

The Institutional Framework for Implementing the African Continental Free Trade Area

BELGUELEIL FARID * ¹, Civil Status System Laboratory, University Djilali Bounaama - Khemis Miliana, Algeria, f.belgueleil@univ-dbkm.dz

TOUMI HADJIRA ², University Djilali Bounaama -Khemis Miliana, Algeria, h.toumi@univ-dbkm.dz

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Abstract:

The endeavors of the African Union countries to establish African Continental Free Trade Areas through treaties and sessions of the African Union since the past several years resulted in the birth of the agreement establishing the African Continental Free Trade Area. Among the specific objectives of the African Continental Free Trade Areas is the establishment of an institutional framework for the implementation and management of the free trade area African continent and ensuring its continuity. As a body independent of the African Union to ensure its proper functioning and implementation of the lined program in the short and long term. Where the agreement establishing these areas specified institutions represented in the conference, the Council of Ministers, the Committee of Senior Trade Officials and the Secretariat. He entrusted them with the task of ensuring the smooth functioning, application and implementation of laws and achieving the goals set forth in the agreement.

Keywords: free trade areas, institutional framework, founding agreement, African Union.

الملخص:

إن مساعي دول الإتحاد الإفريقي في إنشاء مناطق التجارة الحرة القارية الإفريقية من خلال المعاهدات ودورات الإتحاد الإفريقي أثمرت ميلاد الاتفاق المؤسس لمنطقة التجارة الحرة القارية الإفريقية. فمن بين الأهداف المحددة لمناطق التجارة الحرة القارية الإفريقية إنشاء إطار مؤسسي لتنفيذ وإدارة منطقة التجارة الحرة القارية الإفريقية وضمان إستمراريتها. بإعتباره جهازا مستقلا عن الإتحاد الإفريقي لضمان حسن سيره وتنفيذ البرنامج المسطر في المدى القريب والبعيد. حيث حدد الاتفاق المؤسس لهذه المناطق مؤسسات

*BELGUELEIL FARID.

تتمثل في المؤتمر، مجلس الوزراء، لجنة كبار مسؤولي التجارة والأمانة. أوكلمها مهمة ضمان حسن سير وتطبيق وتنفيذ القوانين وتحقيق الأهداف المسطرة في الاتفاق. الكلمات المفتاحية: مناطق التجارة الحرة، إطار مؤسسي، الاتفاق المؤسس، اتحاد إفريقي.

Introduction:

In the face of economic blocs in many countries around the world, as well as the economic development that characterized the world in the 20th century and the resulting competition in global markets in economic, commercial, and service fields, countries turned towards cooperation to address market challenges. Institutions began to heavily rely on partnerships, especially in the commercial sector. Competition necessitated countries to open up to investment and the world at large.

Investment has become one of the prominent issues discussed on both local and international levels, and African countries and the African Union have sought to achieve it. Efforts have been continuously exerted by African Union leaders and governments in past years to enhance intra-African trade, as expressed in the 18th regular session of the African Union Conference held in Addis Ababa, Ethiopia, in January 2012¹.

The aim is to establish the African Continental Free Trade Area (AfCFTA), aiming to integrate African markets, enhance economic relations, including the creation of a larger continental market with the free movement of people, capital, goods, and services. This initiative also aims to boost agricultural development, food security, manufacturing, and economic structural transformation, while also requiring the development of suitable infrastructure, gradual elimination of customs tariffs, and removal of non-tariff barriers that hinder trade and investment.² Clear, transparent, and predictable rules governing trade in goods, services, competition policy, and investment, as well as intellectual property, are essential components, intellectual property is divided into two branches:

¹ Website: Wikipedia, African Union, <https://en.wikipedia.org/wiki>, Accessed Date: 27/03/2023.

² Sami Kabahm, General and Specific Objectives of the African Continental Free Trade Areas, Maarif Journal of Legal and Economic Sciences" Volume: 3 Issue: 1 ,2022,p 134.

industrial property and literary and artistic property, with variations in its divisions depending on legal systems and schools of thought.¹

The foundational agreement for the African Continental Free Trade Area (AfCFTA) was established in Kigali, Rwanda, on March 21, 2018. Algeria, under Presidential Decree 21-133, approved this agreement.

The Algerian legislator abandoned the previous experience of free zones, which proved unsuccessful. However, the re-establishment of free zones under Law 22-15² coincides with Algeria's ratification of the African Continental Free Trade Agreement (AfCFTA), signed in Kigali. This membership presents a significant opportunity for the development of the national economy and the enhancement of trade exchanges with 54 African member countries within this region.³

One of its specified objectives is the establishment of an institutional framework for the implementation and management of the African Continental Free Trade Area,⁴ ensuring its continuity. Therefore, member states established an independent structure dedicated to facilitating the achievement of the desired goals, as outlined in the agreement.

The importance of the topic lies in the novelty of the African Continental Free Trade Area and its continental nature. Africa is set to become the largest market in the long term, in line with the aspirations and goals of Agenda 2063. Furthermore, this area aims to improve the living conditions of Africa's population, create employment opportunities, and achieve economic development. The significance of the matter is heightened by Algeria's agreement and endorsement of this agreement, striving to provide all necessary resources for African integration, particularly given Algeria's role and efforts in achieving African unity and integration on all levels.

This research paper aims to identify the entity responsible for implementing and achieving the goals and objectives of the African Continental Free Trade

¹ Kabahm Sami, *Neighboring Rights to Copyright - A Study in Algerian Law*, Dar Al-Mutanabi for Printing and Publishing, Msila, 2022, p 15.

² Law No. 22-15 dated: July 20, 2022, establishing the regulatory rules for free zones, Official Gazette of the People's Democratic Republic of Algeria, Issue No. 49, dated: July 20, 2022.

³ Amal Meshti, *The Legal Framework of Free Zones in Algerian Legislation Between Establishment and Abolition (Law 22-15 Concerning Free Zones as an Addition)*, The Academic Journal of Legal and Political Research, University of Agouat, Volume 07, Issue 01, 2023, p659.

⁴ Article 04 of Presidential Decree 21-133.

Area, as well as the purpose for which these zones were established. Given the significance of the topic, founding states were required to establish a robust institutional framework to ensure the smooth implementation and execution of the plan and program of the African Continental Free Trade Area.

The raised issue is: What is the institutional entity or framework entrusted with the task of managing, monitoring, and implementing the program and objectives of the African Continental Free Trade Area?

To address this question, we employed a descriptive methodology to provide a description and clarification of the study's subject. Additionally, we utilized an analytical approach by analyzing legal texts related to the study's subject, especially considering the lack of references, literature, and writings due to the novelty and continental nature of the topic.

Our research paper delved into the entity responsible for implementing, managing, facilitating, monitoring, and evaluating the African Continental Free Trade Area: The Conference and the Council of Ministers (First topic) and the Senior Trade Officials Committee and the Secretariat (Second topic).

THE FIRST TOPIC: The Conference and the Council of Ministers

In the context of managing, facilitating, monitoring, and evaluating the African Continental Free Trade Area, Article 9 of the Presidential Decree endorsing the African Continental Free Trade Area Agreement.¹

"We will delve into two institutions of the African Continental Free Trade Area: The Conference (first requirement) and the Council of Ministers (second requirement)."

FIRST REQUIREMENT: TITLE

The paragraph (h) of Article 1 of Presidential Decree No. 21-133, endorsing the founding agreement of the African Continental Free Trade Area signed in

¹Article 09 of Presidential Decree No. 21-133 dated April 5, 2021, approving the Constitutive Agreement of the African Continental Free Trade Area, Official Gazette of the People's Democratic Republic of Algeria, dated: May 16, 2021, Issue No. 36,p 06.

Kigali on March 21, 2018, refers to the Conference of African Union Heads of State and Government.¹

As commonly referred to as the General Assembly, it is the Conference of African Union Heads of State, consisting of the heads of member states and their governments.² It serves as a platform for African leaders to express their opinions and review previous conference outcomes. It is the highest executive organ of the African Union, and decisions within the General Assembly are made by consensus or a two-thirds majority.³

The Constitutive Act of the African Union also refers to it as the Conference of Heads of State and Government of the Union.

Firstly: Functions of the Conference

1-The Conference oversees the African Continental Free Trade Area, being the highest decision-making body within the African Union.

2-It provides strategic guidance regarding the African Continental Free Trade Area.

3-It formulates a work program to enhance intra-African trade.⁴

4-Referring to the provisions of Presidential Decree 21-133, the Conference is empowered to establish the Secretariat, determine its location, nature, structure, and budget.⁵

According to the Constitutive Act of the African Union, Article 20 grants the Conference the authority to define the structure, functions, and regulations of the Commission.⁶ The first paragraph of the same Article establishes the Union Commission, granting it the authority to perform the functions of the Union Secretariat simultaneously.⁷

Secondly : Powers of the Conference

¹ Refer to Article 1 of Presidential Decree No. 21-133.

² Website: <https://www.shorouknews.com/news/view.aspx?cdate=10022019&id=ff3f290c-2384-4c17-a157-b93a43a82946>, Accessed Date: 25/03/2023

³ The first article of the Constitutive Act of the African Union for the year 2000.

⁴ Article 11 of Presidential Decree No. 21-133

⁵ Article 13, same reference.

⁶ Paragraph 3 of Article 20 of the Constitutive Act of the African Union.

⁷ Paragraph 1 of Article 20 ,same reference.

- The Conference has the exclusive authority to adopt interpretations of this agreement based on recommendations from the Council of Ministers. The decision to seek interpretation is approved by consensus.¹

SECOND REQUIREMENT: Requirement: Council of Ministers

The founding agreement of the African Continental Free Trade Area establishes the Council of Ministers, defines its composition, and outlines its role.

Firstly: Composition of the Council of Minister

1- The agreement establishes a Council of Ministers composed of ministers responsible for trade or any other ministers, authorities, or officials appointed by the parties.

Article 104 empowers the President of the Republic to appoint members of the government upon the proposal of the Prime Minister or the head of government, as the case may be. Article 105 specifies that if legislative elections lead to a presidential majority, the President of the Republic appoints.

The President of the Republic serves as the Prime Minister initially and is tasked with proposing the formation of the government and preparing an action plan for implementing the presidential program, which is presented to the Cabinet.²

The eighth meeting of the Council of Trade Ministers was held on January 28th and 29th, 2023, in the Ghanaian capital, Accra, with Algerian Trade Minister Kamal Rezig participating. This meeting was dedicated to discussing and adopting the recommendations stemming from the tenth meeting of senior trade officials for the African Continental Free Trade Area, held between January 24th and 27th, 2023.³

Secondly: the Functions of the Cabinet

Article 11 of the Presidential Decree specifies the composition and functions of the Cabinet for the African Continental Free Trade Area.

¹ Article 10 of Presidential Decree No. 21-133

² Articles 104 and 105 of the Constitution of the People's Democratic Republic of Algeria for the Year 2020, Official Gazette of the People's Democratic Republic of Algeria, Issue No. 82, dated: December 30, 2020.

³ Website: <https://www.elbilad.net/national> , Accessed Date: 01/04/2023

1-The Cabinet submits its reports to the Conference through the Executive Council. Article 1 of Presidential Decree 21-133 defines the term "Executive Council," stating that it refers to the African Ministers responsible for trade of the member states.¹

The Executive Council consists of the Ministers of Foreign Affairs of the member states or any other ministers appointed by the states. It convenes in at least two regular sessions per year and in extraordinary sessions upon the request of a member state and with the approval of the majority of member states. Its decisions are made by consensus, and its meetings are deemed valid by a majority. In matters of procedural issues, a simple majority suffices.²

During its tenure, the Cabinet is responsible for:

- a. Making decisions in accordance with this agreement.
- b. Ensuring effective implementation of the agreement and overseeing it.
- c. Taking necessary measures to enhance the goals of this agreement and related instruments concerning the African Continental Free Trade Area.
- d. Collaborating with the relevant organs and institutions of the African Union.
- e. Encouraging policy alignment, appropriate strategies, and measures to ensure effective implementation of this agreement.
- f. Establishing and delegating responsibilities to special committees, existing committees, working groups, or expert groups.
- g. Developing the rules of procedure and regulations related to the sub-entities established for the implementation of the African Continental Free Trade Area and submitting them to the Executive Council for approval.
- h. Supervising all committees and working groups established under this agreement.
- i. Reviewing reports and activities of the Secretariat and taking appropriate actions.
- j. Formulating regulations, issuing directives, and making recommendations in accordance with the provisions of this agreement.
- k. Reviewing the organizational structure of the Secretariat of the African Continental Free Trade Area and submitting it to the Executive Council for approval by the Conference.
- l. Approving the work program of the African Continental Free Trade Area and its institutions.

¹ Article 1 Paragraph K of Decree 21-133, previous reference.

² Boughzala, Mohamed Nasser, Algeria and the African Union, Algerian Journal of Legal and Political Sciences, University of Ben Yousef Ben Khedda, Algeria, Volume 48, Issue 01,2011,p21.

- m. Reviewing the budgets of the African Continental Free Trade Area and its institutions, and referring them to the Executive Council.
- n. Providing recommendations to the Conference for the adoption of an authoritative interpretation of this agreement.
- o. Undertaking any other tasks as stipulated by this agreement or as requested by the Conference.

2-The Cabinet meets twice a year in regular sessions and may convene in extraordinary sessions when necessary.

3-The decisions made by the Cabinet during its tenure are binding on the parties. Decisions that have legal, financial, or structural effects are binding on the parties upon their adoption by the Conference. It is the responsibility of the parties to take the necessary measures to implement the decisions of the Cabinet.

4-The parties take the necessary measures to implement the decisions of the Cabinet.¹

THE SECOND TOPIC : Committee of Senior Trade Officials and the Secretariat

In this section, we discussed the third and fourth organs of the African Continental Free Trade Area institution: the Committee of Senior Trade Officials (first requirement) and the Secretariat (second requirement).

FIRST REQUIREMENT: Committee of Senior Trade Officials

The Committee of Senior Trade Officials in the African Continental Free Trade Areas is a representative body within the framework of implementing the African Continental Free Trade Areas agreement. This committee aims to enhance cooperation and coordination among member states in the fields of trade, investment, and economic development.

The Committee of Senior Trade Officials is composed of representatives from member states, typically ministers or senior officials in the fields of trade,

¹ Article 11 of Presidential Decree No. 21-133, previous reference.

industry, and economics. They have the authority to make decisions and guide policies related to the implementation of the African Continental Free Trade Areas agreement and the organization of trade activities among member states.

The Committee of Senior Trade Officials undertakes various tasks, including developing implementation plans, coordinating among member states, promoting trade, facilitating investments, resolving trade disputes, and enhancing infrastructure capacities to achieve the objectives of continental free trade in Africa.¹

Firstly : Composition:

The Committee of Senior Trade Officials is composed of Secretaries or Chief Agents of essential central ministries or any other relevant officials from the ministries responsible for trade, appointed by the parties.

Secondly: Its Functions

1- The Committee of Senior Trade Officials assumes the following responsibilities:

- a. Implementing the decisions of the Cabinet referred to it.
- b. Formulating programs and action plans for implementing the African Continental Free Trade Area agreement.
- c. Monitoring and continuously reviewing the African Continental Free Trade Area, ensuring its smooth operation, development, and compliance with the provisions of this agreement.
- d. Establishing subsidiary committees or other working groups as needed.
- e. Supervising the implementation of the provisions of this agreement. For this purpose, a technical committee may be tasked with investigating specific issues.
- f. Providing guidance to the Secretariat for the performance of specific tasks.
- j. Undertake any other tasks under this agreement or as authorized by the Cabinet.

2-Subject to any directives issued by the Cabinet, the Committee of Senior Trade Officials shall meet at least twice a year and operate according to the procedural rules established by the Cabinet.

3-The committee shall submit its reports, including recommendations, to the Cabinet following its meetings.

¹ By examining the legal texts of the Constitutive Agreement of the African Continental Free Trade Area, we find that it grants the parties the freedom for their representatives in the Committee of Senior Trade Officials, among the individuals designated by the Ministry of Trade.

4-Regional economic communities shall be represented in the Committee of Senior Trade Officials as observers.¹

SECOND REQUIREMENT: The Secretariat

The Secretariat was addressed in Article 13 of Presidential Decree 21-133, highlighting its establishment, characteristics, and authorizing the African Union Commission to act as an interim Secretariat until the actual Secretariat is established.

Firstly: Establishment of the Secretariat

1. Establishment of the Secretariat The Conference establishes the Secretariat, determines its nature, location, adopts its structure, and budget.
2. The Commission functions as an interim Secretariat until the full activation of the Secretariat.²

The African Union Commission serves as the General Secretariat of the African Union and represents the executive body of the Union. It consists of ten members, a Chairperson, Vice-Chairperson, and eight Commissioners. The role of the Commission is to represent the African Union and defend its interests under the supervision of the Conference and the Executive Council.

The Committee's task is to be a driver of African integration and to support the development process on the continent in collaboration with the Union's member states, regional economic communities, and African citizens.³

The guiding principles for the Commission's work are subordination and integration with all regional bodies, organizations, and regional groups, as well as member states of the African Union, in addition to coordinating and collaborating with all to achieve desired goals and implement Union policies.

Secondly: Characteristics of the Secretariat

- 1-The Secretariat constitutes an institutional body within the African Union system.

¹ Article 12 of Presidential Decree No. 21-133, previous reference.

² Refer to Article 13 , previous reference.

³ Website: Wikipedia, African Union Commission, <https://en.wikipedia.org/wiki>, Accessed Date: 03/04/2023.

- 2-The Secretariat is an independent entity separate from the African Union Commission.
- 3-The Secretariat's budget is derived from the general budget of the African Union.
- 4-The functions and roles of the Secretariat are determined by the Council of Trade Ministers.¹

Thirdly: Actual Establishment of the Secretariat

The Secretariat was officially established at the beginning of 2020, where the newly elected Secretary-General of the African Continental Free Trade Area, Wamkele Mene, assumed office as the first Secretary-General of the Area. The swearing-in ceremony took place at the African Union Commission headquarters, in the presence of His Excellency Moussa Faki Mohamed, the Chairperson of the Commission, and Edward Zuma Mokaya, the Permanent Representative of South Africa to the African Union and the Chair of the Committee of Permanent Representatives.

The ceremony was also attended by Mrs. Amma Adoma Twum-Amoah, the Ambassador and Permanent Representative of Ghana to the African Union, representing the host country of the Secretariat of the African Continental Free Trade Area, and Mr. Zakariya Maiga, the Ambassador and Permanent Representative of Niger.

The Secretary-General is expected to lead and provide technical support to the Secretariat of the African Continental Free Trade Area, overseeing its daily operations to ensure the achievement of its intended mandate. Particularly, he will be responsible for the comprehensive management of the Secretariat, the execution of its agreements and strategic collaborations, engagement with stakeholders, and resource mobilization for agreement implementation.²

Conclusion:

Through our study, we have come to realize that the African blocs, which the countries of this continent have sought to build over time, have not been able to achieve the desired results, unlike the European blocs and organizations. The

¹ Article 13 , same reference.

² Website: Official Page of the African Union, Secretary-General of the Secretariat of the African Continental Free Trade Area Takes Oath, 19-03-2020, <https://au.int/fr/node/38266>, Accessed Date: 06-04-2023.

African Union member states recognized the need to accelerate the establishment of the African Continental Free Trade Area (AfCFTA), as advocated by many African Union member states during its regular sessions and African forums. This was embodied in the founding agreement of these regions signed in Kigali.

It was essential for African Union member states to ratify the founding agreement of the African Continental Free Trade Area and establish an independent body to ensure the proper functioning and organization of these areas, as well as overseeing the achievement of the set goals and programs. The founding agreement stipulated the establishment of an institutional framework responsible for these tasks, consisting of the Conference, the Council of Ministers, the Committee of Senior Trade Officials, and the Secretariat.

Recommendations:

-There is a necessity to expedite the development of infrastructure in all member states, particularly given the economic challenges faced by many African countries. This is crucial for achieving the outlined objectives of the African Continental Free Trade Area.

-African countries should exert all efforts to ensure the success of this monumental project, which will contribute to comprehensive development across the entire continent.

-Coordination among the various institutional structures of the African Continental Free Trade Area should be prioritized in all fields, creating everything possible to contribute to the development, enhancement, and achievement of the goals of this project.

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