



AFRICA
ECONOMIC
ZONES
ORGANIZATION

AEZO WEBINAR SUMMARY REPORT

APRIL 22ND, 2020 | 11:00 A.M. (GMT)

ECONOMIC ZONES AT THE ERE OF THE NEW AFRICAN CONTINENTAL TRADE CONTEXT : GUIDELINES & CHALLENGES

Conducted by international experts, AEZO Webinars aim to assist its Members in promoting good governance and sharing best practices in the development of Economic Zones in Africa. The webinar sessions provides a seamless experience to attendees, through unique multimedia and interactivity features, offering live presentation, Q&A sessions and case studies demonstration.

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The Webinar session gathered more than **68 Participants from 34 Countries**. The attendees were representatives of AEZO members and other African Economic Zones, Investment Promotion Agencies, Industrial and Investment Associations, Chambers of Commerce and Industries, etc.

AEZO Webinar session started by an introductory speech from the Guest of honor Mr. Willie Shumba, International Expert in Trade, Customs and Trade Facilitation at African Union Commission (AUC). After a brief introduction about the African Continental Free Trade Agreement (AfCFTA), and its current progress situation, he highlighted the importance of the Economic Zones as major stakeholder in the development of regional trade and the implementation of the continental agreement.

Mr. Shumba explained the general context of the AfCFTA and brought an update on the ongoing discussions related to the regulatory framework for Economic Zones.

This introduction was followed by a keynote presentation conducted by Mr. Stefano Inama, Chief, Division for Africa, Least Developed Countries and Special Programs, UNCTAD, and Mrs. Pramila Crivelli, Assistant Professor of International Trade, Goethe University Frankfurt.

This session addressed major challenges related to the treatment of goods originating from Economic Zones under the AfCFTA.

Several issues were pointed out by the experts. First, the unfair competition raised by some African member states as one of the major challenges Economic Zones are facing to benefit from the AfCFTA preferential treatment, and how the exclusion from preferential treatment of goods produced in Economic Zones would impact the effectiveness and efficiency of the AfCFTA. The experts also highlights Economic Partnership Agreements best practices in Africa and in the world, and ended the presentation with practical suggestions and recommendations.



Stefano Inama
Chief, Division for Africa, Least Developed Countries and Special Programmes
UNCTAD

Stefano Inama is a Chief and trade lawyer at UNCTAD. For over 25 years Mr. Inama has been responsible for trade policy advice to Governments during the World Trade Organization (WTO) negotiations and the implementation aspects of WTO agreements, as well as during negotiations of Free Trade Agreements such as the ASEAN-China, European Union (EU)-South Africa, SADC and the Tripartite Free Trade area as well FTA negotiations among Latin American and the European Union (EU). He has been heading the preferences and trade laws section in UNCTAD and Coordinator of UNCTAD commercial diplomacy program. As Coordinator of the UNCTAD commercial diplomacy he leads a network of research and training centers in Developing Countries in Asia, Africa and Latin America on WTO and regional trade issues.



Pramila Crivelli
Assistant Professor of International Trade
GOETHE UNIVERSITY FRANKFURT

Pramila Crivelli is an Assistant Professor of International Trade at the Goethe University Frankfurt. She holds a PhD from the University Of Geneva, Switzerland.

She has 10 years of experience in applied economic research and technical assistance in Africa and Least Developed countries, acquired by working at the University of Geneva, the World Trade Organization, the United Nations Conference on Trade and Development and the European University Institute. She also carried out consultancy work on trade policy issues for various clients. Her main fields of specialization are applied econometrics in international trade policy, regional trade agreements, trade negotiations, trade facilitation, rules of origin and geographical indications.

2 EXPERTS BIOGRAPHIES



Willie Shumba
International Expert in Trade, Customs & Trade Facilitation
AFRICAN UNION COMMISSION

Currently Senior Customs Expert and Advisor in the African Continental Free Trade Area Unit at the African Union Commission (AUC), Department of Trade, Willie Shumba is an effective and motivated personality with over 20 years' experience working as a senior manager and executive in Customs Administration from a strategic perspective and national level. He has a wide exposure and practical experience on matters involving trade, fiscal policies, international business and regional integration, and has a solid appreciation of the business environment together with hands-on experience on how the private sector, public sector and statutory bodies operate. Willie Shumba has also practical experience in Project work, and made over 100 presentations to customs and trade meetings and stakeholders.

AFRICAN CONTINENTAL FREE TRADE AREA : MAJOR HIGHLIGHTS & UPDATES

AGENDA 2063 – “THE AFRICA WE WANT”

The operational phase of the African Continental Free Trade Area (AfCFTA), has been launched at Niamey, Niger, 7 July 2019, after a day-long summit of Heads of State and Government of the African Union (AU) in the Nigerien capital.

The AfCFTA will be governed by five operational instruments which will facilitate implementation: Agreed AfCFTA Rules of Origin, Dashboard of the AU Trade Observatory, AfCFTA Trade in Goods Password Protected Dashboard (online negotiating forum), Pan-African Payments and Settlements System, and Continental Online Mechanism for Monitoring, Reporting and Elimination of Non Tariff barriers.

The African Continental Free Trade Agreement (AfCFTA) is a flagship project of the African Union blueprint and Master plan - Agenda 2063 “The Africa We Want”, which was signed during the Golden Jubilee of May 2013. The Agenda 2063 covers a 50 year period, 2013 to 2063. The AfCFTA aims to boost intra-African trade by providing a comprehensive and mutually beneficial trade agreement among the member states, covering trade in goods and services, investment, intellectual property rights and competition policy. It is built upon the successes of the Regional Economic Communities (RECs). Several issues are under finalization, covering the following: Alignment of national laws to AfCFTA, Publication of trade laws, Rules of Origin (RoO) negotiations; Rules of Origin manuals; Registration of exporters, Capacity Building/ Public awareness activities at national, regional and continental levels, Trade Facilitation/ Customs Cooperation issues, Tariff offers, Harmonized Trade Documentation, National implementation Committees, and finally, National Strategies and implementation plans.

PHASES OF THE AfCFTA NEGOTIATIONS & ENTRY IN FORCE OF THE AGREEMENT

Phase 1 of the AfCFTA negotiations, finalized, has covered areas of Trade in Goods and Trade in Services. It includes Agreement on the Establishment of the AfCFTA, Protocol on Trade in Goods, Protocol on Trade in Services, and Protocol on Rules and Procedures for Settlement of Disputes.

Phase 2, in underway, will cover areas of Investment, Intellectual Property Rights and Competition Policy¹. The detailed agreement architecture can be found in Annexe 1 of the present report.

Article 23 of the Agreement Establishing the AfCFTA provides that it shall enter into force thirty (30) days after the deposit of the 22nd instrument of ratification.

As at 31st December 2018, forty nine (49) countries had signed the AfCFTA Agreement. The remaining six were Benin, Botswana, Eritrea, Guinea Bissau, Nigeria and Zambia. Further the following nine countries: namely, Chad, Cote d'Ivoire, Eswatini, Ghana, Guinea, Kenya, Niger, Rwanda and Uganda have submitted their instruments of ratifications. Responses to signatures and ratifications has been unprecedented, as on 1st April 2020, some 54 countries (all countries except Eritrea), have signed the Agreement. It came into force on 30th May 2019 following deposit of the required 22 instruments of ratifications.

As on April 1st 2020, 28 countries have deposited their instruments of ratification alongside the African Union Commission (AUC).

PHASES OF THE AfCFTA NEGOTIATIONS & ENTRY IN FORCE OF THE AGREEMENT

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AfCFTA: PRIVATE SECTOR & ECONOMIC ZONES

Zones The private sector is engine for sustainable economic growth and development, job creation and poverty alleviation in Africa, and thus, a key stakeholder and beneficiary of the AfCFTA.

The agreement covers several areas of interest to the private sector: Tariff offers, list of goods to be traded duty free, Rules of Origin, Customs Cooperation, Trade Facilitation and Transit, Non-Tariff Barriers, Technical Barriers to Trade, Trade Remedies and Safeguards and Use of international best practices, etc. The Business communities are the actual traders and investors - responsible for moving goods and services across borders. The AfCFTA is a business opportunity for extending activities throughout the continent on several fronts: Trade in Goods (An enlarged market; Duty free movement of qualifying goods; Rules of Origin); Trade in Services (Priority sectors being Transport, Communication, Finance, Tourism and Business services); Investment Issues (Investment promotion, facilitation and State commitments); Intellectual Property Rights (Continental approach towards IPR); Competition Policies (Fair competition in an enlarged market) and finally, Disputes Settlement (Transparent rules to resolve trade disputes).

Economic Zones are a tool to advance the objectives of the AfCFTA in terms of economic development , investment , trade liberalization and cooperation in trade related matters.

The Art 23 of the AfCFTA makes mention of Economic Zones, where three (3) major issues are highlighted:

- Economic Zones as a tool to accelerate development
- Council of Ministers developing regulations for Economic Zones
- Goods produced in Economic Zones shall be subject to AfCFTA Rules of Origin.

AfCFTA & ECONOMIC ZONES | THE CHALLENGE TO BENEFIT FROM THE PREFERENTIAL TREATMENT

ECONOMIC ZONES & THE AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA): THE ISSUE AT STAKE

One of the major concerns of some AfCFTA member states is the unfair competition that may emanate from goods produced in Economic Zones and traded under AfCFTA preferential treatment and how to address it.

The reason behind this concern is that goods produced in Economic Zones benefit from tax and other investment incentives lowering their cost of manufacture. Therefore, such goods can be sold at a lower price than goods not manufactured in Economic Zones.

Two proposals submitted (Burkina Faso and Tanzania) state that goods originating in Economic Zones should not be considered as originating in the context of the AfCFTA and therefore, will not benefit from preferential tariffs.

AfCFTA will contain "Regulations on Economic Zones" that are currently under discussion.

ECONOMIC ZONES BENEFITS AND CHALLENGES & THE IMPACT OF THEIR EXCLUSION FROM THE AfCFTA

Economic Zones can provide a platform for developing the infrastructure and regulatory environment in a country enabling concentrated business activity in a geographically limited area.

Currently, Economic Zones have significantly evolved from their original definition. For instance, companies known as Export Processing Enterprises, can benefit from the incentives offered in the zones without being physically fenced in. This makes the task of determining Economic Zones, and identifying companies that receive benefits usually associated to Economic Zones, more difficult. Besides, the tax incentives provided to companies located in Economic Zones may not necessarily allow them to reduce costs of production. Thus, unfair competition is not demonstrated. Hence, excluding goods produced in Economic Zones will reduce the effectiveness and efficiency of the AfCFTA, as it may exclude sizable shares of intra- African trade from the scope of AfCFTA.

TREATMENT OF ECONOMIC ZONES WITHIN EXISTING TRADE AGREEMENTS

Most African African Regional Economic Communities (RECs) with the exception of Economic Community of West African States (ECOWAS), as well as the European Union (EU)-Economic Partnership Agreements (EPAs) with African African Regional Economic Communities (RECs) and African Growth Opportunities Act (AGOA), provide preferential treatment to goods originating in Economic Zones, and there is no restrictions applied on preferential treatment to product originating in Economic Zones.

It would be detrimental to AfCFTA objectives to exclude products manufactured in Economic Zones from AfCFTA.

If Limitations are introduced in AfCFTA for products originating in Economic Zones, it would mean that a product manufactured in an Economic Zones located in AfCFTA will receive a preferential tariff treatment when exported to European Union (EU), while the same product will not be entitled to AfCFTA tariff treatment.

On the other side, European Economic Zones could benefit preferential treatment when exporting to Africa under Economic Partnership Agreements (EPA) and African Economic Zones could benefit preferential treatment for export to European Union (EU) but not to AfCFTA partner.

Such a provision would work as a disincentive to invest in Economic Zones for exports to AfCFTA markets, and this is in exact contradiction with the AfCFTA objectives.

a. Treatment of economic zones in African Regional Economic Communities

The large majority of African Regional Economic Communities (RECs) treats goods in Economic Zones as originating with the exception of the Economic Community of West African States (Economic Community of West African States (ECOWAS)).

■ Cotonou Agreement (ACP Cotonou)

Agreement between European Union and the African, Caribbean and Pacific Group of States («ACP countries»)

Treated as originating, provision Protocol 1, Article 36 Granted preferential tariff treatment if Rules of Origin requirements of the Cotonou Agreement are met

■ Common Market for Eastern and Southern Africa (COMESA)

Treated as originating, provision Protocol on the Rules of Origin (2015), Granted preferential tariff treatment if requirements of the COMESA Rules of Origin are met

■ East African Community (EAC)

Treated as originating, provision Protocol on the Rules of Origin (2015), Granted preferential tariff treatment if requirements of EAC Rules of Origin are met

■ Tripartite Free Trade Area (TFTA)

Treated as originating, provision Tripartite FTA, Annex 4, Article 40, Granted preferential tariff treatment if requirements of TFTA Rules of Origin are met.

■ Economic Community of West African States (ECOWAS)

Not treated as originating, provision Protocol A/P1/1/03, Article 7, Not granted preferential tariff treatment

■ Economic Community of Central African States (ECCAS) and Southern African Development Community (SADC) are with no provision

b. Treatment of economic zones in African Economic Partnership Agreements with the European Union and under the African Growth and Opportunity Act

As in Regional Economic Communities, the same can be observed in Economic Partnership Agreements (EPA) with the European Union (EU) when it comes to treating goods in Economic Zones as originating.

■ Cotonou Agreement (ACP Cotonou)

Agreement between European Union and the African, Caribbean and Pacific Group of States («ACP countries»), provision Protocol 1, Article 36 treated as originating

■ East African Community (EAC) – European Union (EAC-European Union (EU).

with no provision treated as originating

■ Eastern and Southern Africa (ESA) – European Union.

provision Protocol 1, Article 40, treated as originating

■ Southern African Development Community – European Union

provision Protocol 1, Article 42, treated as originating

■ West Africa-European Union

provision Economic Partnership Agreements (EPA) between the European Union (EU) and West African States / Economic Community of West African States (ECOWAS) / UEMOA, Annex 2 (Protocol 1), Article 40, treated as originating

■ Southern African Development Community (SADC)

provision Annex V, Article 33, treated as originating

ISSUES OF “UNFAIR TRADE & COMPETITION” ARISING FROM PRODUCTS ORIGINATING IN ECONOMIC ZONES

The “Unfair competition/trade” that is claimed to be emanating from goods produced in Economic Zones to be traded under AfCFTA preferential treatment are not formally defined. Documented studies including empirical analysis (ex. figures comparing trade costs across countries) are lacking. The key questions are:

- Do Tax Credits, Exemptions & Rate Reductions in Economic Zones granted to African Economic Zones provide effective cost advantage on export markets?
- Does the cost advantage generate a severe injury / damage to a given domestic industry in the export market that can be clearly identified?
- Is there a causal link between the Tax Credits, Exemptions & Rate Reductions in Economic Zones & the injury?

Presupposes the existence of an industry suffering injury, do these industries exist in Africa? If the industry does not exist, excluding goods originating in Economic Zones from the AfCFTA preferential treatment may prevent and /or delay the development of such industries.

Companies in Economic Zones or companies receiving what are considered as tax and investment incentives may not necessarily be any better off, in terms of cost of production, meaning that they are not a source of unfair competition. A tax expenditure in government budgets may not be a tax incentive for business.

Ex. a tax incentive comprising capital allowances, depreciation schedules, and Value Added Tax (VAT) and import tax exemptions may be regarded by the investor as the minimum expected structure of an “investment grade tax system” in relation to business expenses and treatment of losses and not an incentive. Furthermore, tax credits, exemptions, or rate reductions can give direct benefits to a subset of taxpayers, who may not be in an Economic Zones.

They act as an incentive such as encouraging companies to invest, develop infrastructure, or set up in disadvantaged regions. Such tax expenditures overall are huge: estimated at 2% of GDP in Ghana and 2.5% of GDP in Kenya and Tanzania.

Tax credits, exemptions, or rate reductions do not systematically provide cost advantage and are not granted exclusively to firms located in Economic Zones, thus, categorising all goods produced in Economic Zones as non-originating sets a negative precedent and could be counter-productive and “unfair”.

If the intention is to address unfair competition deriving from subsidized goods benefiting from an effective cost advantage, then all goods should be scrutinized not just goods originating in Economic Zones, and this would practically impossible to implement. The World Trade Organization members are prohibited from subsidising exports and these provisions are contained in the Agreement on Subsidies and Countervailing Measures (ASCM).

The tax rebates and other kind of tax incentives granted to industries and firms located in Economic Zones may be considered as subsidies that may be prohibited or actionable.

If AfCFTA member’s states are concerned about unfair competition from subsidized goods, whenever produced in Economic Zones or elsewhere, then it is more appropriate to address this “unfair” competition with purpose-built instruments such as the World Trade Organization World Trade Organization (WTO) agreement on subsidies and countervailing measures or inspired by it.

Unlike the trade policy instruments contained in the Agreement on Subsidies and Countervailing (ASCM), Rules of origin are not specifically designed to address unfair competition problems. Horizontal measures are not appropriate to address a specific problem

CONCLUSION

Issues related to unfair trade competition arising from subsidies granted to Economic Zones should be addressed using the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (ASCM) and the available provisions in AfCFTA Annex 9 on Trade Remedies.

Indeed, since most African Union (AU) Members are also World Trade Organization (WTO) Members, or aspiring to be World Trade Organization (WTO) Members, the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (ASCM) is the appropriate basis providing the legal trade remedies available to AfCFTA State Parties to address any unfair advantage that may be conferred by subsidies in form of tax holidays, rebates and incentives to firms located in Economic Zones.

Article 2 of AfCFTA Annex 9 on Trade Remedies makes explicit reference to the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (ASCM). Such provision may eventually be amplified to reflect such concern.

It may be further considered and studied how other Free Trade Agreements (FTAs) have dealt with the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (ASCM) to reflect similar concerns. Provisions about State aids could be discussed in AfCFTA in the appropriate context.

The second (2nd) phase of the AfCFTA negotiations is in underway. It will cover areas of Investment, Intellectual Property Rights and Competition Policy. Several issues are yet to be finalized, among other: Alignment of National laws to AfCFTA, Rules of Origin, Capacity building and Public Awareness, etc.

In the context of what is provided in the Agreement in respect of Economic Zones, players, like “Africa Economic Zones Organization” (AEZO), are key stakeholders for AfCFTA. “Regulations of Economic Zones” to be developed is an area of interest to those players. Each member state will have a focal ministry point. Ministries shall develop regulations in respect of Economic Zones. It is of vital importance that the “Regulations on Economic Zones” to be discussed in AfCFTA negotiations are circulated to stakeholders, for that, strong advocacy actions are crucially needed from the community.

Stakeholders, and Africa Economic Zones Organization (AEZO), as an association, should make their views known to the African Union by strong advocacy actions including the drafting a position paper.

Economic Zones should also advocate their case to the national authorities in charge of trade negotiations (Ministry of Commerce) to get their view represented in Trade negotiating forum.



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