

# Policy Insights

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## The WTO's Trade Policy Review Mechanism: Lessons for the AfCFTA Review Process

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African perspectives  
Global insights

# Executive summary

African countries have long been marginalised in the multilateral trading system. Whereas other developing regions have been able to utilise their trade alliances and performance to achieve robust economic growth and sustainable development, African countries have struggled to do so – in particular, leveraging trade to alleviate poverty. It is expected that the African Continental Free Trade Area (AfCFTA) will help to reverse this marginalisation. When fully implemented, the AfCFTA Agreement is expected to generate an additional \$450 billion by 2035, representing an increase of nearly 7% of Africa's current income. Foreign direct investment flows, in turn, are expected to increase by between 111% and 159%, with foreign firms being attracted to the integrated market of 1.3 billion people. Meanwhile, it is estimated that the AfCFTA will lift 30 million people out of absolute poverty and 68 million people out of moderate poverty.

However, there is widespread acknowledgement that these benefits cannot be experienced unless there is full implementation of the AfCFTA Agreement. It was expected that trading under the agreement would fully commence in January 2021, but this did not materialise. It is against this backdrop that the AfCFTA Secretariat introduced the Guided Trade Initiative in 2022 and the AfCFTA Implementation Review Mechanism in July 2024, which will provide for the periodic assessment of the extent to which states parties have implemented their commitments under the AfCFTA. While this is a step in the right direction, the intense focus on implementation may not be the most desirable option. Rather, it would be preferable for the reviews to adopt the approach followed under the World Trade Organization's Trade Policy Review Mechanism.

## Introduction

The AfCFTA aims to create a continental market of 1.3 billion people, characterised by the free movement of persons, capital, goods and services. This is crucial for deepening economic integration, enhancing agricultural output and food security and structurally transforming African economies through a stronger emphasis on industrialisation.

A key focus area of the AfCFTA is to dismantle barriers to trade and replace them with trade-facilitating measures.<sup>1</sup> This involves the progressive elimination of tariff and non-tariff barriers to trade and investment, aided by improved infrastructure, such as roads and railways that link countries and their economic hubs.<sup>2</sup> The agreement establishing the AfCFTA has been signed by 54 of the 55 AU member states. As of October 2024, 47 African countries had ratified the agreement and deposited their instruments of ratification.

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1 AfCFTA, <https://au-afcfta.org/>.

2 AfCFTA, "About the AfCFTA", <https://au-afcfta.org/about/>.

When fully implemented, the AfCFTA Agreement is expected to generate an additional \$450 billion in income for the continent by 2035, equating to an increase of nearly 7% of Africa's current income. Foreign direct investment (FDI) flows are expected to increase by between 111% and 159%, with the integrated market acting as an attractive drawcard for foreign firms. This will create jobs, build the capacity of African firms and facilitate their participation in regional and global value chains. Personal incomes are also expected to benefit, with wages estimated to rise by 11.2% for women and 9.8% for men. This will help to complement efforts by African governments to alleviate poverty and enhance the population's living standards. Overall, the AfCFTA has the potential to lift 30 million people out of absolute poverty and 68 million people (who live on \$5.50 per day) out of moderate poverty.<sup>3</sup>

The benefits to be derived from the AfCFTA are largely dependent on how (well) the agreement is implemented. Anything short of full implementation would diminish the benefits to be accrued by the parties

There is a broad consensus that the benefits to be derived from the AfCFTA are largely dependent on how (well) the agreement is implemented. Anything short of full implementation would diminish the benefits to be accrued by the parties. Full implementation, however, would ensure the achievement of the projections made by several institutions, including the World Bank and UN Conference on Trade and Development (UNCTAD). According to the World Bank, African countries need to adopt trade-facilitating measures and implement deep reforms, such as reducing red tape and simplifying customs procedures, to ensure their long-term growth and development.<sup>4</sup> Similarly, UNCTAD notes that if Africa is to realise its full export potential, which could result in billions of dollars of additional income being generated, it needs to address a myriad of stumbling blocks. These include a proliferation of non-tariff measures, infrastructure gaps and market information gaps.<sup>5</sup> While the AfCFTA Agreement entered into force on 30 May 2019, having been ratified by 24 states parties, it is still (five years later) to be fully implemented. It is in recognition of this problem that the AfCFTA Secretariat launched the Guided Trade Initiative as an interim measure to prepare states parties for full trading under the agreement.

There is political support for the AfCFTA among African leaders, corporate leaders, trade union representatives and ordinary citizens. Yet there is still some hesitation as to what the full implementation of the AfCFTA Agreement would mean for individual countries,

3 World Bank Group, *The African Continental Free Trade Area: Economic and Distributional Effects* (World Bank, 2020).

4 World Bank Group, *African Continental Free Trade Area*, 1.

5 UNCTAD, *Economic Development in Africa Report 2021: Reaping the Potential Benefits of the African Continental Free Trade Area for Inclusive Growth* (UN Publications, 2021).

particularly those that are dependent on tariffs to fund essential public services such as education and health. The full implementation of the agreement would result in the elimination of tariffs on 90% of (non-sensitive) tariff lines by all states parties. Developing states parties are expected to eliminate tariffs within five years, while the least-developed states parties and customs unions with at least one least-developed state party are expected to eliminate them in 10 years. Regarding the sensitive tariff lines (7%), developing and least-developed states parties are expected to eliminate tariffs within 10 and 15 years, respectively. While states parties can exclude 3% of their tariff lines from liberalisation, the value of trade under these tariff lines should not exceed 10% of the value of their intra-African trade.<sup>6</sup>

While various studies are inconclusive about the extent of revenue losses that states parties will face in the wake of their extensive tariff commitments, some parties are expected to experience modest losses,<sup>7</sup> particularly those that are import dependent. This is because trade would be diverted from efficient third parties that are not signatories to the agreement to states parties that have the industrial capacity to replace the third parties as sources of imports. It is probably because of the predicted loss of tariff revenue by some states parties and the decision by the AfCFTA Secretariat to establish an adjustment fund that some states parties have been reluctant to start trading under the agreement. Some states parties, including those belonging to the East African Community (EAC), have also slightly increased some of their most-favoured-nation tariff rates.

The situation with the AfCFTA is not unique. A similar situation has arisen in the Pacific, with a number of Pacific island countries (PICs) yet to commence trading under the Pacific Island Countries Trade Agreement (PICTA), which entered into force on 13 April 2003. Of the 14 member states, only eight (Cook Islands, Fiji, Kiribati, Niue, Samoa, Solomon Islands, Tuvalu and Vanuatu) have announced their readiness to trade under PICTA, with the rest not having indicated when they would be ready. This could partially be attributed to the expected revenue losses under the agreement. With the entry into force in December 2020 of the Pacific Agreement on Closer Economic Relations Plus, which includes Australia and New Zealand, it is doubtful that all the PICs will fully implement PICTA.

In addition to far-reaching tariff commitments, the AfCFTA imposes extensive notification and transparency obligations on states parties, which means that resources must be compliant with such obligations. Article 16 of the AfCFTA Agreement provides that '[e]ach State Party shall promptly publish or make publicly available through accessible mediums its laws, regulations, procedures and administrative rulings of general application as well as any other commitments under an international agreement relating

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6 World Bank Group, *African Continental Free Trade Area*, 3.

7 Lawrence Edwards et al., "Quantifying Tariff Revenue Losses from the African Continental Free Trade Area" (Working Paper Series No 2023-5, Policy Research in International Services and Manufacturing, University of Cape Town, 2023), 4.

to any trade matter covered by this Agreement.<sup>18</sup> This article is identical to Article X of the World Trade Organization's (WTO) General Agreement on Tariffs and Trade (GATT) 1994, which has been the subject of deliberation on several WTO dispute settlement panels.

## The AfCFTA imposes extensive notification and transparency obligations on states parties, which means that resources must be compliant with such obligations

Article 17 of the AfCFTA Agreement obliges states parties to notify (in any one of the AU's working languages) any laws, regulations, procedures and administrative rulings of general application, as well as any other commitments under an international agreement relating to any trade matter covered by the agreement after the latter's entry into force. States parties are also expected to notify any actual or proposed measure that might materially affect the operation of the AfCFTA or otherwise substantially affect the interest of other states parties and to hold consultations at the request of a state party.

Given their resource constraints, it would be challenging for most states parties to meet their obligations under the AfCFTA Agreement. Furthermore, several African countries' track record in establishing regional economic communities (RECs), including the Common Market for Eastern and Southern Africa, the EAC, ECOWAS, the Southern African Customs Union (SACU) and SADC, has not been encouraging, as various key provisions have not been fully implemented. There have also been instances when countries have imposed restrictions on trading partners' exports without any valid justification.

## Given their resource constraints, it would be challenging for most states parties to meet their obligations under the AfCFTA Agreement

It is widely acknowledged that the slow implementation of the AfCFTA by states parties is to a large extent attributable to the difficult economic environment in which they operate as a result of COVID-19 and the war in Ukraine, as well as other global conflicts and disturbances. According to the WTO, many of its members adopted trade-restricting measures, including export restrictions and licensing procedures, after the outbreak of

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8 AU, "Agreement Establishing the African Continental Free Trade Area" (AU, 2018) 11.

COVID in 2019.<sup>9</sup> Others granted subsidies to their industries to boost their economies and stave off a recession. For many African countries, high food import bills and rising interest rates have made the servicing of their debts unsustainable, pushing a number of them into default, including Ghana and Zambia. According to Afreximbank, more than 50% of African countries are in debt distress.<sup>10</sup> The growing demand for protection among import-competing sectors in various African countries has also contributed to the slow implementation of the agreement.

These worsening economic conditions, exacerbated by the uncertainty caused by the climate crisis and other challenges, have been partly responsible for delays in the full implementation of the AfCFTA Agreement. However, there is still strong support among various stakeholders across the continent for the AfCFTA to succeed. It is hoped that in due course all states parties will fully meet their commitments under the agreement, failing which it will be difficult for the continent to enjoy the expected benefits of the AfCFTA.

The states parties are conscious of the risk of apathy and backsliding. They have therefore decided to establish an AfCFTA Implementation Review Mechanism (AFIRM), whose objectives are:

- to assess the progress of states parties in implementing their AfCFTA commitments;
- to increase the transparency surrounding the implementation of AfCFTA commitments;
- to promote improved adherence by states parties to rules, disciplines and commitments under the AfCFTA Agreement;
- to identify challenges in the implementation of the AfCFTA Agreement and to facilitate the adoption of appropriate solutions thereto; and
- to encourage peer learning and experience sharing among states parties.<sup>11</sup>

The AFIRM is inspired by the African Peer Review Mechanism (APRM), which is a voluntary arrangement entered into by African countries in 2003. The APRM's aims are to assess and review governance at the head of state level with a view to promoting political stability, deepening regional and continental economic integration and achieving robust economic growth and sustainable development. It is also inspired by the WTO Trade Policy Review Mechanism (TPRM), which was established in 1989 during the Uruguay Round of multilateral trade negotiations as an 'early harvest' to promote transparency in the trade policies of GATT contracting parties.

While the circumstances are different, the fundamental purpose of the two review mechanisms is similar, as they are both intended to promote adherence to their respective

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9 WTO, "Report Shows Increase in Trade Restrictions Amidst Economic Uncertainty, Multiple Crises", December 6, 2022.

10 Afreximbank Research and International Cooperation, *State of Play of Debt Burden in Africa 2024: Debt Dynamics and Mounting Vulnerabilities* (Afreximbank, 2024).

11 AU, "Ministerial Directive on the AfCFTA Implementation Review Mechanism (2024)", paragraph (2) (not publicly available).



agreements. Arguably, the TPRM is broader in scope than the AFIRM, as the former is not exclusively focused on WTO members' adherence to the WTO Agreement. In contrast, four of the five key objectives of the AFIRM are exclusively focused on the implementation of the AfCFTA Agreement by states parties. Hopefully, under the fifth objective, states parties could share their experiences on broad trade and economic trends in addition to their experiences with the implementation of the AfCFTA Agreement, thereby bringing the AFIRM to the same level as the TPRM.

The purpose of this policy insight is to examine and draw lessons from the WTO's TPRM, which could be helpful for the evolution of the AFIRM. It needs to be borne in mind, however, that the AfCFTA Agreement is yet to be fully implemented by the states parties, even though it entered into force in May 2019 and some states parties began trading under it on 1 January 2021. It is noteworthy that the TPRM entered into force on a provisional basis when the Uruguay Round of the GATT was still being negotiated.

## The WTO's Trade Policy Review Mechanism

Transparency is one of the fundamental principles of the WTO, as are non-discrimination, security and predictability of market access, fair trade and increased participation of developing countries in the multilateral trading system. Owing to the institutional structure of the WTO, where the Secretariat lacks policing and enforcement powers, there is tacit acceptance among WTO members that the multilateral trading system can only function properly when the highest standards of transparency are maintained. Accordingly, Article X of the GATT 1994 obliges WTO members to promptly and efficiently publish laws, regulations, judicial decisions and administrative rulings so that they are easily accessible.

Although GATT contracting parties largely complied with Article X of the GATT 1994, the latter was thought to be limited in scope and to provide insufficient analysis of parties' trade policies. Furthermore, there were no incentives for contracting parties to comply with their notification obligations; nor were there penalties if parties failed to notify their relevant trade rules and regulations. For many developing contracting parties, particularly least-developed countries facing enormous resource constraints, compliance has always been challenging. It was therefore implicitly accepted that it was in the mutual interest of all contracting parties to fulfil their notification obligations to ensure the effective and efficient functioning of the rules-based multilateral trading system, and that failure or omission to notify should not attract punitive measures.

The importance attached to transparency prompted the contracting parties to devise new mechanisms to review trends in the multilateral trading system. To that end, they introduced, in 1980, the biannual special meetings of the GATT Council. The meetings

were considered very useful, which resulted in the broadening of the scope of the reviews. Commencing in 1983, the contracting parties agreed (pursuant to paragraph 7(i) of the 1982 GATT Ministerial Declaration) ‘to make determined efforts to ensure that trade policies and measures are consistent with GATT principles and rules and ... to make determined efforts to avoid measures which would limit or distort international trade’.<sup>12</sup> During the 1980s debt crisis, several contracting parties adopted trade restricting and other protectionist measures, including the granting of significant domestic support and export subsidies to their farmers, and enforced grey area measures, such as orderly marketing arrangements and voluntary export restraints.<sup>13</sup>

It was against this background that the GATT contracting parties decided to request an Eminent Persons Group, chaired by Swiss economist Fritz Leutwiler, to examine (among other things) how the global economic recovery could be supported and the multilateral trading system strengthened so that it could function optimally. One of the group’s pertinent recommendations was that the contracting parties’ trade policies and activities should be subject to regular oversight or review, which would enable the GATT Secretariat to collect and publish relevant information. This recommendation appeared in the Punta del Este Declaration, which launched the Uruguay Round of the GATT in 1986.<sup>14</sup> The declaration underlined the commitment of the contracting parties ‘to enhance surveillance in the GATT to enable regular monitoring of trade policies and practice ... and their impact on the functioning of the multilateral trading system’.<sup>15</sup>

Following a series of intensive negotiations under the auspices of the Negotiating Group on the Functioning of the GATT System, agreement was finally reached regarding the establishment of the TPRM. While developing contracting parties had concerns about taking on significant new obligations that might stretch their capacity, they eventually agreed to join the emerging consensus to establish the TPRM. As noted by Ghosh, they were motivated by the desire<sup>16</sup>

to close the gap between their surveillance capacity and that of developed countries, improve their trade and investment policies and obtain international recognition for these improvements, and ensure that the trade measures applied by major trading countries would be regularly monitored.

This was particularly the case as, it could be argued, they had the greatest propensity to distort trade. Put differently, they wanted to have a level playing field so that they could also compete and leverage trade as an instrument to drive robust economic growth and sustainable development.

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12 WTO, “[Ministerial Declaration](#)” (L/5424, adopted November 29, 1982).

13 Sam Laird and Raymundo Valdes, “The Trade Policy Review Mechanism”, in *The Oxford Handbook on the World Trade Organization*, eds. Amrita Narlikar, Martin Daunton and Robert M. Stern (Oxford University Press, 2012), 463–84.

14 Laird and Valdes, “The Trade Policy Review Mechanism”.

15 Foreign Trade Information System, “[General Agreement on Tariffs and Trade \(GATT\): Punta del Este Ministerial Declaration](#)”, September 20, 1986, paragraph E (i).

16 Arunabha Ghosh, “[Developing Countries in the WTO Trade Policy Review Mechanism](#)”, *World Trade Review* 9, no. 3 (July 2010).



The TPRM was agreed to on a provisional basis (early harvest) during the Mid-Term Review of the Uruguay Round negotiations in Montreal in December 1988 and implemented in April 1989. It eventually became Annex 3 of the Marrakesh Agreement Establishing the World Trade Organization and its scope was expanded to cover trade policies and measures in trade in services and trade-related aspects of intellectual property rights, in keeping with the decision to expand the coverage of the GATT 1947 to these new areas.<sup>17</sup>

As stated in the Annex, the TPRM's purpose is to<sup>18</sup>

contribute to improved adherence by all Members to rules, disciplines and commitments made under the Multilateral Trade Agreements ... and hence to the smoother functioning of the multilateral trading system, by achieving greater transparency in, and understanding of, the trade policies and practices of Members.

Furthermore, the TPRM enables the regular evaluation of individual members' trade policies and practices and their impact on the functioning of the multilateral trading system, taking into account the wider economic and developmental needs, policies and objectives of the member concerned as well as its external environment. Importantly, the Annex notes that the TPRM is not intended to enforce specific obligations under the agreements or for dispute settlement purposes, or to impose new policy commitments on members.<sup>19</sup>

The Annex also acknowledges the importance of domestic transparency in government decision-making on trade policy matters for both members' economies and the multilateral trading system. In addition, it establishes a Trade Policy Review Body (TPRB) and sets out the procedures for (including the timing of) the review of WTO members' trade policies and practices. Originally, the trade policies and practices of the four largest members were to be reviewed every two years, the next 16 largest members every four years and the rest of the membership every six years. However, these intervals were subsequently changed to three, five and seven years, respectively.<sup>20</sup>

The Annex further provides for the TPRB to base its work on available information, including (i) a report prepared by the member being reviewed, setting out its trade policies and practices; and (ii) a report prepared by the Secretariat, based on publicly available information as well as information provided by the member being reviewed. The Secretariat cross-checks the accuracy of the information in its possession and typically makes two visits to each country being reviewed. The first visit is a fact-finding mission where the Secretariat verifies the authenticity or accuracy of information in its possession with relevant government officials and other stakeholders so that it can produce its report.

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17 WTO, "Agreement Establishing the World Trade Organization", [https://www.wto.org/english/docs\\_e/legal\\_e/04-wto.pdf](https://www.wto.org/english/docs_e/legal_e/04-wto.pdf).

18 WTO, "Annex 3: Trade Policy Review Mechanism (TPRM)", [https://www.wto.org/english/tratop\\_e/tpr\\_e/annex3\\_e.htm](https://www.wto.org/english/tratop_e/tpr_e/annex3_e.htm).

19 WTO, "Annex 3".

20 WTO, "Amendment of the Trade Policy Review Mechanism, Decision of the General Council" (WT/L/1014, adopted July 27, 2017).

The second visit takes place after the Secretariat has completed its draft report and gives the Secretariat the opportunity to discuss specific portions of the draft or seek further information before finalising it.

During the review meeting presided over by the TPRB chair and facilitated by a discussant, WTO members have the opportunity to pose questions to the member being reviewed. The member must provide its responses during the meeting, together with responses to the questions sent in advance before the meeting. After the review meeting, the Secretariat's report, the member's trade policy statement and the member's questions and answers are published, along with the TPRB chairperson's concluding remarks delivered at the conclusion of the meeting.<sup>21</sup>

Having been in operation for nearly 36 years, the TPRM has been credited with enhancing the transparency of, and adherence to, members' trade policies and practices under the WTO Agreement, thereby contributing to the effectiveness of the rules-based multilateral trading system.<sup>22</sup> Generally, countries do not want to be embarrassed in front of their peers and therefore take steps to clear outstanding transparency and notification obligations before their review comes around. Likewise, they may choose to withdraw measures that are trade distorting or inconsistent with their obligations under the WTO Agreement. Through the question-and-answer session at the review meeting, members hear first-hand what other members think of their trade policies and practices. Where there is an overwhelming view that a member is not meeting its WTO obligations – either its notification and transparency obligations or its substantive obligations – the member being reviewed would feel obliged to be compliant. In this way, the TPRM holds members accountable for their trade policies and practices. Domestically, stakeholders (including traders) get to know the full range of the country's trade policies and practices and any gaps therein, as do the country's trading partners and their businesses and policymakers.

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The TPRM provides many members (particularly developing countries) with a unique opportunity to take stock of their trade policies and practices and to make the necessary adjustments so as to achieve a range of objectives. These include fulfilling their substantive and notification/transparency WTO obligations; implementing cutting-edge policy

21 WTO, "Trade Policy Reviews: Introduction"; Sam Laird, "The WTO's Trade Policy Review Mechanism: From Through the Looking Glass", *The World Economy* 22, no. 6 (1999).

22 Laird, "WTO's Trade Policy Review"; Laird and Valdes, "The Trade Policy Review Mechanism", 464.

frameworks to address identified gaps in their trade policies; attracting FDI in critical sectors of their economies; and ensuring that their economies perform better. Developing country members also have the opportunity to cooperate across relevant ministries and departments throughout the review process, thus helping them to determine their technical assistance needs. In analysing a member's trade policies and practices, the Secretariat report identifies areas where improvements could be made to enhance the competitiveness of the economy.

As a transparency-enhancing instrument that facilitates greater understanding of a member's trade policies and practices, the TPRM helps to reduce conflicts among members while minimising costly legal disputes. Although it is clearly stated that the mechanism is not intended to enforce existing obligations or impose new ones or to be used as part of a dispute settlement procedure,<sup>23</sup> the mere threat of formal dispute settlement acts as an incentive for members to strive to meet their obligations. Taking the decision to modify trade policies and practices promotes good relations among members and helps to strengthen the multilateral trading system.

Both the TPRM and the TPRB's annual publication, 'Overview of Developments in the International Trading Environment', have been credited with enhancing transparency in the multilateral trading system and encouraging WTO members to meet their obligations under the WTO Agreement. However, its overall effectiveness has been questioned by some analysts who believe that the analyses conducted by the Secretariat are not rigorous enough and who are also critical of members' trade policies and practices. It has been suggested that the reports produced by some domestic transparency agencies and international organisations such as the World Bank are more substantive and robust and give a fuller picture of a country's trade policies and practices.

There is also the view that the value of the Secretariat's reports to domestic policymakers is limited, as they are not prescriptive and recommendations are not always directed at, or binding on, the members under review. The fact that the reports are not enforceable and cannot be used as a basis for initiating cases under the WTO dispute settlement process is seen as a weakness by some analysts. As noted by Laird and Valdes: 'While the mechanism is generally perceived as having worked satisfactorily, it has been criticised for not being tough enough or analytical enough.'<sup>24</sup>

The fact that the Secretariat reports are not as prescriptive and direct as other transparency reports issued by some governments and international organisations<sup>25</sup> is mainly due to the nature of the WTO, which also acts as the final arbiter of disputes among its members. Hypothetically, if the TPRB took the view that a member was not complying with its substantive WTO obligations and there was subsequently a dispute, it would be difficult

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23 WTO, "Annex 3", 742.

24 Laird and Valdes, "Trade Policy Review Mechanism", 464.

25 Valentin Zahrnt, "The WTO's Trade Policy Review Mechanism: How To Create Political Will for Liberalization" (Working Paper no. 11, ECIPE, 2009), 5.

for the WTO to be seen as an impartial arbiter as it would be considered to have already formed an opinion on the matter. A ruling that the member whose trade policies and practices were reviewed had violated its WTO obligations would cast doubt on the impartiality of the WTO dispute settlement process, while a ruling absolving that member of any wrongdoing would undermine the TPR exercise. It is mainly for this reason that the recommendations in TPR reports have to be carefully crafted.

The quality of Secretariat reports has also evolved over the years. For example, reports take into account the changing nature of international trade and developments in the global economy. Furthermore, the scope of analysis has been broadened and the conclusions strengthened, thereby underscoring the Secretariat's independence.<sup>26</sup> Reports now include a detailed examination of the trade and investment regimes of the country under review. While there is always room for improvement, WTO members appear to be satisfied with the TPRM.

## Participation of African countries in the TPRM

Owing to resource constraints, among other reasons, African countries have always been reluctant to assume new obligations under the WTO and, before that, the GATT. Many of them did not sign on to the GATT's Tokyo Round codes. During the Uruguay Round, they were hesitant about accepting the extension of multilateral trade rules to the General Agreement on Trade in Services (GATS) and Trade-Related Aspects of Intellectual Property Rights (TRIPS). However, the allure of a level playing field in agriculture, as embodied in the commitments under the Agreement on Agriculture, softened their stance and they eventually agreed to the single undertaking.

Together with other developing countries, African countries agreed (albeit reluctantly) to the establishment of the TPRM. Their aims were to close the gap between their surveillance capacity and that of developed countries, to improve their trade and investment policies and obtain international recognition for these improvements, and to ensure that the trade measures applied by major trading nations would be regularly monitored. Morocco, Australia and the US were the first countries to have their trade policies and practices reviewed under the newly created TPRM in 1989. Since the entry into force of the WTO Agreement in January 1995, there have been over 100 reviews of the trade policies and practices of African countries. Several countries have been reviewed three or four times. As of October 2024, Malawi was the most recent African country to undergo a review.

Notwithstanding the intensive nature of the review process and the significant resources required, almost all African countries have embraced it. In fact, members of several RECs, including the Economic and Monetary Community of Central Africa, the EAC, SACU

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<sup>26</sup> Laird, "WTO's Trade Policy Review Mechanism", 751–53.

and the West African Economic and Monetary Union, have asked that their reviews be conducted together, following the lead of the EU, which is a WTO member in its own right. There have been numerous demands from African countries to undergo a review. They consider the seven-year cycle to be too long, especially when this timeframe is not always respected because of resource constraints (on the part of the Secretariat). There are many instances where the earlier six-year cycle and current seven-year cycle have not been respected. For example, Malawi underwent its first review in 2002, its second in 2010, its third in 2016 and its most recent in 2024. Similarly, Zimbabwe underwent a review in 2011, but the next one was conducted in 2020. The outbreak of COVID-19 and the resultant restrictions also destabilised timeframes, but efforts are being made to now conduct the reviews within the agreed timeframes.

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Many African countries see the TPRM as offering them a unique opportunity to improve internal and regional coordination and to make the necessary changes to their trade policies and practices in the light of comments from other countries during the review exercise and observations made in the Secretariat reports. They also study the review reports of other countries, which provide useful insights into these countries' trade and investment regimes and how they might build resilient economies.

The WTO's Trade Policy Review Division introduced a technical assistance programme to assist developing country members to boost their capacity in trade policy matters, in response to the outcome of reviews. Several African countries have taken advantage of this programme and sought technical assistance to deepen their knowledge about WTO agreements and their associated obligations. Some members have acceded to certain WTO plurilateral initiatives, such as the Investment Facilitation for Development Agreement, after becoming aware of the potential benefits and minimal costs. Others have introduced new policies and legislation relating to, for example, competition policy and investment with a view to aligning with modern international standards.

## **Analysis of the AfCFTA Implementation Review Mechanism**

While there are many customs union and free trade agreements in Africa, the implementation record overall has not been positive, making the continent one of the least integrated in the world. It is estimated that intra-African trade grew from \$98 billion

in 2013 to \$102 billion in 2022.<sup>27</sup> However, as a percentage of global trade, intra-African trade fell from a peak of 21% between 2015 and 2016 to 15% in 2022. Intra-regional trade in the various RECs is also very low at less than 10% on average.<sup>28</sup> The low level of intra-regional trade can partly be explained by the non-implementation of certain key provisions in the various regional trade agreements.

**Unless incentives are created for states parties to meet their obligations under the agreement, the AfCFTA is likely to suffer the same fate as a number of RECs that have struggled to meet their compliance obligations**

With the AfCFTA Agreement not having been fully implemented, there is an understandable concern that unless incentives are created for states parties to meet their obligations under the agreement, the AfCFTA is likely to suffer the same fate as a number of RECs on the continent that have struggled to meet their compliance obligations and make a meaningful impact.<sup>29</sup> While the Guided Trade Initiative is to be welcomed, the trade that takes place under its auspices is very limited. There are, however, efforts under way to increase the number of compliant states parties and traded products.<sup>30</sup>

As previously noted, the states parties decided to establish the AFIRM to assess the implementation of their AfCFTA commitments and to encourage and track parties' adherence to the various provisions of the AfCFTA Agreement. Some of the AFIRM's objectives are similar to those of the TPRM. The AfCFTA Ministerial Directive provides for the reviews to be conducted by senior trade officials (STO), who meet in dedicated sessions. It is envisaged that states parties belonging to the same customs union will be reviewed jointly, while those not in a customs union will be reviewed individually. To increase synergies and avoid duplication of work between the states parties, the timing of a review under the AfCFTA must consider the time of a review under an REC or the WTO TPRM.<sup>31</sup> This is essential, considering that review processes, such as the TPRM, are resource intensive.

With about 10 states parties being reviewed under the AFIRM each year within the relevant five-year period, considering the reviews conducted by the WTO and other RECs in Africa

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27 TRALAC, "Intra-Africa Trade: Facts and Figures 2022", December 19, 2023.

28 TRALAC, "Intra-Africa Trade".

29 Micheal Ehis Odijie, "The AfCFTA and the Entrepôt Economy: A Clash of Free Trade and Political Realities", *Oxford Development Studies* 52, no. 1 (2024).

30 In addition to the original eight state party adherents, an additional 24 states parties are expected to adhere to the Guided Trade Initiative in 2024, bringing the total to 32, while the items traded also increased; US International Trade Administration, "Ghana AfCFTA Guided Trade Initiative Update", 2024.

31 AfCFTA Secretariat, "Ministerial Directive on the Implementation of State Parties Schedules of Specific Commitments", AfCFTA/DTIID/CTIS/10/MD/FINAL (Accra, July 7, 2022).



would reduce the cost of AFIRM reviews and allow for faster completion. Provision is made for the AfCFTA Secretariat to help states parties during the review process, should they need it. A distinct advantage of the AFIRM is that non-state actors (private sector firms, civil society, academia and research institutions) are expected to actively participate in the process by providing inputs to the Secretariat in the preparation of reports.

## Both the TPRM and the AFIRM are intended to promote improved adherence by their member states to rules, disciplines and commitments

It is noteworthy that both the TPRM and the AFIRM are intended to promote improved adherence by their member states to rules, disciplines and commitments under their respective agreements. They are also meant to create a better understanding of member states' trade policies and practices and the impact thereof on the trading system. Both mechanisms have complementary instruments aimed at enhancing transparency in trade policymaking and implementation. However, they differ in several respects. Under the AFIRM, the review exercise focuses primarily on a state party's meeting of its obligations under the AfCFTA, as specified in the Ministerial Directive. As previously noted, this could be challenging if the STO makes a definitive decision regarding whether or not a state party is in compliance with its obligations under the AfCFTA.

The proposed approach, with its clear focus on implementation, is understandable considering states parties' failure to fully implement their obligations under the AfCFTA Agreement and the historically low levels of implementation of some regional trade agreements on the continent. Yet it may lead to non-cooperation by the states parties, especially where reviews appear not to be mandatory – as they are under the TPRM. In the Ministerial Directive establishing the AFIRM, Paragraph 7 states that 'each State Party or Customs Union shall communicate to the Secretariat its readiness for a review'.<sup>32</sup> Paragraph 8, however, provides that 'State Parties shall be reviewed at least once every five years, from the date of start of trading on 1 January 2021'.<sup>33</sup>

There appears to be a disconnect between the two provisions, unless they are supposed to mean that a state party or a customs union will be reviewed within the relevant five-year period, irrespective of whether it has communicated its readiness for a review. If not read this way, then it could be argued that if a state party or customs union does not communicate its readiness within the relevant five-year period, the review cannot, in principle, be carried out. Leaving it to the discretion of the states parties may therefore not

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<sup>32</sup> AfCFTA, "Ministerial Directive".

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be advisable, as it would only be those that feel confident that would submit to the review. It is hard to imagine a state party that has only partially met its AfCFTA commitments to submit to a review and risk being embarrassed in front of its peers. It could be that it was the intention of the states parties that all parties have to be reviewed within the relevant five-year period, except that priority will be given to those that declare their readiness to be reviewed.

The Ministerial Directive is silent on whether the Council of Ministers will decide on the status of STO reports by consensus. If decisions on the reports are to be adopted by consensus, as is expected under Article 14 of the AfCFTA Agreement, then it is possible to envisage a situation in which some states parties may block the adoption of reports with which they are not happy. It may well be that the Council of Ministers will only take note of the reports rather than adopt them formally. Under the TPR exercise, there is no requirement that TPR reports must be adopted by the TPRB.

To ensure that STO reports are fully implemented, the Ministerial Directive encourages reviewed states parties or customs unions to draft a follow-up action plan that ‘addresses identified implementation challenges and appropriate interventions, including specific areas where financial and technical assistance and capacity building may be required’.<sup>34</sup> The coordination of such assistance is entrusted to the AfCFTA Secretariat, which will work with states parties, customs unions and partners upon request. As previously noted, under the TPRM, follow-up missions are undertaken by the TPRD to assist reviewed developing country members to address matters arising out of the TPR exercise. While not explicitly stated, reviewed members may be able to obtain aid for trade from donor countries and other international organisations.

The Ministerial Directive further provides for STO-dedicated sessions to have, as a regular agenda item, ‘AFIRM follow-up action plans’ to encourage states parties to share information and discuss the development, implementation and updates of their trade policies and practices. It would appear that this provision is inspired by Article 21.6 of the WTO Dispute Settlement Understanding (DSU), which obliges relevant members to provide periodic status reports to the Dispute Settlement Body until implementation is completed. This provision (like the DSU) is intended to put pressure on states parties to ensure that they meet their AfCFTA commitments.

## Conclusion

The decision to establish the AFIRM was evidently because of concerns about the slow implementation of the AfCFTA Agreement by states parties. With the agreement having entered into force in May 2019 following its ratification by 24 states parties, trading under the agreement was expected to fully commence in January 2021. After this deadline was

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34 AfCFTA, “Ministerial Directive”.

missed, the AfCFTA introduced the Guided Trade Initiative in October 2022 as an interim measure to allow states parties that were ready to commence trading on a pilot basis until such time that the agreement was fully implemented. With no new deadline having been set for trading to officially commence under the AfCFTA, the establishment of the AFIRM in July 2024 is a step in the right direction, as it could facilitate the full implementation of the agreement by states parties.

As the AFIRM is currently structured, states parties would periodically be assessed (once every five years) to determine whether they complied with their AfCFTA commitments. In principle, this would encourage states parties to meet their AfCFTA obligations as they would not like to risk being embarrassed in front of their peers or the outside world. The availability of technical assistance and perhaps financial assistance could encourage states parties to put themselves forward as candidates for a review within the intended timeframes. Furthermore, reviewed states parties may use the findings and recommendations in the STO reports to push through difficult reforms for the purposes of improving the competitiveness of their economies and achieving robust economic growth and sustainable development.

However, it is debatable whether the AFIRM's approach of directly assessing whether or not a state party has met its AfCFTA obligations is the most appropriate one. It may lead to resistance and non-cooperation by the states parties if they feel under siege. As noted previously, the TPRM has the overwhelming support of the WTO membership, as it focuses more broadly on a member's trade policy regime and the need to enhance transparency, as opposed to directly assessing whether a member is meeting its WTO obligations. Moreover, it is not a requirement that TPR reports are adopted by the TPRB.

Where a state party lacks the political will to implement its AfCFTA obligations, it is doubtful whether the AFIRM process will succeed in compelling it to do so. First, a state party may not indicate its readiness to be reviewed within the relevant five-year period, which makes it unlikely that the review can proceed. As noted previously, it would appear that, unlike with the TPR process, it is not mandatory for each state party to be reviewed once every five years, unless that state party itself volunteers to be reviewed. A plausible argument could, however, be made that all states parties must be reviewed during the relevant five-year period, except that priority will be given to those that have declared their readiness to be reviewed. It would have been preferable if the Ministerial Directive had been (as with the TPR process) more explicit in indicating that each state party or those belonging to a customs union would be reviewed once every five years. Second, should a state party volunteer for its trade policy regime to be reviewed, it could block the adoption of the STO report by the Council of Ministers, whose decisions are generally expected to be arrived at through consensus.

It is hoped that once the AFIRM is operational, the reports shall be 'factual and evidence-based', as mandated in the AfCFTA Ministerial Directive, and follow a template like that used in TPRs. This will assist in getting buy-in from the states parties, which is necessary for the AFIRM to advance the economic integration process on the African continent.

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