

**UNDERSTANDING THE SCOPE OF AFRICAN CONTINENTAL FREE
TRADE AREA (AfCFTA) AGREEMENT: - STATE OBLIGATIONS AND
DOMESTIC IMPLEMENTATION IN NIGERIA**

BY

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**A PRESENTATION MADE AT A ONE-DAY CAPACITY BUILDING
WORKSHOP FOR LEGAL ADVISERS IN MINISTRIES, DEPARTMENTS
AND AGENCIES (MDAs) ON THE AfCFTA AGREEMENT AND ITS
IMPLEMENTATION IN NIGERIA**

ORGANISED

BY

THE NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES.

VENUE: - SUPREME COURT OF NIGERIA COMPLEX, ABUJA

DATE: - THURSDAY, 5TH SEPTEMBER, 2024.

OBJECTIVES

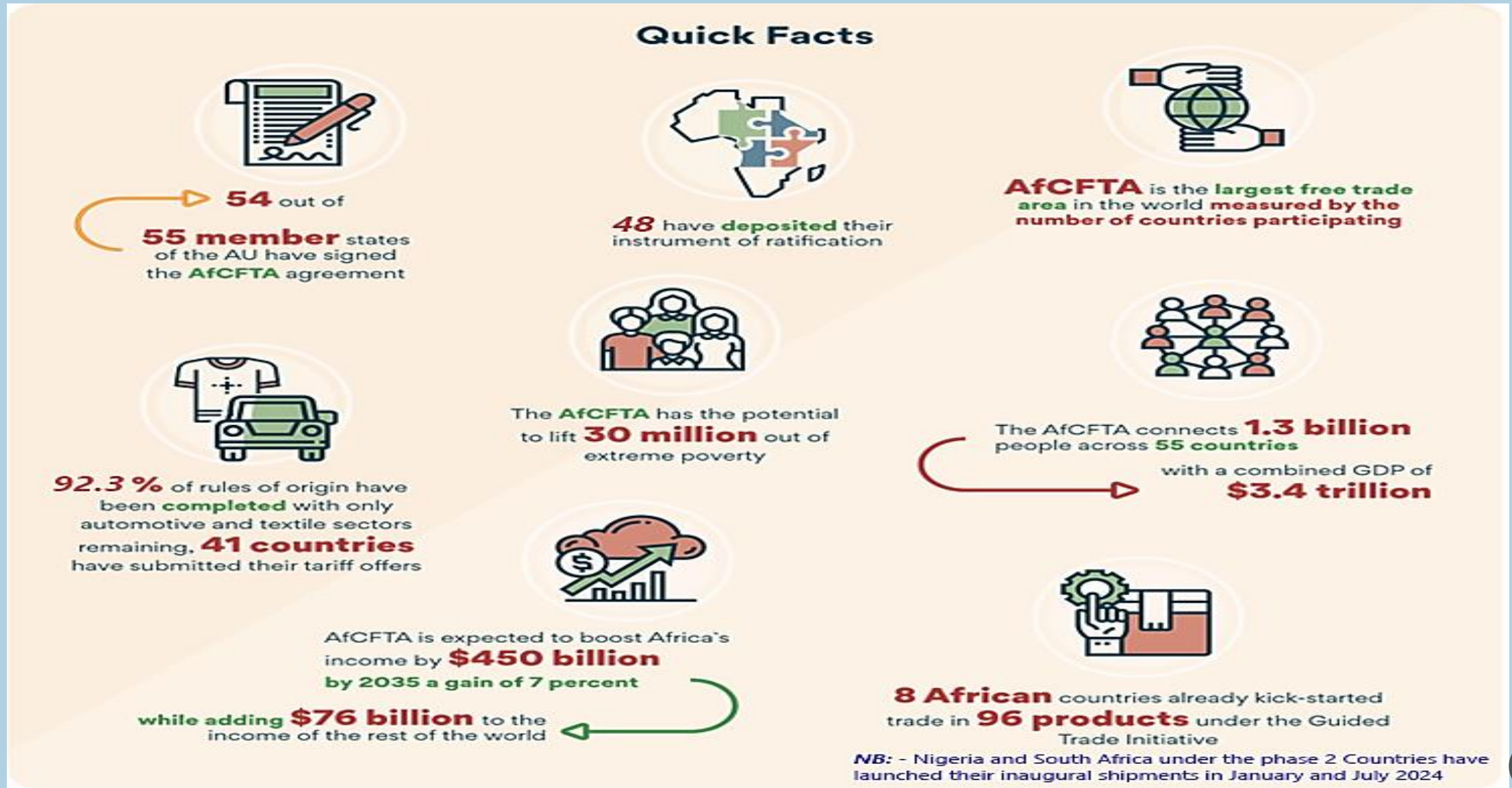
- Enhance the contextual understanding of participants of the nature and scope of the AfCFTA Agreement and its 8 Protocols;
- Enhance participants' ability to align, analyze and advise appropriately on domestic implementation of Nigeria's treaty obligations under the AfCFTA.

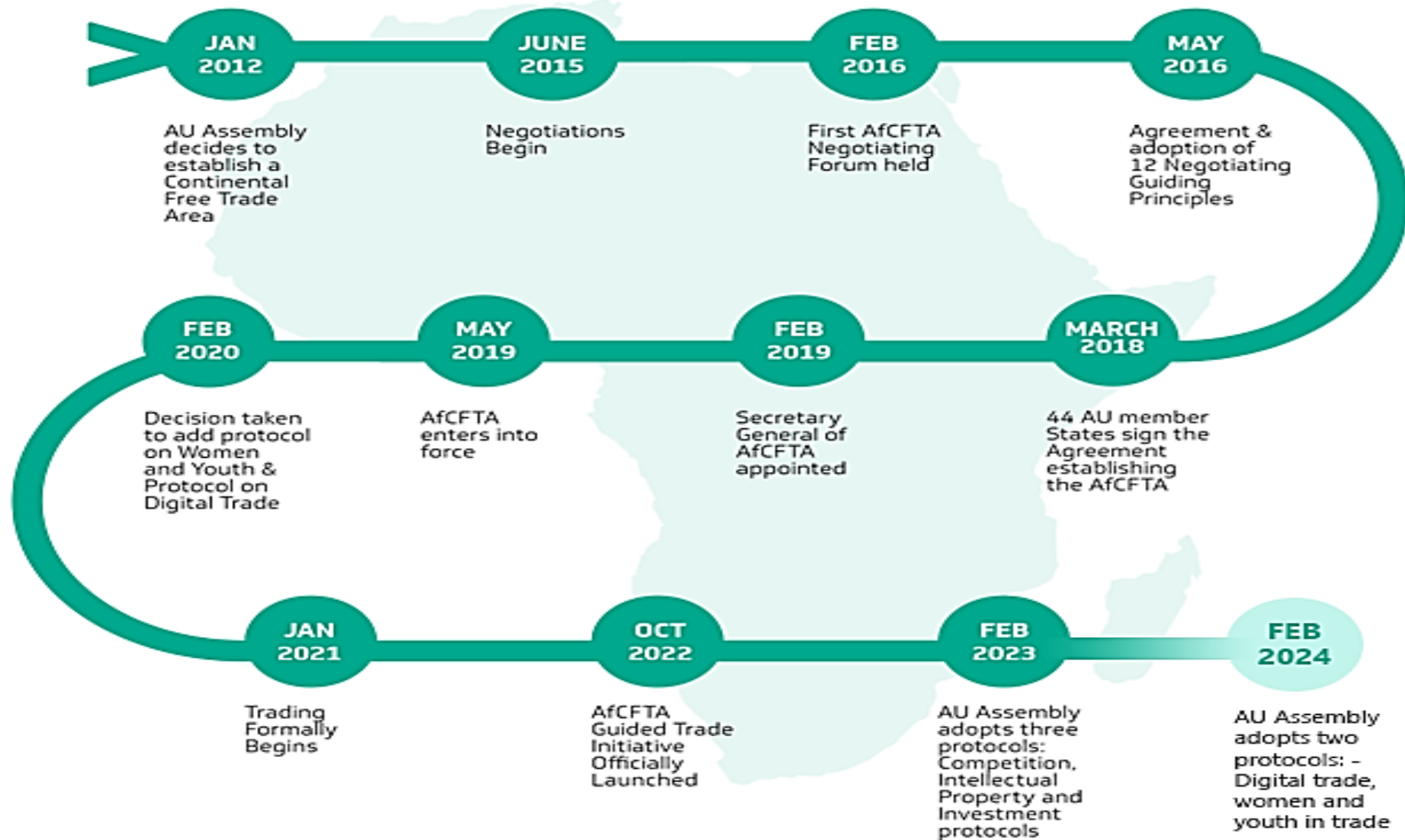
INTRODUCTION

- The initiative to create a single African market has existed in the Pan-African political discourse for decades (e.g., Article 6 of the Abuja Treaty Establishing the African Economic Community, entered into force on 12 May 1994, signed by 54 of 55 States and ratified by 50 out of 55 AU Member States). The continent was set on the path to actualizing the goal after the creation of the African Continental Free Trade Area (AfCFTA) Agreement was included in the African Union's 2063 Agenda, of the Africa we want. The Agreement was signed on 21 March 2018, came into force on 30 May 2019 and became operational on 7 July 2019. After delays caused by the COVID-19 pandemic, the Free Trade Area(FTA) was launched on 1st January 2021. There are 54 signatories and 48 State Parties to AfCFTA Agreement out of 55 AU Member States, as at August 2024. Nigeria signed on 7 July 2019, ratified on 11 November 2020 and formally deposited on 5th December 2020.

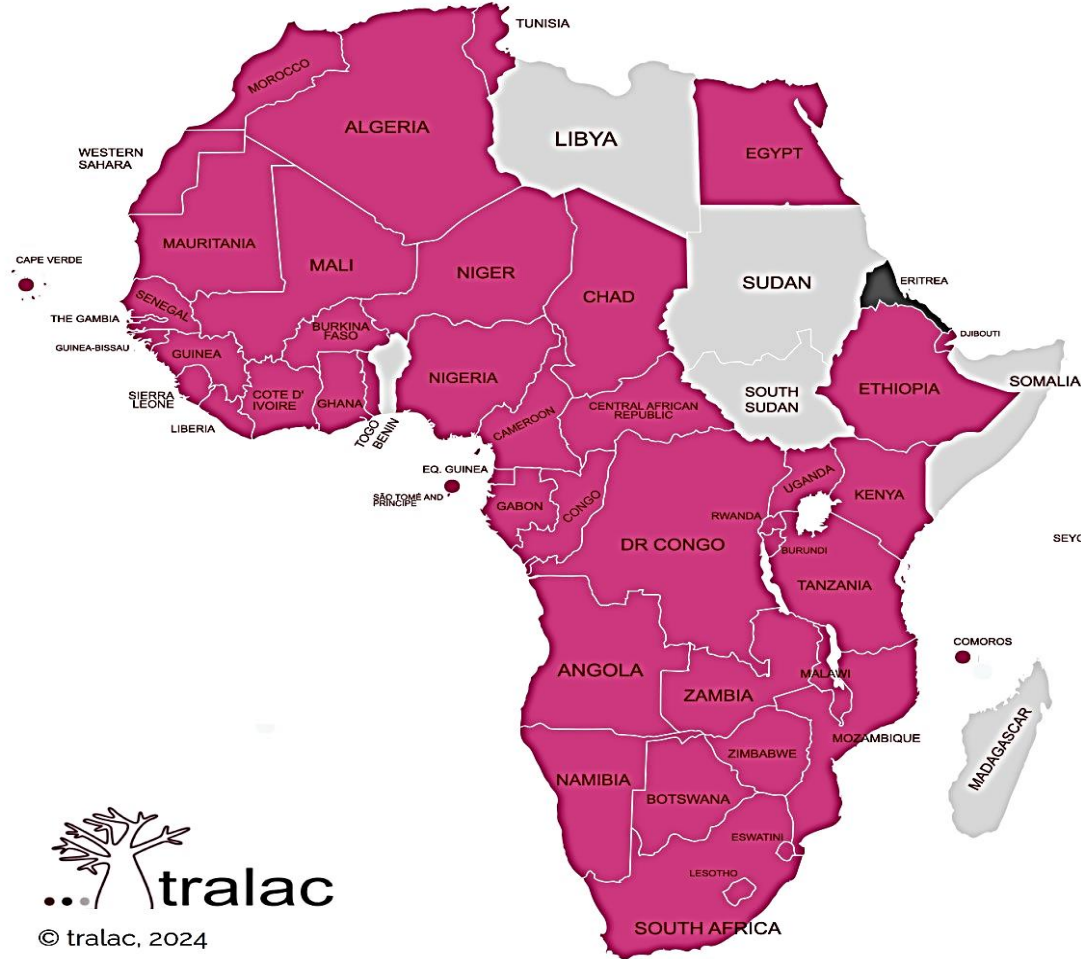
1. THE AfCFTA AGREEMENT

1.1 THE ROAD TO AfCFTA: - QUICK FACTS, AIM, OBJECTIVES AND KEY GUIDING PRINCIPLES.





Which countries have ratified the AfCFTA Agreement?



Listed by date on which the AfCFTA instrument of ratification was deposited with the AUC Chairperson

1.	Ghana	10-05-2018
2.	Kenya	10-05-2018
3.	Rwanda	26-05-2018
4.	Niger	19-06-2018
5.	Chad	02-07-2018
6.	Eswatini	02-07-2018
7.	Guinea	16-10-2018
8.	Côte d'Ivoire	23-11-2018
9.	Mali	01-02-2019
10.	Namibia	01-02-2019
11.	Uganda	09-02-2019
12.	South Africa	10-02-2019
13.	Republic of the Congo	10-02-2019
14.	Djibouti	11-02-2019
15.	Mauritania	11-02-2019
16.	Senegal	02-04-2019
17.	Togo	02-04-2019
18.	Egypt	08-04-2019
19.	Ethiopia	10-04-2019
20.	The Gambia	16-04-2019
21.	Sahrawi Arab Democratic Rep.	30-04-2019
22.	Sierra Leone	30-04-2019
23.	Zimbabwe	24-05-2019
24.	Burkina Faso	29-05-2019
25.	São Tomé and Príncipe	27-06-2019
26.	Equatorial Guinea	02-07-2019
27.	Gabon	07-07-2019
28.	Mauritius	07-10-2019
29.	Central African Rep.	22-09-2020
30.	Angola	04-11-2020
31.	Lesotho	27-11-2020
32.	Tunisia	27-11-2020
33.	Cameroon	01-12-2020
34.	Nigeria	05-12-2020
35.	Malawi	15-01-2021
36.	Zambia	05-02-2021
37.	Algeria	23-06-2021
38.	Burundi	26-08-2021
39.	Seychelles	15-09-2021
40.	Tanzania	17-01-2022
41.	Cape Verde	05-02-2022
42.	Democratic Rep. of the Congo	23-02-2022
43.	Morocco	20-04-2022
44.	Guinea-Bissau	27-09-2022
45.	Botswana	19-02-2023
46.	Comoros	19-02-2023
47.	Mozambique	05-07-2023
48.	Liberia	31-07-2024

I.2 AIM, OBJECTIVES AND KEY GUIDING PRINCIPLES

AIM

AfCFTA Agreement aims at boosting intra African trade by providing a comprehensive and mutually beneficial trade agreement among the state parties covering in goods and services, investment, intellectual property rights, competition policy, digital trade and women and youth in trade, as well as dispute settlement mechanism.

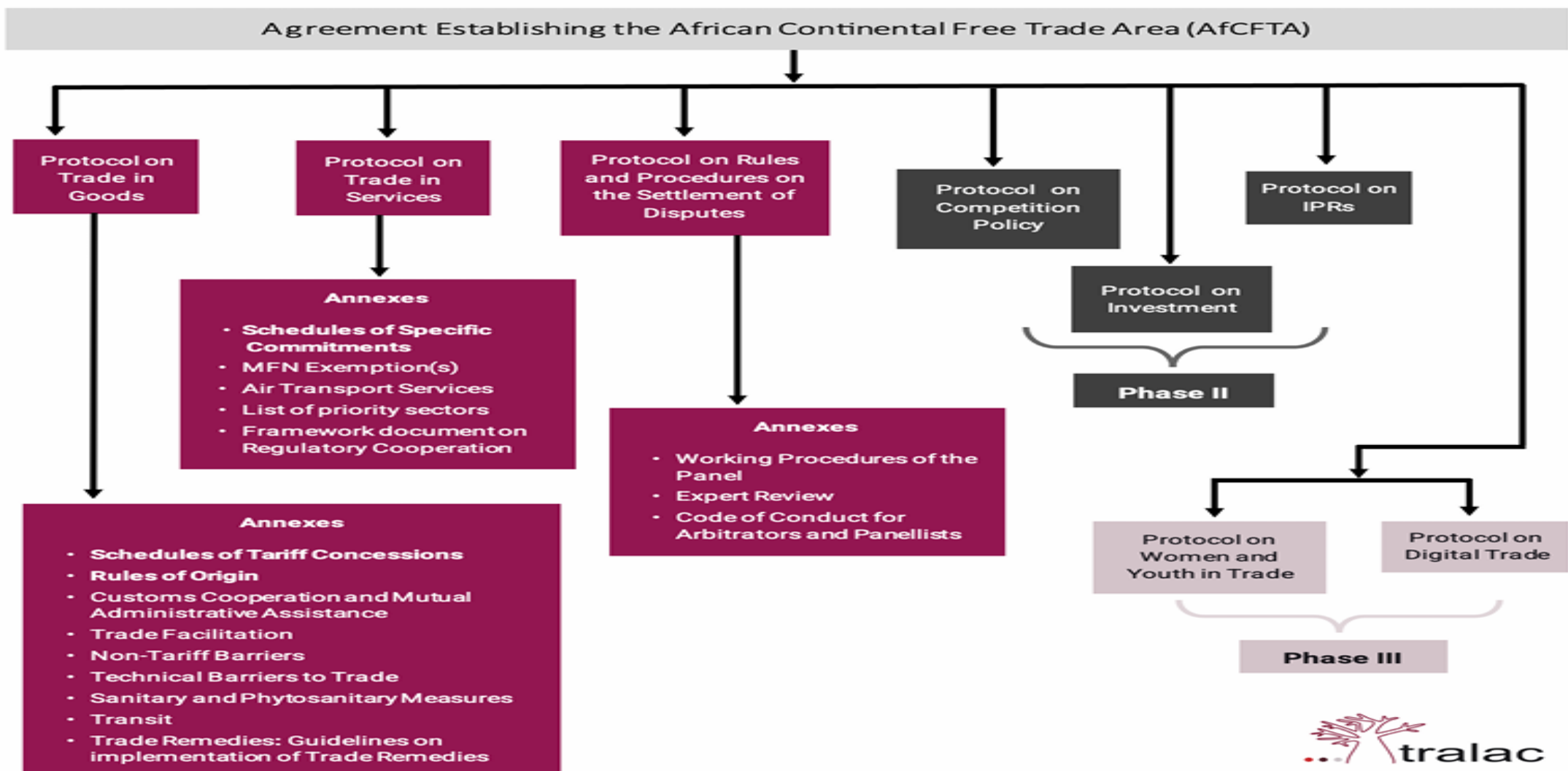
OBJECTIVES

- By virtue of Articles 3 and 4 of the Agreement, the main objective of the AfCFTA is to create a single market for goods and services, facilitated by movement of persons in order to deepen the economic integration of the African Continent.
- More specifically, the state parties shall progressively eliminate tariffs and non-tariff barriers, progressively liberalise trade in services, cooperate on investment, intellectual property rights and competition policy, cooperate on all trade related areas and on customs matters, as well as the implementation of trade facilitation measures;
- Establish a dispute settlement mechanism concerning their rights and obligations;
- Establish and maintain an institutional framework for the implementation and administration of AfCFTA.

KEY GUIDING PRINCIPLES

- Of the 12 principles set out by Article 5, AfCFTA shall be governed by among others;
- Member states driven agreement in terms of rights and obligations, inter-state disputes and resolution;
- Regional Economic Communities (RECs) like ECOWAS, SADC, EAC etc, constitute the building blocs for the AfCFTA;
- Most Favoured Nation Treatment (MFNT) principle requires member States NOT to discriminate between their trading partners linked to the free circulation of goods and services and their access to marketing;
- Reciprocity and consensus in decision-making;
- Transparency and disclosure of information among others

2. THE SCOPE OF AfCFTA AGREEMENT



2.1 THE AGREEMENT

- In terms of Scope, the **Agreement** covers trade in goods, trade in services, investment, intellectual property rights, competition policy, Dispute settlement rules and procedures, digital trade and women and youth in trade, and their associated Annexes and Appendices, forming part of the Agreement, upon adoption, consistent with Articles 6, 7 and 8 of the Agreements.
- By virtue of Article I of the Agreement, all the eight (8) Protocols adopted as at February 2024, their Annexes and Appendices adopted as at September 2024, shall form an integral part thereof. An Annex is an instrument attached to a Protocol, while an Appendix is an instrument attached to an Annex, and a Protocol is an instrument attached to this Agreement.
- Articles 9-13 of the Agreement provide for **Institutional Framework** for the implementation, administration, facilitation, strategic guidance and oversight, monitoring and evaluation of the AfCFTA by the Assembly of Heads of States, the Council of Ministers, the Committee of Senior Trade Officials and the Secretariat, as well as various technical committees.
- Articles 19-20 on conflict and dispute settlement between member states, and this Agreement shall prevail to the extent of the specific inconsistency or conflict with any other regional agreement.

NB: The AfCFTA Negotiations take place in phases.

- On May 30, 2019, the AfCFTA Agreement and its **Phase I Protocols on Trade in Goods and Services as well as Dispute Settlement Rules and Procedures, together with their Annexes and Appendices** had been concluded, adopted and became legally binding on all States Parties that ratified/acceded to them

2.2 THE PROTOCOL ON TRADE IN GOODS

- The objectives of this protocol are to boost intra-African Trade in goods through the elimination of tariffs and non-tariff barriers, enhanced efficiency of customs procedures, among others.
- The protocol provides for the following key features: Most Favoured Nation Treatment, National Treatment, Special Differential Treatment, Liberalization of Trade, Schedules of Tariff Concessions, Export Duties, Non-Tariff Barriers, Rules of Origin, Customs Operation and Mutual Administrative Assistance, Trade Facilitation, Transit, Anti-Dumping and Countervailing Measures, Preferential Safeguard Measures, General Exceptions, Dispute Settlement and Implementation.

Update on Trade in Goods Negotiations

- As at February 2024, a total of 45 out of 48 tariff offers on trade in goods submitted by individual states parties and collectively as part of customs unions (ECOWAS, EAC, SACU and CEMAC) have been verified by the AfCFTA secretariat to be in accordance with the agreed modalities for tariff liberalization. These provisional schedules of Tariff Concessions are available in the e-Tariff Book and are applied to trade under the Guided Trade Initiative (GTI).
- Final implementation of the schedules of Tariff Concessions will be undertaken when the remaining 10% category of the tariff books (7% sensitive products subject to a longer period of liberalization and 3% excluded products) have been finalized. The 12th council of ministers of Trade directed that the tariff covering the 10% should be submitted by September 2024, to enable the necessary bilateral negotiations.
- The Guided Trade Initiative (GTI) begun in October 2022 for matchmaking businesses and products for exports and imports between seven (7) state parties (Ghana, Egypt, Cameroon, Kenya, Rwanda, Mauritius and Tanzanian) that have shown readiness and met the minimum requirements to start trading under the AfCFTA in coordination with their national committees of AfCFTA implementation. The main objective of the GTI is to practically test the efficacy of trading under AfCFTA preferences or preferential trade and identify the operational, institutional and legal challenges in order to improve on them for the benefit of the private firms, NOT Governments in particular countries that are the real importers, exporters, retailers, service providers and investors.

- Under the second phase of the GTI with 24 states, South Africa on 31 January 2024 and Nigeria 16th July 2024 made their Inaugural shipments having met the requirement to trade including the domestic gazetting of the ECOWAS Provisional Schedule of Tariff Concessions (PSTCs) by Nigeria. While South Africa exported products like fridges, home appliances and mining equipments to Ghana and Kenya, on the other hand, Nigerian companies like Dangote exports clinkers to Cameroon, Secure ID Ltd exporting smart cards to Cameroon; Avilla Naturalle exports black soup and shea butter to Kenya, Flour Mills Nigeria exporting native starch to Algeria; Ruchim Ltd exporting SIM and bank cards to Kenya; other products include bags, ceramics, textiles etc
- Goods traded currently under the GTI include ceramic tiles, tea, coffee, processed meat product, sugar, pasta, corn starch, dried fruit, etc'
- The production in GTI participating countries of these goods can benefit from tariff reductions if they meet the product-specific rules of origin under the AfCFTA. These tariff reductions may also apply to production by companies owned by interests outside Africa, if they meet the Rules of Origin (RoO) criteria.
- The Rules of Origin: Are the legal provisions that are used to determine the economic nationality of a product in international trade, and should only be used to reduce trade deflection, while, at the same time, creating a conducive environment for trade in originating goods to take place between FTA members. The agreed RoO currently cover 92.4% of tariff lines with 7.6% remain outstanding. Trade in goods, for which RoO are finalized, can take place under the tabled tariff offers. These offers must comply with the agreed modalities for tariff negotiations. Nb Textile and clothing and automotive products are two key sectors where RoO are yet to be finalized for the automotive products, the general rule chapter requires 40% African content and not more than 60% inputs from outside the continent (value of Non-originating material)

2.3 THE PROTOCOL ON TRADE IN SERVICES

- ❖ The Protocol aims to create an open, transparent, and integrated single services market, fostering economic growth and development across sectors.
- ❖ Building upon existing progress in service liberalization and regulatory harmonisation at regional and continental levels, the focus is on leveraging the potential of service providers on the continent to participate in regional and global value chain.
- ❖ While recognising the sovereignty of State Parties to regulate services within their territories for national policy goals, the emphasis is on responsible regulation that does not compromise consumer protection, environmental safeguards and overall sustainable development.
- ❖ In 2023, the AfCFTA GTI focus on the following five (5) **PRIORITY AREAS OF SERVICES** (Financial, transport, tourism, communication and business services) following the submission of initial services offers by **48** Member States, out of which **22** draft Schedules of specific commitments were adopted for provisional implementation by the Extra-Ordinary Summit on the AfCFTA held on 25 November 2022. The 2024 AU Summit commended the **FIVE** East African Community (EAC) Partner States (Burundi, Kenya, Uganda, Rwanda and Tanzania) for gazetting their adopted Schedules of Specific Commitments in the five priority service sectors.

2.3 THE PROTOCOL ON TRADE IN SERVICES

❖ Among the **KEY PROVISIONS** of the Protocol on Trade in Service are: -

- The **definition of Trade in Service (TIS)** : - as the supply of a service across borders and include any of the following: - Provision of services: -
 - a) From one country into the territory of another;
 - b) to consumers located in another country;
 - c) by a supplier of one country to consumers in another, through a commercial presence in that country;
 - d) by a supplier of one country through the presence of natural persons in the territory of another country.
- Part IV of the Protocol introduces **eleven General Obligations on State Parties**: -
 - a) **Most Favoured Nation Treatment** requires State Parties to afford another country's service supplier treatment that is **NO LESS FAVOURABLE THAN** what they afford to like service suppliers of any 3rd Country (a third country is a State that is NOT a party to the AfCFTA Agreement), subject to an express exemption due to a **double taxation agreement** that binds s State Party.

2.3 THE PROTOCOL ON TRADE IN SERVICES

- b) **Transparency**, requires state parties to publish all relevant measures of general applications that may affect the operation of the Protocol.
- c) **Disclosure of confidential information** that may prejudice the legitimate commercial interests of particular enterprises;
- d) **Special and differential treatment** to liberalise service sectors' commitments and modes of supply, grant flexibilities and accord technical assistance and capacity building etc as special consideration;
- e) **Right to Regulate** services within national Jurisdiction;
- f) **Domestic institutional review** mechanism of procedures, remedies and administrative decisions affecting trade in service;
- g) **Mutual recognition** in the authorisation or certification of suppliers;
- h) **Monopolies** and Exclusive service supplier should **not** be abused contrary to State party's obligations;
- i) **Anti-Competitive** business Practices be eliminated;
- j) **Payments and transfers**: - for current transactions must not suffer from restrictions
- k) **Restrictions to safeguards the balance of payments** and external financial difficulties: - must be temporary non-discriminatory among state parties and must avoid unnecessary damage to the economic, commercial or financial interest of other states Parties.

2.3 THE PROTOCOL ON TRADE IN SERVICES

- **Obligation on liberalisation and market access;** - States Parties may not place limits: - on the number of service providers by quotas or monopolies etc; on the total value of service transactions or assets; on the total number of service operation or quantity of service output; on the total number of natural persons employable in a given service sector; on the types of legal entity which a service provider may give.

2.4 PROTOCOL ON DISPUTE SETTLEMENT RULES AND PROCEDURES (DSM)

- On Dispute Settlement and Enforceability in Trade:- The Agreement (Articles 4(f) and 20) and the Protocol on Rules and Procedures on the Settlement of Disputes (Articles 1-25) established a Dispute Settlement Mechanism (DSM) to be administered in accordance with the Protocol.
- Put together, the AfCFTA regime provides for a robust DSM for resolving trade disputes among its members:- State-State Dispute modeled along the WTO mechanism, with the first option to explore amicable solution through ADR processes like Negotiation, mediation and binding/enforceable Arbitration, before referral to a Panel, then an Appellate body and Final/Binding Ruling by the DSB upon the parties to the dispute.
- While Article 1 of the Protocol on DSM Rules and Procedures has clarified the concepts of “Disputes” “State Party Concerned” “Party to a Dispute” and “Third Party”, it however practically excluded Non State Parties from having access to the DSM (see Article 4(4) and 27 of the Protocol)
- Knowingly that:-
 - a) Most trade transactions involve Private entities/non-state actors;
 - b) African Governments do not sue each other in practice, they resolve such disputes by consensus under an Alternative Option of Article 10(2) of the AfCFTA Agreement;

2.4 PROTOCOL ON DISPUTE SETTLEMENT RULES AND PROCEDURES (DSM)

- c) Although disputes about Trade in Services are often handled by national/domestic courts/tribunals involving sector regulators (energy, communication, financial etc), their rules about due process must reflect AfCFTA Agreement principles (Article 5),
- d) It might be different with regards to yet to be negotiated Protocol on Investment (hopefully by December 2021) which may require a special arrangement for the Protection of Non-State Parties like INVESTORS and Investments;
- e) Lack of technical skills/expertise and cost implication of international arbitration prevent most African States from declaring Trade disputes, which involve Trade Remedies and Safeguards;
- Having proclaimed under Article 2 of the Protocol that the DSM established under Article 20 of the Agreement shall be transparent, accountable, fair, predictable and consistent process with the provisions of the Agreement.

ANY LEGAL OPTION FOR THE PRIVATE SECTOR / NON – STATE ACTORS ON DSM ?

- Despite not being in the same position as the State Parties to the AfCFTA Agreement, Private Sector's actions are crucial to the AfCFTA 's success. A different **category of trade remedies** that can be used to stop unfair trade practices like the dumping of goods or the subsidizing of imports may be advantageous to them.
- Additionally, they might receive temporary protection when there is a rise in imports due to trade liberalization taking place as a result of AfCFTA. These remedies entail an alternative process wherein affected private sector entities (like investors, producers, exporters, traders, service providers, importers, MSMEs etc) may ask national investigative authorities to carry out the required investigations and impose **anti-dumping duties, countervailing measures or safeguard measures**. Trade remedies, including safeguards, are specifically covered in the AfCFTA Annex. Under the laws of the host governments, private sector entities will have some rights to due process. Following the adoption of the investment protocol, it will be clear how and where investors' right would be protected.

2.5 THE PROTOCOL ON INVESTMENT

- The AU Summit held between 18-19 February 2023 in Addis Ababa adopted **three Protocols** under Phase 2: - on Investment, Competition policy and intellectual Property Rights, with a built-in agenda of negotiations on their Annexes and outstanding provisions.
- The investment Protocol clarifies key legal concepts such as: - investment, investor, Home State, Host State, Enterprise or Company, Third party, sustainable development, etc. it sets out to achieve **five objectives and the rights and obligations for State Parties, investors and investment, under scope of application**; provides for admission of investments in accordance with domestic laws; conditions for denial of benefits of this protocol to an investor of another State party; investment promotion and facilitation with incentives; designation of national focal points to provide support to investors from other State Parties; provision for accessible, adequate and reliable information on relevant national laws and policies to guide investors; non-disclosure of confidential information and data that would jeopardize legitimate interests of other enterprises or national security or public interests; investment protection standards such as: - the National Treatment and its exceptions; Most Favoured Nation Treatment and its exceptions.

- The Protocol further provides for the following key features and State obligations: - interpretations of Non-Discrimination (measures); Administrative and Judicial Treatment of investors of another State Parties should be fair, just, non-discriminatory and of a minimum standards of international law; physical protection and security; Expropriation or nationalization of investments conditions and exceptions as well as compensation regime; Transfer of funds be allowed freely without delay subject to payment of legally approved changes, taxes, duties and the exceptions recognized by the protocol; the right of State Parties to regulate investments in accordance with the principles and goals of sustainable development and with other national environmental, labour , health, climate action, social and economic policy objectives, essential security interests and human resources development, as well as transfer of technology
- The protocol further provides for a detailed **investor obligations** in relation to State Party obligations, compliance with national and international laws, Business ethics, human rights, environmental and labour standards; protection of indigenous peoples and local communities; socio-political obligations, corporate social responsibility, anti-corruption standards; corporate governance, taxation and transfer pricing; institutional arrangements, management an settlement of disputes as well as investor liability.
- The Protocol's articles that were referred back (Articles 19 and 21 on expropriation) were adopted by the 37th Ordinary Session of the AU Assembly in February 2024. The development and negotiations are on-going of the Annexes to the Protocol, including the Rules on Dispute settlement, appropriate governance and administrative structures and for the operation of the Pan-African trade and Investment Agency.

2.6 THE PROTOCOL ON INTELLECTUAL PROPERTY RIGHTS (IPRs)

- Following the adoption of the Protocol on IPR by the 36th Ordinary Session of the AU Assembly in February 2023, negotiations by State Parties have commenced on the Annexes relating to Copyrights, Patents, Utility models, Trade Marks, Genetic Resources, Traditional Knowledge and Geographical indications, etc. The Protocol includes a preamble and seven parts or chapters with 42 Articles, reflecting a shared commitment by State Parties to protect and enforce IPRs, balance IP systems, and confirms the importance of IP to boosting intra-African trade,

- The fact sheet below summarizes the protocol

AfCFTA Protocol on Intellectual Property Rights Factsheet



Introduction

The AfCFTA Protocol on Intellectual Property Rights (IPRs) was adopted by the AU Assembly during its 36th Ordinary Session held from 18 to 19 February 2023 in Addis Ababa, Ethiopia. The Protocol includes a Preamble and 7 parts (or chapters) with 42 Articles. The Protocol will enter into force 30 days after the deposit of the 22nd instrument of ratification of the Protocol. Only State Parties to the AfCFTA Agreement can ratify or accede to the Protocol. The Protocol reflects a shared commitment by State Parties to protect and enforce IPRs, balance IP systems, and confirms the importance of IP to boosting intra-African trade. In this factsheet, States means State Parties to the Protocol.

Intellectual Property Rights

The Protocol covers a wide range of IPRs, including plant variety, geographical indications (GIs), marks, patents, utility models, industrial designs, undisclosed information, layout designs of integrated circuits, copyright and related rights, traditional knowledge, traditional cultural expressions, and genetic resources. The Protocol also includes pharmaceutical IP provisions.



Plant variety



Geographical indications



Marks



Patents



Utility models



Industrial designs



Undisclosed information



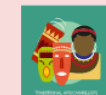
Layout designs of integrated circuits



Copyright and related rights



Traditional knowledge



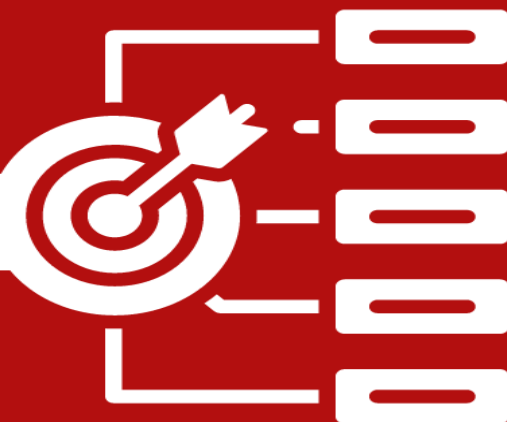
Cultural expressions



Genetic resources

The general objective of the Protocol is to support the realisation of the objectives of the AfCFTA by establishing harmonised rules and principles for the promotion, protection, cooperation and enforcement of IPRs.

Specific objectives



- support intra-African trade
- promote African innovation and creativity and deepen IP culture in Africa
- promote coherent IPRs policy in Africa
- promote science, industrialisation, services, investment, digital trade, technology, and technology transfer, and regional value chains
- promote a harmonised system of IP protection in Africa
- encourage African negotiating positions on IPRs
- support and promote creative and cultural industries
- contribute to access to knowledge
- support public health needs and priorities of State Parties

Guiding Principles

States shall be guided by the following principles in the protection and enforcement of IPRs:

- ✓ Promotion of intra-African trade
- ✓ Promotion of coherence between IP and socio-economic development policies
- ✓ Balancing private and public interests
- ✓ Promotion of the public interests in sectors vital to socio-economic development e.g. education, public health, agriculture, food security
- ✓ Facilitation of access to medicines, vaccines, diagnostics, therapeutics & other healthcare essential tools consistent with relevant IPRs treaties
- ✓ Facilitation of access to clean and efficient energy, and promote just and fair energy transition & environmental sustainability.
- ✓ Promotion of digital trade along with new and emerging technologies to foster Africa's digital transformation
- ✓ Prevention of the abuse of IPRs or the resort to practices that unreasonably restrain trade or adversely affect the transfer of technology by right holders.

Non-discrimination of IPRs

- States are required to treat IPR holders from other States in the same way they treat their own nationals.
- States are required to treat IPR holders of other States in the same way they treat nationals of its most favoured nations.
- However, these obligations do not apply in cases where there are exceptions provided under applicable treaties of State Parties.

Exhaustion of IPRs

- The Protocol provides for regional exhaustion of IPRs. That means, IP protected products are put on the AfCFTA market (in the State Party) with the consent of the IPR holder.
- The conditions for the applicability of the exhaustion of IPRs will be specified in an Annex to be developed.
- However, IPRs are not exhausted in the AfCFTA market if such products are placed for sale for the first time in any country outside the AfCFTA. Parallel importation is permitted within regional markets but may be banned from outside the regional market.

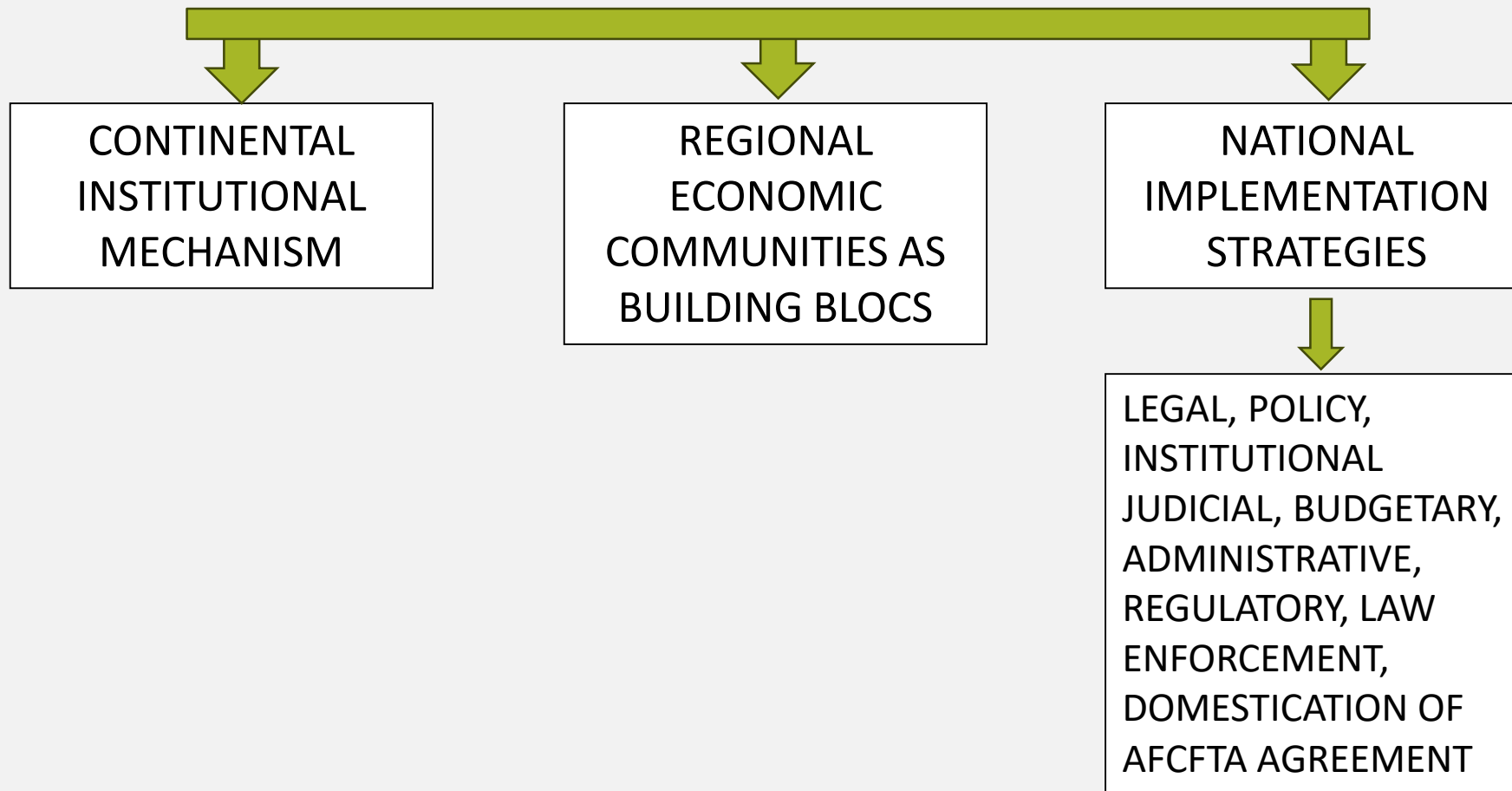
2.7 THE PROTOCOL ON WOMEN AND YOUTH IN TRADE

- Under phase 3 of the AfCFTA Agreement, the Protocol on women and youth in Trade was adopted by the AU Assembly at the Summit in February 2024 held in Addis Ababa following the recommendation of the 12th AfCFTA Council Ministers meeting. This Protocol sees women and youth as the engine of trade, and represents a significant and unique step towards a more **inclusive, equitable** and prosperous Africa. It creates concrete rights and obligations that aim specifically at empowering women and youth in the context of trade, by providing for steps to the removal of gender-based barriers that hinder women's participation in trade, including limited access to finance, absence of trading opportunities, and lack of mentorship.
- The Protocol seeks to eliminate discrimination, promote equality and inclusiveness and ensure that women and youth benefit from trade opportunities. It obligates State Parties to eliminate Non-Tariff barriers affecting women and youth in trade, encouraging their participation in trade associations and ensuring their access to trade information, participation in decision making processes affecting their rights as cross-border traders, operators of MSMEs, as well as facilitating their access to digital trade information for informed decisions.

2.8 THE PROTOCOL ON DIGITAL TRADE

- The protocol was adopted by the AU Assembly in February 2024 on the recommendation of the 13th Council of AfCFTA Ministers held in January 2024. The Protocol includes a ban on levying customs duties on digital trade in the AfCFTA and seeks to reserve the non-imposition of customs duties for digital products that originate in Africa, African Carriers and the African content.
- The Protocol aims to establish harmonised rules and common principles to enable and support digital trade across Africa. It focuses on promoting intra-African digital trade, enhancing cooperation on digital matters among State Parties, and creating a transparent, secure, and trusted digital trade ecosystem.
- Preparations are underway for the commencement of negotiations on the various Annexes, specifically; -
 - a) Rules of origin , which will set out the criteria for determining African origin of products;
 - b) Digital identities;
 - c) Cross-border Digital Payments;
 - d) Cross-border Data Transfer;
 - e) Online safety and security;
 - f) Financial technology, etc.

3.0 IMPLEMENTATION OF AfCFTA



- In addition to the primary duty bearers for the effective implementation of AfCFTA

Agreement and its 8 Protocols, Non-State Actors like Private Sector entities are the Key drivers of AfCFTA and the primary beneficiaries of the process and its outcomes in terms of opportunities that are limitless. The charts below summarize the role of the private sector.



For AfCFTA to succeed, a set of preconditions must be created These include

Cross-border transportation networks for the movement of goods and people.

Regular and stable supply of power to industries at competitive tariff and the removal of non-tariff barriers to trade

Unlike other parts of the world, where free trade blocs were created at a time cross-border infrastructure and industries already existed, these basic requirements will now need to be created in Africa. The infrastructure shortfall alone is estimated by the AfDB at almost two trillion dollars (\$2 trillion) over a ten-year period.

The AfCFTA is therefore not just a trade treaty but a program that opens the door to one of the biggest opportunities for the private sector to transform the continent by investing in infrastructure and industries to increase intra-Africa trade and create wealth. AfCFTA holds the key to trigger an infrastructure and economic transformation of Africa.

AfCFTA's
1.3bn
consumer
market

and
\$6.3
Trillion GDP
(PPP) economy

is the biggest incentive ever for investors previously doubtful of Africa's small, fragmented markets to now find a reason to finance regional-scale infrastructure and industrial projects across Africa.



The urgent need for Trans-African transportation networks triggers investments in extensive infrastructure

Rules of Origin triggers investments in agribusiness, value-addition for trade to the 1.3 billion people based on light and heavy industries

Investment in energy, special economic zones, smart cities, and agro-poles.



The opening up of cross-border trade creates investments in telecommunications, digitization, financial services, logistics and transportation services, professional services and tourism etc.

AfDB estimates of the continent's financing need for infrastructure alone is \$170 billion per annum (\$1.7 Trillion in 10 Years), whilst the already identified PIDA projects are estimated at \$360 billion

CORE OPPORTUNITY AREAS

1



Feeding the People

2



Clothing the People

3



Housing the People

4



Moving the People & Goods

5



Value-Addition

6



Tourism & Creative Industries

7



Digital Economy

8



Skills & Healthcare

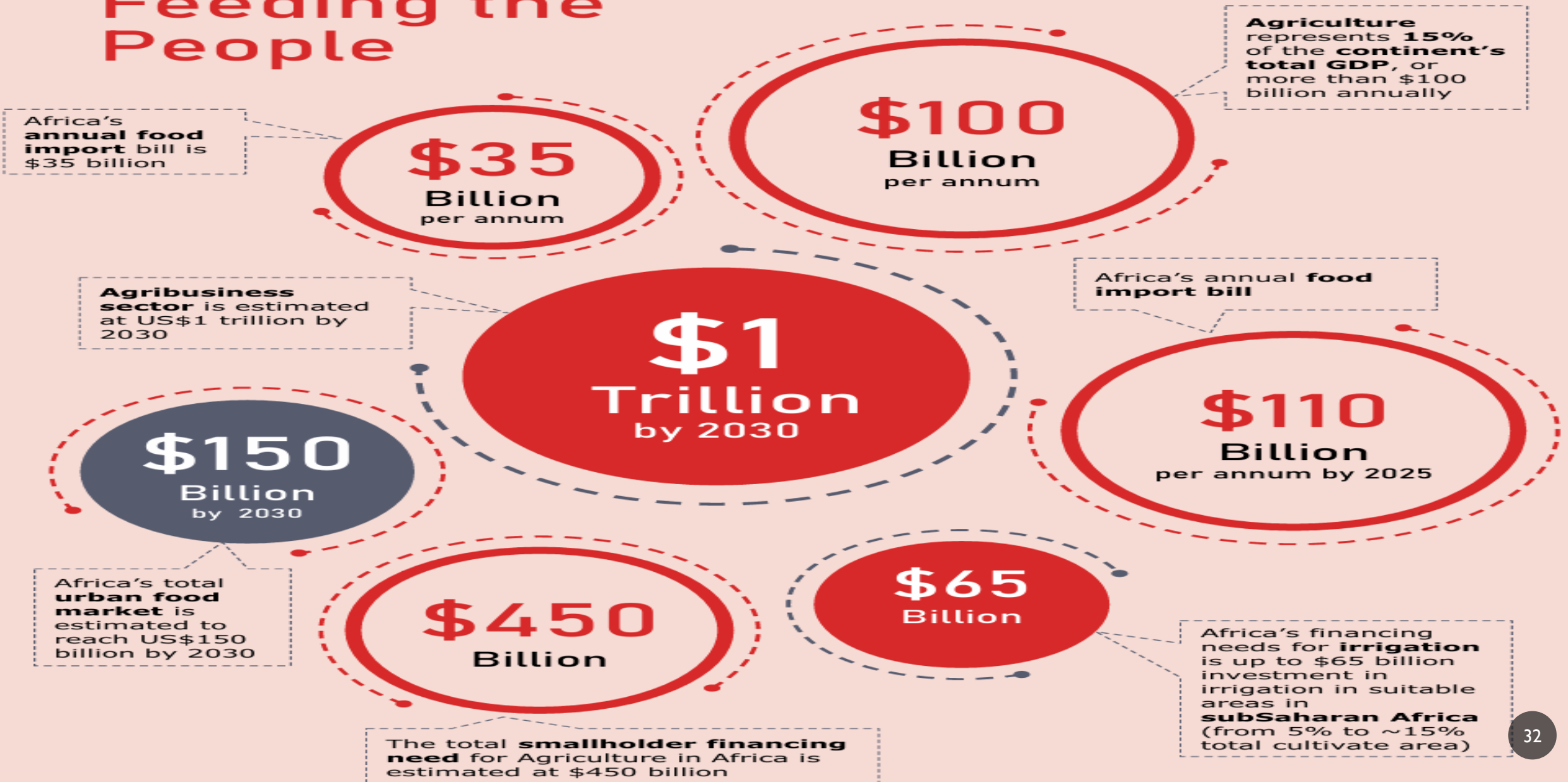
9



Financial services

SOME INDICATORS – CURRENT AND FUTURE

Feeding the People



Africa's annual food import bill is \$35 billion

\$35
Billion
per annum

Agriculture represents 15% of the continent's total GDP, or more than \$100 billion annually

\$100
Billion
per annum

Agribusiness sector is estimated at US\$1 trillion by 2030

\$1
Trillion
by 2030

Africa's annual food import bill

\$110
Billion
per annum by 2025

\$150
Billion
by 2030

Africa's total urban food market is estimated to reach US\$150 billion by 2030

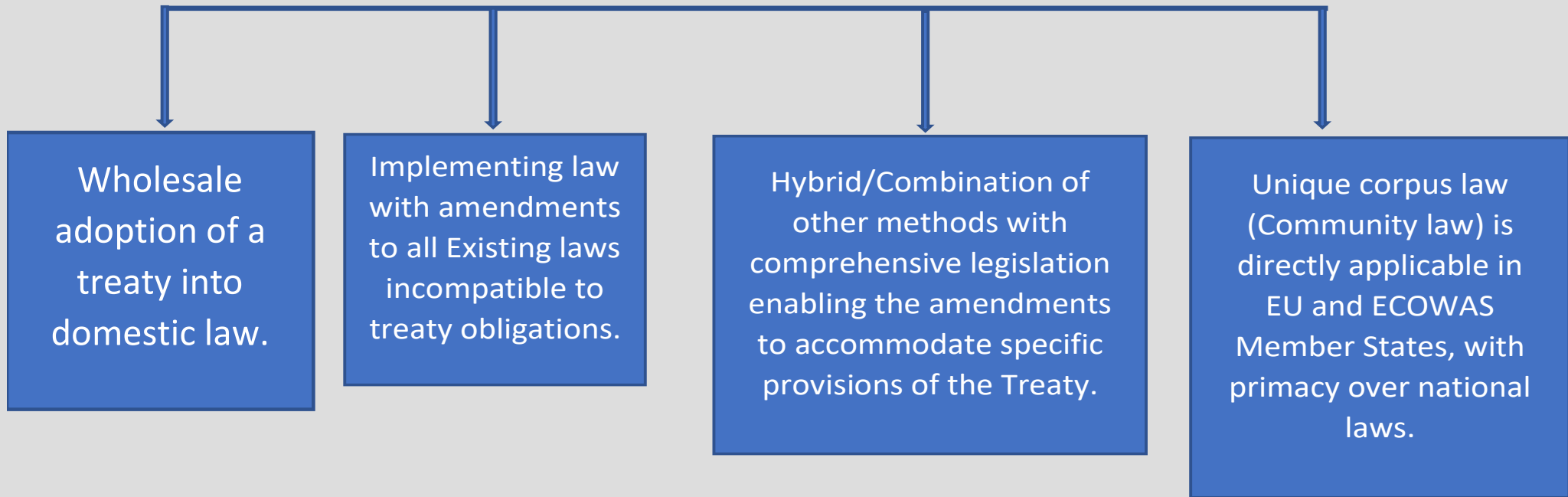
\$450
Billion

The total smallholder financing need for Agriculture in Africa is estimated at \$450 billion

\$65
Billion

Africa's financing needs for irrigation is up to \$65 billion investment in irrigation in suitable areas in subSaharan Africa (from 5% to ~15% total cultivate area)

4.0 NATIONAL PRACTICE ON DOMESTICATION OF TREATIES IN NIGERIA: - AfCFTA IN FOCUS



1. Wholesale adoption: - An implementing national legislation is enacted for wholesale adoption of a treaty into domestic law (and Annexed the treaty in question).

E.g., the African Charter on Human and Peoples Rights, Cap. A9, LFN 2004; and the Geneva Conventions Act Cap.G3, LFN 2004(which gives effect to the fundamental provisions and obligations relating to universal Jurisdiction for war crimes and duty to punish individuals under the Four Geneva Conventions of 1949).

NB:- In 2009, the Geneva Conventions and Additional Protocols (Consolidated) Bill was scheduled for consideration by NASS, for the purpose of Repeal of Cap. G3 and for the Domestic implementation of both the Four Geneva Conventions and their Two Additional Protocols of 1977. Officially gazetted as SB 315/C31693183, NASS; and was re-tabled in 2019/2020 as an Executive Bill for passage.
2. Superseding for incompatibility/inconsistency with treaty obligations: - An implementing legislation with suspension or amendments to all Existing national legislations that may be / are incompatible with State obligations under the treaty in question.

E.g., the Child Rights Act, No. 26 of 2003, superseded the Children and Young Persons Act of 1945 etc for inconsistency with Nigeria's treaty obligations under both the UN Convention on the Rights of the Child and the AU Charter on the Rights and Welfare of the Child ratified by Nigeria(section 274).
3. A Hybrid approach/Combination of other methods: - An implementing Comprehensive Legislations enabling the CONSEQUENTIAL AMENDMENTS to accommodate new or expansive provisions contained in the treaty; or for the specific provisions of the treaty to be incorporated in consequential amendments to existing domestic legislations.
E.g., the Suppression of Piracy and Other Maritime Offences Act, 2019, gives effect to the fundamental maritime security provisions under the UN Convention on the Law of the Sea (UNCLOS) 1982 and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) 1988 and its Protocols.
NB: - while section 21 of the Act provides for consequential amendment / repeal, Sections 2,6 and 9 refer to the two treaties explicitly on matters relating to application, Jurisdiction, Custody and detention.

4. Domestication by Reference: - is where the implementing legislation transforms a treaty (or treaties) into domestic law merely by reference to either specifically or generally of the treaty in the body, long and short titles, preamble or schedule of the implementing statute.
- E.g., the Constitution of Nigeria(Third Alteration) Act, 2010 (Assented on 4 March 2011) is an incorporation of the National Industrial Court (NIC) Act into the Constitution, a re-establishment of the NIC as a superior court of records with exclusive Jurisdiction on labour and related matters provided in section 254(c) as embodied in Section 6 of the Third Alteration Act. Section 254(c) (2) of the Act , made reference to the application of all treaties, which Nigeria has ratified , relating to labour, employment, workplace, industrial relations or matters connected therewith, and conferred Jurisdiction on NIC to deal with such matters, notwithstanding anything to the contrary in this Constitution.
- NB: - The above provision appears to have practically rendered inoperative the provisions of section 12(1) of the Constitution in this context. (See the Supreme Court of Nigeria's decision in the case of NDIC v. Okem Ent. Ltd (2004)10 NWLR (pt.880) p.107 at 182.)
- NB: - The Plant Variety Protection Act, 2021 refers to UPOV and incorporated the provisions of the 2001 Plant Variety Treaty ratified by Nigeria on 20 January 2021 relating to Plant Breeders and Farmers' Rights.
5. Domestication by a UNIQUE CORPUS LAW (Community law) with direct application in Member States of the European Union(EU) and the Economic Community of West African States (ECOWAS), without recourse to the rigours and attendant delays of parliamentary ratification (in civil law jurisdictions)or domestication of such treaties (in dualist Jurisdictions like Nigeria).
- NB: - In ECOWAS , under the new Community Legal regime , consistent with MONISM, all Supplementary Acts passed by the Authority of Heads of States, apply directly in Member States as Legally binding instruments.

Keeping the process on the national agenda

Given the complexity of the consultative development of a national instrument on AfCFTA, national and other entities may have to make substantial efforts to keep the process on the national agenda. The periods between validation and adoption, and then between adoption and implementation, are particularly important in this sense.

The following measures may help to sustain momentum for the development and implementation of the instrument:

- * Ensuring the government body entrusted with leading the process is equipped with the necessary capacities and decision-making powers to maintain the pace of the process;
- * Advocacy by other national, regional and international entities with their relevant governmental counterparts and, if applicable, with parliament for swift adoption and implementation. A national champion may be identified to pursue the process;
- * Expressions of commitment and support for implementation from other national, regional and international entities during the process;

- * The making and honouring of financial commitments for implementation;
- * Ensuring that national, regional and international entities' planning and programming is in line with the instrument, even if not yet adopted, giving effect to expressed commitments.

It is evident from the above that domestication of treaties in Nigeria is a constitutional function, supported by case law. The analysis reveals also that between 1960 and April 2023, Nigeria has triggered four out of 5 different methods of domestication of treaties on different subjects. Due to the complexity of AfCFTA and its Protocols, all the four options are open for possible consideration or a combination of domestication by Reference and Hybrid may be plausible.

CONCLUSION

THANK YOU