African Union

Creating One African Market

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THE AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA): OPPORTUNITIES AND CHALLENGES FOR KENYA

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OUTLINE

- Background of the AfCFTA
- Signature, Ratification and Accession
- Protocol on Trade in Goods -Tariffs and RoO,
- Protocol on Trade in Services
- Dispute Settlement
- Opportunities, Threats and Implications
- Conclusion

BACKGROUND OF THE AFCFTA

KENYA

PROFILE OF KENYA

- **Population:** 46 million
- **Business orientated:** business negotiators; skilled and educated populate
- **Nairobi –** modern and cosmopolitan city
- **Natural resources:** Wildlife, land, varied weather, tourist attraction
- **Services:** Tourism, Professional, Educational, ICT
- **Agriculture Products:** Tea, coffee, sugarcane, horticultural products.
- **Industries:**Consumer goods (plastic, furniture, batteries, textiles, soap, flour, cigarettes), agricultural products processing; oil refining, cement; tourism.
- **Exports - commodities:** tea, horticultural products, coffee, petroleum products, fish, cement.
- **Imports - commodities:** machinery and transportation equipment, petroleum products, motor vehicles, iron and steel, resins and plastics.
- Positioned in East Africa yet well connected with the rest of the continent, Asia, Middle East etc

Free Trade Area

According to the WTO, a free-trade area shall be understood to mean

- a group of two or more customs territories
- in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX)
- are eliminated
- on substantially all the trade between the constituent territories
- in products originating in such territories.

Notes: Art XI and XIII deal with quantitative restrictions; Art XII with balance of payments; Art XIV deals with exceptions to the rule of non-discrimination; Art XV deals with exchange arrangements; and Art XX deals with general exceptions.

Treaty Establishing the African Economic Community (The Abuja Treaty) 1991

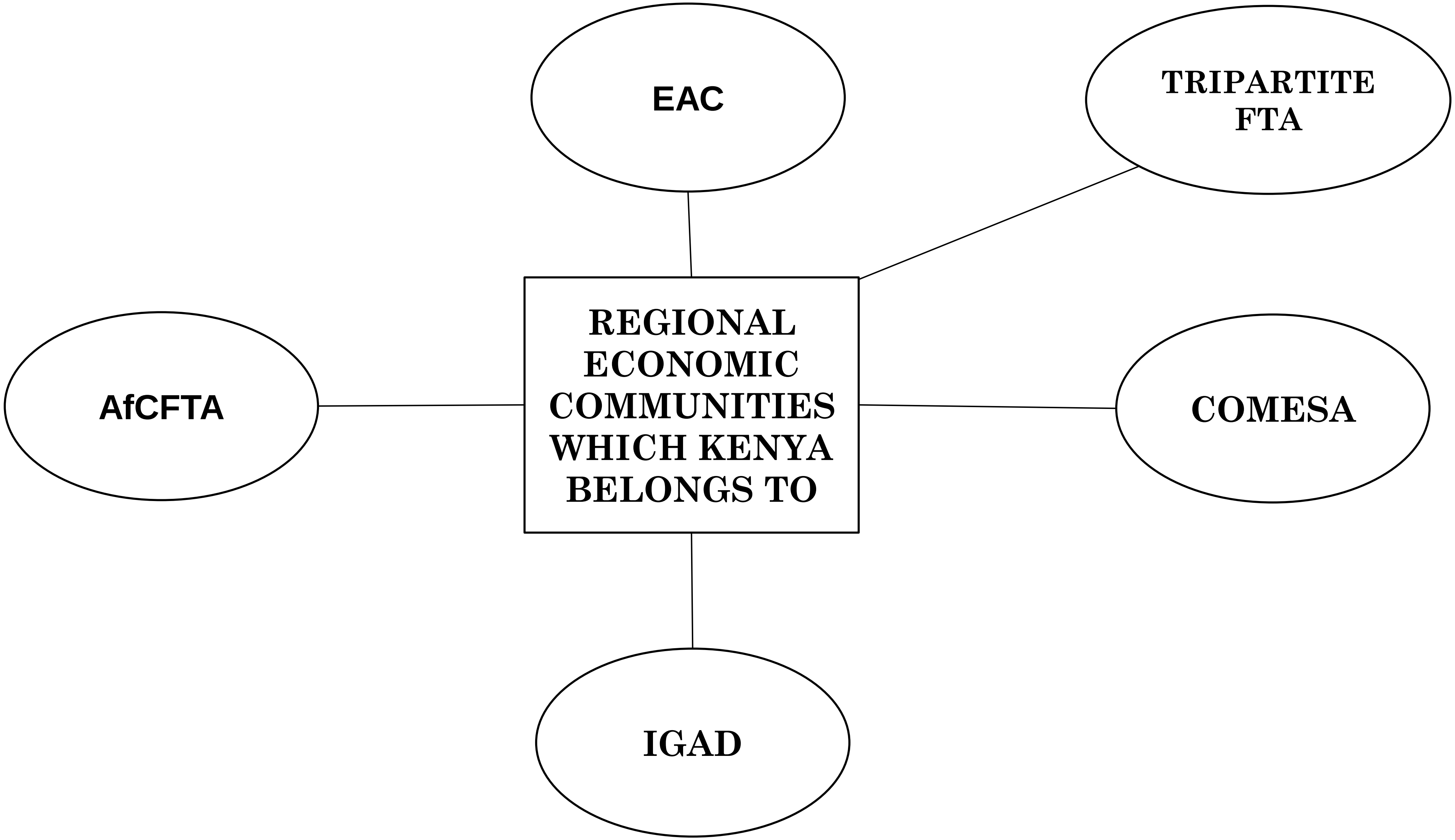
ge	Activity
	Establishment of RECs, strengthening the existing RECs in the 5 regions of Africa
	Preparatory work on trade liberalisation with focus on trade barriers
	Removal of tariff and non tariff barriers
	continental customs union within a period of two years after the third stage, that is by 2019
	the establishment of an African Common Market - free movement of factors of production by 2023
	Establishment of an African Economic Community ie integration of fiscal and monetary policies by 2028

Africa’s Regional Economic Integration Agenda

African economic and political integration is based on the following 8 RECs recognised by the AU:

1. Community of Sahel-Saharan States (CEN-SAD)
2. Common Market for Eastern and Southern Africa (COMESA)
3. East African Community (EAC)
4. Economic Community of Central African States (ECCAS/CEEAC)
5. Economic Community of West African States (ECOWAS)
6. Intergovernmental Authority on Development (IGAD)
7. Southern African Development Community (SADC)
8. Arab Maghreb Union (UMA)

KENYA AND REGIONAL ECONOMIC COMMUNITIES



Why the AfCFTA?

- Trade is a powerful engine for economic growth and development. Studies have shown a relationship between trade and economic growth and development
- However, Africa's role in the global trade market has been providing raw commodities in exchange of manufactured goods, thereby capturing a minimal 3% of the global share of trade.
- **In addition intra-Africa trade is just 15% of its total trade, compared with 19% intra-regional trade in Latin America, 51% in Asia, 54% in North America and 70% in Europe.**
- The low level of intra-African trade can change if Africa effectively addresses supply side constraints and weak productive capacities, infrastructural bottlenecks, trade information networks, access to finance for traders and other economic operators, trade facilitation and trade in services and free movement of people.

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Objectives of the AfCFTA

- To overcome dependence on exportation of primary products and promote social and economic transformation for economic growth, industrialization and sustainable development in line with Agenda 2063;
- AfCFTA is a flagship project of the AU blueprint and Masterplan ie Agenda 2063 – The Africa We Want, which was signed during the Golden Jubilee of May 2013
- Achieve a comprehensive and mutually beneficial trade agreement among the Member States of the African Union.
- Boosting intra-Africa trade
- To create a freer market for goods and services, building upon the trade agreements within the regional economic communities and associated commitments and thus pave the way for accelerating deeper integration
- The AfCFTA seeks to combine the economies of 55 African states under a pan-African free trade area comprising 1.35 billion people in a market with a combined GDP of $3.4 trillion.

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21st March 2018: 10th Extraordinary Summit in Kigali, Rwanda: HE President Paul Kagame; HE President Issoufou Mahamadou; HE Moussa Faki Mahamat

Phases I, II and III

- **Phase I - Concluded in March 2018**

➢ AfCFA Agreement

➢ Trade in Goods – outstanding work on Tariff Offers and Rules of Origin

➢ Trade in Services - For Services, the priority sectors are: Transport Services eg road and air transport; ICT; Professional Services; Financial Services; and Tourism Services

➢ Dispute Settlement Mechanism

- **Phase II negotiations will further deepen the AfCFTA**

➢ Investment – Provisions on promotion, facilitation and protection to galvanise the investment needed to restructure Africa's economies.

➢ Competition Policy - Provisions to enable fair competition and market outcomes that stimulate industrialisation, competition and development.

➢ Intellectual Property Rights - Provisions can incentivize increased innovation, ensure a level playing field and support trade

Phase III negotiations will be on

➢ E commerce – Provisions on cooperation and use of ecommerce

Agreement Establishing the AfCFTA

Creating One African Market

Agreement Establishing the African Continental Free Trade Area

Protocol on Trade in Goods

- Annex 1: Tariffs Liberalization Schedule of Commitments
- Annex 2: Rules of Origin
- Annex 3: Customs Coop and Mutual Admin Assistance
- Annex 4 Trade Facilitation
- Annex 5: Non Tariff Barriers to Trade
- Annex 6: Technical Barriers to Trade
- Annex 7 : Sanitary and Phyto – Sanitary Measures
- Annex 8: Transit
- Annex 9: Trade Remedies and Safeguards

Protocol on Trade in Services

- Schedules of Specific Commitments
- Regulatory Frameworks

Agreement on Investment

Agreement on Competition

Protocol on Rules & Procedures for Settlement of Disputes

Agreement on Intellectual Property Rights

Signature, Ratification and Accession

RATIFICATION PROCESS IN KENYA

- The Ministry of Foreign Affairs has a Treaty Section within the Legal Division that keeps records of bilateral and multi-lateral treaties involving Kenya
- The significance of a signature is captured well by the Kenyan Act of Parliament, the Treaty Making and Ratification Act, 2012 which states:

  > “signature” means an act whereby the State expresses its willingness to consent to the text of a treaty and has the effect of obligating the said State, even though it may not be a party to the treaty, to refrain, in good faith, from acts that would defeat the object and purpose of the treaty;

- Art 2:6 of The Constitution of Kenya has a provision for any treaty or convention which has been ratified to be part of the law under the Constitution.
- Art 7 of the Treaty Making and Ratification Act, 2012 provides the procedures which must be followed in ratifying an international agreement - the Executive initiates the process and the responsible Cabinet Secretary for the treaty submits the case to Parliament for consideration.

SIGNATURE AND RATIFICATION OF THE AFCFTA

- As on 1st April 2021, all member states of the AU, except Eritrea had signed the agreement;
- **Signature**: reflects a consent by the principals to the agreement
- **Ratification:** a step by a state towards making a treaty enforceable at national level. International treaties therefore become effective upon ratification. Ratification is undertaken by a country which participated in the negotiation of an agreement or treaty and has signed the text.
- 36 ratifications as on 1st April 2021: Angola, Burkina Faso, Cameroon, Cape Verde, Chad, Congo, Cote D'Ivoire, Djibouti, Egypt, Equatorial Guinea, Eswatini, Ethiopia, Kenya, Gabon, The Gambia, Ghana, Guinea, Lesotho, Malawi, Mali, Mauritania, Mauritius, Namibia, Niger, Nigeria, Uganda, Rwanda, Saharawi Republic, Sao Tome and Principe, Senegal, Sierra Leone, South Africa, Togo, Tunisia, Zambia and Zimbabwe
- Those who ratified AfCFTA Agreement become **State Parties**

10 May 2018:Ghana and Kenya Ambassadors to Ethiopia and the Permanent Representatives to the Africa Union

Obligations from Ratification

- An undertaking to implement, and not to undermine implementation of an international agreement
- An undertaking to align national laws to the Agreement
- Alignment of all national laws within a State, so that they are all in harmony and further the implementation, without any conflicts
- Alignment of procedures and systems
- Prepare staff and internal mechanism to implement

Highlights: Protocol on Trade in Goods, Protocol on Trade in Services and Dispute Settlement

OBJECTIVES OF THE PROTOCOL ON TiG

Objectives as stated in Article 2 of the Protocol

1. The principal objective of this Protocol is to create a liberalised market for trade in goods in accordance with Article 3 of the Agreement.

2. The specific objective of this Protocol is to boost intra-African trade in goods through:

(a) progressive elimination of tariffs;

(b) progressive elimination of non-tariff barriers;

(c) enhanced efficiency of customs procedures, trade facilitation and transit;

(d) enhanced cooperation in the areas of technical barriers to trade and sanitary and phytosanitary measures;

(e) development and promotion of regional and continental value chains; and

(f) enhanced socio-economic development, diversification and industrialisation across Africa.

Tariff Liberalisation

- 90% tariff lines will affect revenue figures, especially if your trade was mainly with Africa
- Even when your trade was not with Africa eg importation of fuel from the Middle East, importers might divert from traditional suppliers and source it from others eg Central Africa or West Africa
- While customs duties go down – what is the impact on domestic activities – possibility of other tax heads eg VAT, domestic taxes increasing
- Similarly a trader in Africa whose only source of a product was eg Kenya has other opportunities to get goods from elsewhere

TARIFF IMPLEMENTATION

STRUCTURE OF WCOs HS 2017

21 Sections

96 Chapters

96 Chapters	2 digits (01 to 97)
1222 Headings	4 digits (01.01 to 97.06)
5387 Subheadings	6 digits (0101.21 to 9706.00)

Chapter 77 reserved for future use by the WCO

Chapter 98 to 99 Local use

EAC Tariff Structure

Rate	**No of Tariff Lines**
0%	2128
10%	1159
25%	2335
Sensitive items with, eg combination tariffs or tariffs exceeding 25%	66
Total	**5688**
90% tariff offers would be	***5120***

TARIFF OFFERS

- Following 41 countries including CEMAC, EAC, ECOWAS, SACU have submitted tariff offers:

Benin, Botswana; Burkina Faso, Burundi, Cameroon; Cabo Verde; Chad; Central Africa Republic; Congo Republic; Côte d'Ivoire; DRC; Egypt; Equatorial Guinea; Eswatini; Gabon; Gambia; Ghana; Guinea; Guinea-Bissau; Kenya; Lesotho; Liberia; Madagascar; Malawi; Mali; Mauritania; Mauritius; Namibia; Niger; Nigeria; Rwanda; Sao Tome and Principe; Senegal; Seychelles, Sierra Leone; South Africa. South Sudan; Tanzania; Togo; Uganda; and Zambia

- Of the above 41 countries the following 36 have ratified:

Burundi; Burkina Faso; Cameroon; Cabo Verde; Chad; Republic of Congo; Côte d'Ivoire; Egypt; Equatorial Guinea; Eswatini; Gabon; Gambia; Ghana; Guinea; Kenya; Lesotho; Liberia; Mali; Mauritania; Mauritius; Namibia; Niger; Nigeria; Rwanda; Sao Tome & Principe; Senegal; Seychelles; Sierra Leone; South Africa. South Sudan; Tanzania; Togo; Tunisia, Uganda; Zambia; and Zimbabwe

Purpose of AfCFTA Rules of Origin

- The AfCFTA has negotiated a transparent, clear and predictable criteria for determining the rules of origin; This criteria is a separate Annex 2 of the Protocol on Trade in Goods;
- The overall objectives of the RoO are as follows:

  -Deepen market integration in Africa

  -Boost intra-Africa trade

  -Promote regional and continental value chains

  -Promote industrialisation

Origin Conferring Criteria

Goods are considered as originating if they have:

1) been wholly obtained or produced in a member, as defined eg minerals, plant and plant products or
2) undergone substantial transformation in a member as defined. In this respect goods are considered to be sufficiently worked or processed when they fulfil one of the following criteria:

a) Value Added ie when they comply with the required criteria

b) non-originating material content as specified

c) change in tariff Heading; or

d) any other specific process eg extraction by means of selective solvents

Rules of Origin: Refrigerators HS 8418

COMESA – Manufacture in which the value added is at least 25% of the ex-factory cost of the finished product

SADC - Manufacture in which the value of all non originating materials used does not exceed 50% of the ex-works price of the product

AfCFTA – Value of non originating material does not exceed 60% of the ex-works price of the product

Comparative Analysis: Rules of Origin on Tea and Coffee. HS 0902

COMESA – 35% value addition or CIF value of non originating materials does not exceed 60%

SADC – Manufacture in which all Materials of this Chapter used must be wholly obtained; with exceptions on coffee and black tea where manufacture in which the weight of the materials used does not exceed 40% of the weight of the product

AfCFTA - Manufacture in which all Materials of this Chapter used must be wholly obtained

Outstanding Issues on Rules on Origin

The following are amongst the outstanding issues, which are subject to negotiations:

- Regulations on Special Economic Zones and their possible effect on Rules of Origin
- fisheries; edible oils; sugar; leather; textiles and apparel; and the automotive industry
- Manual/Guide on Rules for a common understanding on interpretation on the RoO
- Trade can proceed underway on the basis of the finalised RoO

Trade in Services

5 PRIORITY AREAS FOR TRADE IN SERVICES

- Professional services
- Information and Communication services
- Financial services
- Tourism services
- Transport services

Protocol on the Rules and Procedures on the Settlement of Disputes

- The AfCFTA Agreement has a Protocol on the Rules and Procedures on the Settlement of Disputes – this refers to the resolution of disputes. It provides clear rules on dispute resolution and guidelines with time frames
- DSM is along the lines of the WTO; AfCFTA Dispute Settlement Mechanism is bound by rules in order to ensure that trade is conducted under transparent rules
- Was negotiated by the Member States
- There are provisions for consultations and mediations
- Dispute can be initiated through any of the trading party, done by MS. Adjudication done by Panels and Appellate Body with clear time frames
- Final report is presented to State Parties for consideration
- More rigid and stronger that what is provided by RECs such as SADC or COMESA

OPPORTUNITIES/ IMPLICATIONS

General Information

- AfCFTA focuses on the continent and is a stage towards the establishment of the African Economic Community
- Taking advantage of Government policy on economic and trade diplomacy, cooperation with government
- Trade liberalisation means opening up the market, industry must be prepared for competition
- Trade Remedies etc
- Trade Facilitation measures designed for the continent also benefit global trade
- NTB mechanism to report and deal with NTBs
- Readiness to do business within the continent
- What documents are required and who issues them?
- Capacity Building/Public awareness activities at national, regional and continental levels

Value Chains

- Realisation that in certain industries we may not be able to produce everything
- Building upon Kenya's competitiveness in order to develop National, Regional and Continental value in order to have 'Made in Africa'
- Kenya has a reputation for producing original and organic products ie non GMO goods eg food, cotton etc
- These value chains can also be utilised to have Kenya local content into markets which we do not have access into
- Industrialisation

Exports and Imports

- **Exports**

Market Intelligence

Apart from COMESA/EAC/SADC members, AfCFTA brought in over 25 countries more and new markets

✓ Swot Analysis

- **The African Trade Observatory** https://ato.africa/en/.

✓ National institutions to build upon the work established by the AfCFTA

✓ designed to support micro, small and medium enterprises in Africa to simplify their market research. ·

- **Export Promotion and development**

✓ Explore market access conditions of African partners

Imports

✓ Are the tariff offers available and accessible

✓ Availability of Information

✓ What documents are required

National Strategy

- Participation during engagements at national levels in order to have coordinated planning and response to issues
- National implementation Strategy
- National Implementation Committees

OPPORTUNITIES AND THREATS

- An open market of 1.35 billion in Africa
- Opportunities for investment, industrialisation, and Value chains
- Trade facilitation within the AfCFTA and globally
- Cooperation with govt agencies involved in trade
- Competition will be open
- Products will be competing with the rest of Africa
- Rule based trading regime where countries will be accountable to one another for actions taken by their industries

CONCLUSION

Issues of Customs Cooperation

Some of the major issues for Customs are:

- Interpretation and implementation of tariffs schedules and rules of origin
- Implementation of trade policy issues
- Trade Facilitation
- Border management
- Monitoring the movement of goods
- Exchange of information and cooperation when dealing with fraud
- Mutual Administrative Assistance eg capacity building
- Simplified and harmonised Customs procedures
- Security issues and protection of society
- Collection of statistics

What are the Implications to Strategic Partners

- Revenue Implications – MoF, Treasury, Budgets
- Trade Facilitation – Ministry responsible for Trade, Trade Facilitation Committees
- Security – National Security Organisations, Police Defence, State Security
- Manufacturers – Industry bodies,
- Transporters
- Clearing and Shipping Agents – frontliners in respect of Customs work
- Consultancy firms – Tax implications, issues on Investment, Competition, Trade in Services
- Customs to Customs, Customs to Business, Customs to Other Govt Agencies
- National Implementation Committees

KEY ISSUES

- Government has negotiated an international agreement with opportunities;
- What’s the niche for Kenya?
- There will be opportunities for investment, industrialisation, trade in goods and services etc,
- Capacity Building/Public awareness activities at national, regional and continental levels
- National Strategies and implementation plans
- Work in progress eg trade facilitation issues, payment systems etc

Thank you for your attention

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