossly underestimated. Moreover, the service sector tends to operate in some sense as an essential component to other more discernible sectors such as agriculture and manufacturing.

The AfCFTA Protocol on Trade in Services (APTiS) is generally analogous to the WTO’s General Agreement on Trade in Services (GATS). The scope of the Protocol covers in generality, all the measures taken at all levels of government that may affect trade in services. Such measures broadly include laws, statutes, and regulations, administrative and institutional actions, or any such institutive action taken by the government at the regional, central, or local levels that may impact TiS.

Nonetheless, the APTiS, in line with GATS, excludes all services supplied in the exercise of government authority; measures or services affecting or related to air traffic rights, except aircraft repair and maintenance services, selling and maintenances of such services, and any services tied to an online systems of reservation for such services. The APTiS also excludes any forms of procurement done governments or their agencies for the governmental purposes devoid of a motive to make profits. Decidedly, there is no attempt to define what constitute a service, conceivably due to its extreme heterogeneity. The APTiS again adopts the approach of the GATS of imputing services through the four



conventional modes of supply. These modes of supply are in no way a complete description of the entire catalogue of services. The aim of GATS, and now the APTiS is to rely on these generic attributes to classify trade barriers in respect of TiS, particularly in respect of the capacity of services and their suppliers to enter new markets, the national treatment of such foreign services and their suppliers vis-à-vis their competitors within that domestic market. Below is a summary and illustration of the various modes of supply.

#### Most-favoured nation (MFN) Approach

Article 4 of APTiS obligates Member States to uphold the principle of MFN in their agreements under this Protocol. The idea is to ensure that any preferences that could be conceived by any Member State for the benefit of a third country is accorded to all other Member States who may not have been a party to that agreement. In this context, a third country refers to any other state that is not a party to agreement entered into between the two countries.

Table 1 **The accepted Modes of Supply of Services under the AfCFTA**

Mode of supply	Short Description	AfCFTA Definition	Illustration
Mode 1	Cross-border supply	From the territory of one member into the territory of any other Member	Online services supplied via the Internet (e.g. ecommerce) by a supplier in Country A to a consumer in Country B.
Mode 2	Consumption abroad	In the territory of one Member to the service consumer of any other Member.	Hotel in Country B providing services to a visiting citizen from Country A. Note: Any limitations on the freedom to provide services are placed by the country of the consumer to prevent the consumer from seeking services in Country A (e.g. a requirement to obtain insurance domestically, due to the prudential objective of ensuring that insurance is obtained where the risk is located).
Mode 3	Commercial presence	By a service supplier of a Member, through commercial presence in the territory of any other Member	Bank in country A setting up a branch, subsidiary, or joint venture in Country B
Mode 4	Movement of natural persons	By a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member	Bank in Country A moving temporarily to Country B to set up or run its branch office, subsidiary, or joint venture.

Though Article 4 is principally the same as its equivalent in the GATS, there is a special consideration for any pre-existing preferences. In this sense, a state party is under no obligation to extend existing preference made to a third country before the commencement of the Protocol, of which that State Party was a member or a beneficiary. Still, the State Party with the capacity to enjoy this exclusion may grant other State Parties the opportunity to negotiate the same preference, as long as it will be granted on a reciprocal basis.

### Transparency

Article 5 of APTiS stipulates that State Parties have a general obligation to act transparently. Each State Party is expected to publish within reasonable time, the relevant measures that they have taken in respect of this Protocol, in a medium that is accessible to the public. This could be through a website, a newsletter, the Hansard, or the national gazette. However, as reiterated in Article 6, such obligation is not applicable to any information that is deemed by such State Party to be confidential or sensitive.

### Special and Differential Treatments

Out of the general objective of increasing beneficial participation by all State Parties in TiS, there is a general obligation imposed upon State Parties, under Article 7, to consider the following:

- provide special consideration to the progressive liberalization of service sectors commitments and modes of supply which will promote critical sectors of growth, social and sustainable economic development;
- take into account the challenges that may be encountered by State Parties and may grant flexibilities such as transitional periods, within the framework of action plans, on a case by case basis, to accommodate special economic situations and development, trade and financial needs in implementing this Protocol

for the establishment of an integrated and liberalized single market for trade in services, and

- accord special consideration to the provision of technical assistance and capacity-building through continental support programmes.

### Creating Domestic Legislations

Generally, barriers to trade in services are to be found on the regulations and institutional arrangements that may discourage entry of foreign services or service suppliers. Such barriers can sometimes arise out of the fact that states have an inherent right to regulate services as a means of ensuring consumer protection, enhancing competition, improve quality, and to meet any other national policy objective. The APTiS in Article 8 acknowledges the right of states to regulate services within their borders, but asserts that such right should not be used to hinder or lessen any rights provided to any other State Party under Protocol.

Article 9 calls upon State Parties to ensure that all measures of general application affecting trade in services are administered in a reasonable, objective, transparent, and impartial manner. This provision is applicable in the sectors where specific commitments have been undertaken.

### Mutual Recognition

Article 10 of the Protocol concerns the mutual recognition of standards or criteria for the authorization, licencing, or certification of service suppliers. It provides that a State Party may recognize the pre-requisite level of education, experience, licencing, certification or any other requirements granted by another State Party as a recognition of an individual's capacity to provide a particular service; as long as such recognition does not constitute discrimination among State Parties. So far, mutual recognition of professional qualifications across national borders has only been achieved within the EAC. Other RECs are in various stages of achieving this goal, but more often they have failed to meet their own

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deadlines for achieving this objective.

It is important to point out however that the AU Protocol relating to the Free Movement of Persons, Right of Residence and Right of Establishment, which was also adopted in 2018. The goal of this Protocol is to facilitate greater connectedness across Africa and to further integration, and labour migration. Unfortunately, this Protocol has not attracted much enthusiasm. Presently, only four state have ratified and deposited the documents with the AU – Rwanda, Sao Tome and Principe, Niger, and Mali. The Protocol requires at least 15 ratification for it to come into force. In line with the objective of the facilitation of movement of services across borders, Article 18 of this Protocol mandates State Parties to mutually recognize academic, professional, and technical qualifications of their nationals to promote and facilitate the movement of persons among AU Member States.

#### Anti-competitive Practices

The Protocol calls upon States Parties to ensure that monopoly and exclusive service suppliers do not have the leverage to engage in anti-competitive practices. Such State Parties are also obliged to open channels for consultation with other State Parties to with the view of eliminating such practices.

#### International Transfers and Payments

Under Article 13, the Protocol obliges State Parties to refrain from imposing any restrictions on international transfers and payments for current transactions relating to its specific commitments. However, this obligation is qualified somewhat because State Parties are free to take measures that may restrict trade in services, particularly if the prevailing situation poses or threatens a serious imbalance of payments and external financial as pronounced in Article 14. There are some general and security exceptions to this rule under Articles 15 and 16 respectively.

#### Subsidies

The Protocol provides for State Parties to maintain subsidies related to trade in

services under Article 17. However, the Article merely recognizes that State Parties may use subsidies in relation to their development programmes. This clause is obviously limited in its scope as compared to Article XV of GATS, which provides for the WTO members to negotiate with the goal of developing the essential multilateral disciplines to prevent trade-distortive effects of such subsidies. Nevertheless, the idea mechanism for an information exchange and review of such subsidies is similarly provided alongside a framework for consultations among State Parties who consider that they may be adversely affected by a subsidy of another State Party.

#### Progressive Liberalization

Under Article 18, State Parties are obligated to pursue successive negotiations with the view of progressively liberalizing their markets to attain the objectives of the AfCFTA. Ideally, this is to be the focus State Parties with respect to trade in services under the AfCFTA. The rationale for having successive rounds is that AU Member States do not have the capacity to attain full liberalization of the markets through just a single round of negotiation. Depending on their ability, Member State will be required to gradually negotiate with each other with the common agenda of attaining the highest level of liberalization within the shortest time possible. Nonetheless, Article 18 still provides that the process of attaining liberalization be focused on progressive elimination of the most adverse effects of the measures on trade in services as a means of providing effective market access with the view to boosting intra-African trade in services.

#### Priority Sectors

Considering that Article 18 allows for progressive or successive rounds of negotiations, it is almost imperative that State Parties will need to prioritize some sectors for immediate liberalization. However, this does not in any way impute that the non-priority sectors are less significant. It basically means that negotiations will follow a sequence, which will eventually cover all sectors eventually. For an enhanced trade in services under the



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## Priority Sectors would be business services (including professional services), communication, tourism, financial, and transport services

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AfCFTA, it will be imperative that as many services as possible are brought within such liberation. Such a wide coverage will not only enhance liberation, but will also meet the requirement of Article V of GATS, which permits parties to a budding economic integration agreement to adopt favourable terms of trade in services without a mandatory requirement that such favourable terms be extended to all members of the WTO under the MFN principle.

In the first round of negotiations, the AMOT agreed that the priority sectors would be business services (including professional services), communication, tourism, financial, and transport services. It was agreed that these sectors be deemed as priority because the main RECs have already identified them as key in their endeavour to liberalise trade in services and also on the basis that they would hasten the realization of the objectives of BIAT and the overall industrialization process within the continent of Africa.

### Structure of Negotiations

In 2017, Member States agreed, in the preliminary negotiations, on the modalities for trade in services that the subsequent negotiations would comprise 'Schedules of Specific Commitments' along with the applicable regulatory framework for each services sector. Under the WTO, 'Schedule of Specific Commitments' gives the basis for commitments in relation to 'national treatment' and 'market access' for the Members of the WTO. Granted that most of the states in Africa have retained membership in WTO, it is right to assume that the State Parties in the AfCFTA are familiar with the concept of commitments with respect to trade in services.

### Schedule of commitments

Like the GATS and most trade agreements, the core negotiation have embraced a series of sector-specific and cross-sectoral obligations. These obligations have been set out in the form of national 'Schedules of Specific Commitments.' For clarity of purpose, Article 22 outlines what such schedules must contain:

- The terms, limitations, and conditions on market access
- The conditions and qualification of national treatment
- Undertakings related to additional commitments
- The timeframe for implementation of such commitments, including their date of entry into force.

Given that it was considered simpler to anchor such schedules on existing design already in place within notables RECs such as SADC and COMESA and other AU Member States, the stakeholders adopted the format of the WTO as a means of simplifying the completion and to aid comparison between agreements. To achieve this goal, the Protocol has the following Articles setting out specifically what must be included:

- Limitations on market access – Article 19
- Limitations on national treatment – Article 20
- Additional commitments – Article 21

In the table below, the numbers 1 to 4 correspond to the four modes of supply described in table 3. In each column, the relevant limitations are listed. Consequently, in the places marked as 'None' there are no limitations – the sub-sector and the mode of supply is fully liberalized. For those marked as 'Unbound' it means that the State Party has reserved its position entirely to introduce new, possibly more restrictive regulations or has made no binding commitment. In the instances where specific limitations are listed,

Table 2 **Configurations for Schedules of Commitments**

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitment
A. Hotel and restaurant services (including catering) (CPC 641-643)	(1) Unbound (2) None (3) Commercial presence is allowed only in the form of a judicial person	(1) Unbound (2) None (3) None (4) Unbound, except as indicated in the horizontal section	
B. Travel agencies and tour operator services (CPC 7471)	Foreign capital participation is limited to 49%  (4) Unbound, except as indicated in the horizontal section.		

### Market access

A concept within the AfCFTA framework, market access refers to the degree of entrée that one State Party accords another with respect to the latter's services and service suppliers. The rationale of having this commitment is to ensure that like services and services suppliers from another State Party are accorded a common and non-discriminatory treatment in terms of accessing the market for such services.

A binding commitment made by a State Party as stated in Article 19, operates as a guarantee that access to that state's market, will, from the operationalization of the Protocol, be no more restrictive than as set out in its Schedule of Specific Commitments. Ideally, the Schedule should identify the sector or subsectors covered, alongside the terms, limitations, and conditions applicable in each of the four modes of supply. In using this basis to grant market access, State Parties are giving a commitment that they will accord services and service suppliers of any other State Party 'treatment no less favourable than that provided for under the terms, limitations, and conditions agreed and specified in tis Schedule.'

In line with the GATS, Article 19 provides that in sectors where market access commitments are undertaken, the measures which a State Party shall not maintain or adopt either on the basis of a regional subdivision or

the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

- Limitations on the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- Limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- Limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
- Limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and are directly related to the supply of a specific service in the form of numerical quotas of the requirement of an economic needs test;
- Measures which restrict or require specific types of legal entity or joint

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venture through which a service supplier may supply a service; and

- Limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

### National Treatment

National treatment refers to the treatment a State Party will give to a service or service supplier of another State Party compared to a domestic 'like' service or service supplier. The Protocol notes in Article 20 that 'in all sectors inscribed in the Schedule, and subject to any conditions and qualifications set out therein, each State Party shall accord to services and service suppliers of any other State Party treatment no less favourable than that it accords to its own like services and service suppliers, subject to the conditions and qualifications agreed and specified in its Schedule of Specific Commitments.'

As in the GATS, the Protocol provides that 'a State Party may meet the [national treatment] requirement by according to services and service suppliers of any other State Party either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the State Party compared to like services or service suppliers of any other State Party.' Thus, it can be seen that the definition of national treatment can be quite wide, in that it would apply if a measure by a State Party 'modifies the conditions of competition in favour of [domestic] services or service suppliers.' Where it wishes to apply different treatment, this must be listed in the Schedule.

### Additional commitments

In addition to market access and national treatment, State Parties may include additional commitments not related to those

two areas of regulation (Article 21). The Protocol notes that such negotiated commitments may include but are not limited to 'measures regarding qualification, standards or licensing matters.' In the WTO, the main use of this provision has been the adoption by certain WTO Members of a reference paper on pro-competitive commitments relating to the regulation of basic telecommunications. The central aim was to ensure that incumbent telecom operators who control access to domestic networks (referred to as major operators) do not control access to 'essential facilities' in an anti-competitive way. Additional commitments would be those entered into by individual State Parties. They would not necessarily be entered into by all State Parties.

### Regulatory Frameworks

In many trade agreements, and especially in the WTO, Schedules of Specific Commitments have tended to bind existing levels of market access and national treatment. This includes AU-recognized RECs that have followed a GATS approach. There are very few examples of commitments to liberalize, either upon entry into force of the agreement or at some future date stipulated in a country's schedule.

However, in RECs such as ECOWAS and ECCAS, which have not followed a GATS approach, more regulatory coherence at a regional level has been achieved through the negotiation of regulatory frameworks, notably enshrined in directives and regulations. For this reason, State Parties agreed that the negotiating modalities should include a commitment to negotiate sector specific obligations through regulatory frameworks.

The Protocol, in Article 21, confirms this and provides that regulatory frameworks are to be developed 'for each of the sectors, as necessary, taking account of the best practices and acquis from the RECs, as well as the negotiated agreement on sectors for regulatory cooperation.' The timetable for the negotiation of regulatory frameworks is not stipulated in the Protocol or in political decisions that have been taken.



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Rather, the Protocol provides that ‘State Parties agree that negotiations for continuing the process shall commence following the establishment of the AfCFTA, based on the work programme to be agreed by the Committee on Trade in Services.’

There is much unfinished business to be carried out under the Protocol on Trade in Services. The results of the ongoing negotiations will be annexed to the Protocol, whereupon they will form an integral part of the Protocol. At the time of adoption of the Protocol, the following were anticipated to be annexed, although this is not an exhaustive list:

- Schedules of Specific Commitments;
- MFN Exemption(s) – these would stipulate areas where a State Party wishes to maintain a preferential agreement with one or more State Parties, e.g. in the area of bilateral transport agreements;
- Air Transport Services – this is one example of a possible sectoral annex, the content of which has not been spelled out, but the Preamble to the Protocol refers to the commitment by the AU Assembly to establish a Single African Air Transport Market through the Implementation of the Yamoussoukro Decision, which is seen as boosting intra-African trade and fast-tracking the AfCFTA – although how this would fit with the exclusion of services related to traffic rights from the scope of the Protocol remains to be explained;
- List of Priority Sectors; and
- A framework document on Regulatory Cooperation – again, not spelled out and needs to be further elaborated.

The Protocol also provides that State Parties may develop additional annexes for the implementation of this Protocol for adoption by the Assembly. Upon adoption by the Assembly. Upon adoption by the Assembly, such annexes shall form an integral part of this Protocol. Based on what other RECs have

done, this may include other sectors as well as an annex clarifying commitments under Mode of Supply 4.

### Protocols on Investment, Intellectual Property Rights, and Competition Policy

During the AU Extraordinary Summit in Kigali in early 2018, the Assembly of Heads of States and Government issued a directive to AMOT to proceed and conclude negotiations on Competition Policy, Investment, and Intellectual Property Rights, with the view of having a ready draft of the legal text by January 2020 in readiness for adoption by the Assembly through its Specialized Technical Committee on Justice and Legal Affairs.

Given that there are no clear reference points, apart from WTO’s framework for intellectual property rights, which has been codified as Trade-Related Aspects of Intellectual Property Rights (TRIPs). Nonetheless, the stakeholders have agreed that each of these issues will be designed as Protocols under the AfCFTA. Negotiations on these areas have been ongoing since mid-2018, though there are no Protocols as yet.

The issues surrounding the creation of an investment protocol had been debated in the past. It was initially assumed that it would be better to have an investment agreement as a sub-set of the Phase I negotiations. However, the Member States rejected the text that had been prepared on the argument that it was proper to conclude the Protocol on Trade in Services first and to agree on the modes of supply before considering investment issues.

The final protocol on investment should be forward looking, with substantive obligations dispute settlement mechanism, development oriented, and obligations of mutual commitment. It should also offer clear guidelines on investment protection, promotion, facilitation, and investor obligations.

Unlike investment, negotiations under intellectual property rights (IPRs) have a basis under the WTO’s TRIPs. Within the continent, IPRs include trade secrets, patents, copyrights, trade marks, industrial designs,

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## While IPRs are vital to the development of industries and innovation, most sectors within the continent do not have the capacity to create competitive intellectual property

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and geographical indications.

While IPRs are vital to the development of industries and innovation, most sectors within the continent do not have the capacity to create competitive intellectual property. In fact, much of what could be termed as innovation tends to occur in the informal sector, where there is little impetus invest in the protection of such innovation.

Nevertheless, the protection of IPRs is not new. Any agreements under the AfCFTA with respect to the protection of IPRs must unite the overlapping mandates that have been created under the RECs. Already, the various RECs are working on streamlining the core principles and guidelines that would govern intra-regional IPRs. It will be important for the stakeholders to create an agreeable framework, which does not, in principle, stifle innovation within the continent, but is also solid and equivalent to international standards. Such an IPRs regime is likely to encourage investment across Africa, especially from the developed countries that are keener on stronger IPRs.

Discussions on the ideal Competition Policy is also underway. In principle, such a policy is imperative to prevent the rise of cross-border cartels, and to regulate mergers and acquisitions or abuse of dominant position that may be arise due to enhance intra-regional trading. However, only a few countries within Africa have viable competition laws. It will be necessary for the stakeholders to develop a protocol that envisages a continental framework that can work in the absence of strong domestic legislations.

## Protocol on Electronic Commerce under the AfCFTA

During the 33<sup>rd</sup> AU Ordinary Session in February 2020, the African Union Commission agreed to incorporate a third Protocol to the AfCFTA – a Protocol on Electronic Commerce (e-commerce). This agreement was reached despite the fact that Phases I and II are yet to be concluded due to a number of delays.

Phase III negotiations on e-commerce are to commence immediately after the conclusion of Phase II – the protocols in Investment, Competition Policy, and Intellectual Property Rights. It is still early to speculate the trajectory of the negotiations and plausible structure of the resultant protocol, the groundswell for such a protocol is already in existence. The private sector is increasingly incorporating e-commerce into their business model to broaden their markets. Similarly, an increasing number of governments are adopting electronic platforms for service delivery. Even in the informal sector, individual entrepreneurs and small businesses rely on social media platforms to explore market opportunities.

The creation of an e-commerce protocol under the AfCFTA will nevertheless call for a deeper interrogation of other policies such as data protection, taxation, cybercrime, digital identity, and e-transaction laws.

The resultant protocol should be able to enhance cooperation between African states and eliminate regulatory barriers that could be exploited by preeminent technological giants who may be keen on sustaining their dominance. Equally, such a protocol should not be an impediment to cross-border trade or create a comparative disadvantage to businesses that are yet to digitize.

Importantly, stakeholders must consider ways of improving the digital infrastructure and to lessen the disparities in access to technology in order to maximize the benefits of e-commerce platforms. In readiness for this protocol, African states should start evaluating their capacity and explore areas of improvement.

# PRIVATE SECTOR IN THE AFCFTA

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There is no better instrument for innovation, growth, and overall development in any state than the private sector. The most remarkable inference of this phenomenon is the spectacular growth in East Asia in no less than four decades after the Second World War. The torrents of publications that have attempted to explain this occurrence in East Asia tend to vary in their theories, but nevertheless agree on the pivotal role of the private sector during that golden era (Leinbach & Ulack, 2000).

From the perspective of economic professionals, the most remarkable feature of the emergence East Asia was the corresponding elevation of large chunks of the population from poverty (Kimura & Chang, 2017). The cumulative influence of state intervention, vibrant private sector, and an effective utilization global value chains, seems to have precipitated a sweeping economic transformation. The present global poverty dynamics demonstrate that the Asian continent has transitioned the highest number of people from poverty to the middle class.

According to the world poverty clock, some 600 million people are still living in extreme poverty, with about two-thirds of this number in Africa. With approximately 70 percent of the world's poorest living in sub-Saharan Africa, the idea that the continent of Africa is poverty-stricken has garnered wide consensus (Kharas, Hamel, & Hofer, 2018). Ironically, the continent has had its fair share of uninterrupted growth over the last two and half decades. But little of the accrued wealth ever get to the fringes of the population.

Given the crucial role of the private sector in the phenomenal transition in East Asia, there is little doubt that the fate of the continent – its quest to create a prosperous and peaceful Africa through its Agenda 2063 – is intimately connected the development of the private sector. This realization has led to a shift in the thinking of most governments across the continent, who now see this sector as a significant pinion in the generation of new businesses, creation of new employments, and the generation of national revenues.

Regrettably, states and governments across the continent have been sluggish in facilitating the quintessential changes to allow the private sector to thrive within their national and regional markets. The private sector is still facing a plethora of obstacles such as poor infrastructure, inadequate and ineffective government regulations, restrictive policies, shortage of skilled workers, poor financial support, and restrictive trade practices across national borders (African Development Bank Group, 2013). Curiously, despite the absolute unanimity that private sector development in Africa is still benign due to unfavourable macroeconomic conditions, states and government have been passive in inducing the needed structural transformations to enable the private sector to exploit its potentiality.

This general passivity by states and government, especially in sub-Saharan Africa can be traced to a general orientation towards a political economy that abets political nonaccountability. In this scenario, Moncrieffe (1998) argues that the political class and other public officials are not compelled to be responsive to the needs of the citizens, which hinders, eventually, any meaningful social, political, and economic transformation. Nevertheless, it would be callous to suppose the sluggishness of private sector development in Africa is due to the deficiency of strategy at both the national and continental levels.

Within the last two decades, key regional and international establishments such as the AfDB and the Bretton Woods Institutions have advanced theoretical frameworks and strategies to stimulate the growth of the private sector in Africa. A similar approach has also been adopted key development partners under the G20 forum. In its development policy, the AfDB regards the private sector as an engine of sustainable and inclusive growth and perceives it as an indispensable area of attention in its endeavour to reduce poverty and catalyse sustainable development (African Development Bank, 2020). Other key development partners have also embarked on programmes to unravel the impediments to a



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## **The AfDB regards the private sector as an engine of sustainable and inclusive growth and perceives it as an indispensable area of attention in its endeavour to reduce poverty and catalyse sustainable development**

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faster private sector development. For instance, the International Development Association (IDA), under the World Bank, has committed billions of dollars towards the investment in essential infrastructure, skills development, and access to credit across the African continent.

While the Preamble to the AfCFTA recognizes that State Parties retain the right to pursue any such policy objectives as their circumstances may require, the Agreement's General Objectives calls upon State Parties to work in concert towards a more prosperous African continent. The new institutions that will be created will oblige weaker and complacent states to pursue the necessary structural transformation to take advantage of its emergent opportunities. In this quest for national realignment for the sake of continental integration of trade, the citizens who carry out business activities, in formal and informal sectors, will prosper.

Accordingly – and in line with other continental commitments through treaties, declarations, and initiatives under the African Union (AU) – the implementation of the AfCFTA should generate a conducive environment for private sector development. The uniqueness of the AfCFTA in the broad continental drive to improve the continent's socio-economic quandary is that it has the potential to revamp the macro and microcosmic issues in private sector development. The action plan under the AfCFTA is primed to rationally tackle persistent drawbacks such as feeble trade policies, inadequate trade facilitation, low productive capacity, and weak financing of

trade. The AfCFTA will also enhance the sharing of information on trade and boost goods and factor market integration.

This general optimism regarding the potential and capacity of the private sector in Africa is backed by solid statistics. For instance, the informal sector accounts for roughly 66 percent and 52 percent of the total employment in sub-Saharan and North Africa respectively. At the same time, informal cross-border trade is supposed to be at least 50 percent of the formal trade across the continent. It is thought that the huge proliferation of informal cross-border is a by-product of high tariffs and non-tariff barriers, distortion of markets by interest groups, poor institutional support, high cost of formal trade, corruption, and excessive regulations. However, informality of cross-border trade has recently been shown to be quite intricate behoving a multifaceted approach for a better understanding (Mhando & Kiggundu, 2018).

For one, the notion that the informal sector is an evolutionary stage towards more sophisticated formal enterprises could be a misconception. Mhando (2018); Sallah (2016); and Williams (2016) argue that there is some inherent paradox in transposing the informal economy to formal orderliness because the latter is dependent on the former for corporate sustenance. In other words, an aggressive push to have the informal economy under formal institutional arrangement may be unsettling and even detrimental to overall objective.

As the most advanced REC in Africa, the EAC holds the strategic initiative to direct the implementation of the AfCFTA. The fact that intra-regional trade is still stymied, despite political goodwill, suggests that policy interventions have not yielded the expected outcomes. Consequently, it is not anomalous to deduce that such policies and measures have not be truly characteristic of the perspectives of the private sector (Adriaenssens, 2015). The AfCFTA presents another opportunity for the EAC and other RECs within the region to enlist the private sector as a key ally in its implementation. Only then can the process be deemed as inclusive and consultative.

# SHAPING THE DISCOURSE IN AFCFTA

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In order to influence the discourse on the implementation of the AfCFTA, the private sector must have a proper understanding of the various Protocols and Annexes under the Agreement. From the commentary on the AfCFTA framework above, it is apparent that the anticipated payoff to the business community is intimately linked to the degree of elimination of tariffs and non-tariff barriers to trade across the continent (UNECA, 2019). In fact, the various Protocols under the AfCFTA simply propound the general obligations. The crucial adjustments that will ultimately deliver the objectives of the Agreement will be encompassed in the Annexes and Schedules of tariff concessions, most of which are yet to be concluded.

Nonetheless, we must set forth that the negotiations with respect to the implementation of each Annexes is quite intricate and we may not have the most recent development, granted that states are allowed to pursue their deliberations in confidence until an agreement is reached. Accordingly, we have circumscribed this commentary to be a generic explanation of the developments under the key facets of the AfCFTA and how such principles should influence national and regional action and how the private sector can direct such discourse. Abstractly, the implementation of the AfCFTA agreement will induce drastic changes in the institutional and regulatory administration of businesses in areas such as taxation, customs policy, transit, licensing prerequisites, technical standards, and visa qualifications.

Certainly, the EAC has been swift in implementing the AfCFTA, and we can only assume that some of the issues in the various Protocols have been concluded or are advanced in the stages of deliberations. Businesses in both the formal and the informal private sector must understand the impending impact of the AfCFTA to their immediate and long-term operations, considering that the Agreement is scheduled to come into operation from 1<sup>st</sup> July 2020. Nevertheless, there is a growing concern that the Covid-19 pandemic is likely to derail any

on-going deliberations, as nations and states endeavour to strengthen their responses to the emergent crisis (World Bank Group, 2020). Evidently, each of these looming modifications require a sophisticated commentary, which is beyond the scope of this study. For any area-specific interest, businesses should pursue comprehensive analyses from the relevant experts.

Similarly, given that the implementation of the AfCFTA is by any metric a complex and convoluted process, it is not possible to consider all possible views or consternations. Nevertheless, regardless of political and national identities, the private sectors across such national boundaries may just have two objectives: better opportunities for business and proper systems for mitigating the adverse effects continental transactions.

From a continental perspective, the AfroChampions Initiative has made some significant effort in creating a platform for a public-private engagement with respect to the AfCFTA. Through this body, there have been a number of initiatives and programmes designed to coalesce the concerns of the business community, enhance institutional capacity, and to design support systems for a more consultative framework. Besides the AfroChampions, the Pan-African Chamber of Commerce & Industry (PACCI) is also playing an important role as the focal point at least 50 chambers of commerce and industry within the continent. The objective of PACCI is to promote policies that nurture continental economic integration, competitiveness, and sustainability.

Within the EAC, the EABC has been working closely with the COMESA Business Council, and other such entities to create a forum for a more inclusive dialogue to agitate for the interests of the private sector in the implementation of the AfCFTA.

Unfortunately, most of these initiatives only give preference to formal businesses within the private sector. In order for more inclusive conversations, these formal bodies must find ways of roping in the informal sector.

# CONCLUSION

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To the business community across the continent, there is an urgent need to appreciate the general principles of the AfCFTA; its Protocols and Annexes; and how such instruments will explicitly affect their dealings. As stated in the preceding sections of this study, a comprehensive implementation of the AfCFTA is contingent on State Parties' eagerness to attain consensus on the removal of tariffs and the elimination of non-tariff barriers to trade. Taking into account the number of states involved, each with its unique interests, there is little doubt that the continent is embarking on a long and multifarious undertaking. Regardless, the prospects of a more prosperous continent capable of resolving perennial problems such as extreme poverty and high unemployment should counteract any hardships.

Within the EAC, State Parties have had an enduring reverence to integration. To the credit of the private sector in this region, trade among State Parties is higher than any other REC. The AfCFTA is expected to enhance trade within East African through a further alignment of laws and regulations within the RECs. Also, given that the AfCFTA is greatly aligned with existing agreements under the World Trade Organization (WTO), State Parties who are also members of the WTO are already familiar with the principles of negotiations with respect to the elimination of tariffs and non-tariff barriers to trade.

Given its key role in the uninterrupted growth across Africa within the last quarter of a century, the private sector ought to be given an intrinsic role in the implementation of the AfCFTA and the imminent adjustments that will need to occur behind the borders. Within the EAC, the preeminent REC in the region, bureaucrats should expand opportunities for dialogue and seek ways of mainstreaming the informal sector without destabilizing its essence or stifling its vibrancy. Ultimately, the region will realize the associated structural transformation that will allow more wealth to trickle to the masses.

While it is fair to state that all the governments within the region have their own plans on how to enhance the productivity of the private sector, it is also imperative to point out that such initiatives must be considered and implemented within the shortest time possible – if the East African region is hopeful of reaping from the forthcoming Africa Continental Free Trade Area (AfCFTA).

Without a doubt, there has been remarkable progress on the path towards the implementation of the AfCFTA. All the 55 AU members have now signed this momentous agreement. The rate of ratification has also increased within the last year. The AfCFTA also provides an opportunity for the continent to overcome the crisis of implementation and a validation of the continental Agenda 2063.

However, the efficacy of this Agreement is dependent on the ability of national ministries and the relevant stakeholders to work expeditiously to harmonize approaches for implementation in good faith. This will result in a single and fully liberalized continental trade area.

To be able to take advantage of the AfCFTA, states and governments must buttress their implementation endeavours, while at the same time, creating complementary measures in investment, trade-related infrastructure, production capacity, and import defence.

For the areas that are yet to be agreed on; investment, intellectual property rights, and competition policy, it will be prudent to engage and private sector at every level. By this statement, stakeholders should endeavour to involve the informal sub-sector, which practically support the formal sector, but is rarely listened to. Obviously, much of the job that is to be done in order for businesses to thrive under the AfCFTA boils down to the commitments of governments to prioritise investments in facilitative areas such as infrastructure, institutional capacity, high quality labour, and proper legislative interventions.

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