ECONEWS AFRICA

FACT SHEET ON FREE TRADE AGREEMENTS

Free Trade Agreements (FTAs)/ Economic Partnership Agreements (EPAs)

WHAT ARE THEY?

A Free Trade Agreement (FTAs) is an international agreement which seeks to remove or reduce tariffs and non-tariff barriers to trade and investment between partner countries. FTAs and Economic Partnership Agreements (EPAs) are essentially the same thing hence they tend to be used interchangeably.

Tariff – a tax/fee paid on a particular class of imports or exports

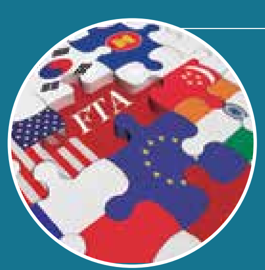
Non – Tariff Barriers (NTBs) – these are any measures, other than tariffs, that acts as an obstacle to international trade. Technical barriers to trade (TBTs) such as testing or certification procedures form the largest category of NTBs. Some notable NTBs are:

a) **Quotas**: limit on the physical amount of a certain product that can be sold in a market
b) **Subsidies**: benefits, usually in the form of financial support, offered by governments to domestic producers that reduce their costs thereby increasing their competitiveness against international producers
c) **Rules of Origin**: requirement to provide proof indicating the country in which a product was made (TBT)
d) **Sanitary and Phytosanitary (SPS) measures**: laws, regulations, standards, and procedures that governments employ as "necessary to protect human, animal or plant life or health." SPS measures can take many forms such as requiring products to come from a disease-free area, inspection of products, specific treatment or processing of products, setting of allowable maximum levels of pesticide residues or permitted use of only certain additives in food (TBT)

TYPES OF FTAS

FTAs generally take two forms;

(1) Bilateral - an agreement between two countries



(2) Multilateral - an agreement with three or more countries. These may be in the form of regional trade agreements which cover countries from one region (AfCFTA, ASEAN and USMCA/NAFTA) or they may involve countries from multiple regions such as the treaties governing members of the World Trade Organization (WTO)

In the regional context, trade agreements can vary depending on the level of commitment and the arrangement among the member countries. These variations include:

a) **Customs Union**: members of an FTA adopt a common external tariff against third parties (non-members)
b) **Common Market**: an advanced customs union whereby there is free movement of labor and capital among member states
c) **Economic Community (Union)**: in addition to being a common market, members harmonize their economic policies including a common currency and a common tax rate.
d) **Political Federation**: members go beyond harmonizing their economic policies and adopt common legislation and political structures. This is the most advanced form of integration.

To conclude, while countries may consider rules at the WTO in formulating and implementing FTAs, countries are not bound by these rules.

BENEFITS OF AN FTA

Governments that sign and ratify FTAs do so because of the following perceived benefits:

i) **Increased economic growth** arising from market access and investment opportunities due to reduced barriers to trade and investment in an FTA that promote the expansion of local industries and employment.
ii) **Greater efficiency and specialization of countries** as an FTA encourages competition forcing countries to produce the goods and services that they are most efficient at producing as well as encouraging the producers to make better quality products at a lower cost to be on par with competitors.
iii) **More dynamic business climate** with the elimination of barriers in an FTA that prevent international competition against stagnant and non-competitive industries including monopolies.
iv) **Improved access to a wider range of competitively priced products** allowing consumers to enjoy a higher purchasing power and access to a variety of goods and services.
v) **Potential for technology and skills transfer** when an FTA encourages international companies to partner with local firms in order to access domestically available business opportunities.
vi) **Enhanced relationships among partners** that may be beneficial in their agendas especially at the global stage.

COSTS OF AN FTA

While FTAs may offer some benefits, there are also risks associated with such agreements. These include:

i) **Crowding-out of domestic industries** as local firms may have to compete with more efficient international companies who can sell their products at a lower price causing the local firms to lose market share to these multinationals.
ii) **Increased job outsourcing** as reduced barriers may encourage companies to move to other countries where the cost of labor among other inputs is lower.
iii) **Poor working conditions** when jobs are outsourced to countries that lack adequate labor protection laws to ensure healthy, safe and secure working environments.
iv) **Threat to Intellectual Property** as free trade could lead to counterfeit or hijacking of ideas if legal structures to protect and enforce intellectual property laws are non-existent or weak.
v) **Destruction to environment and native cultures** particularly in emerging markets with sub-standard environmental and human rights laws as FTAs could lead to the degradation of natural resources and destruction of indigenous cultures.
vi) **Reduced tax revenue** due to lower or zero tariffs in an FTA (at least in the short-term).

TRADE ARRANGEMENTS INVOLVING KENYA

Below is a summary of trade arrangements to which Kenya is party to

Multilateral:

I) Agreement Establishing the World Trade Organization (WTO),
II) African Continental Free Trade Area (AfCFTA),
III) East African Community (EAC) Protocols,
IV) Common Market for Eastern and Southern Africa (COMESA) Treaty,
V) COMESA-EAC-SADC Tripartite Free Trade Agreement
VI) Africa Growth Opportunity Act (AGOA),
VII) European Union - African, Caribbean, Pacific Group of States (EU-ACP) Cotonou Partnership Agreement
VIII) Generalized System of Preferences (provides preferential market access for Kenyan products in developed countries including Australia, Canada, Japan and New Zealand)

Bilateral:

Kenya has signed a total of **29** bilateral trade agreements.

Argentina	Bangladesh	Bulgaria	China	Comoros	Congo (DRC)	Djibouti	Egypt
Hungary	India	Iraq	Lesotho	Liberia	Netherlands	Nigeria	Pakistan
Poland	Romania	Russia	Rwanda	Somalia	South Korea	Eswatini (Swaziland)	Tanzania
Thailand	United Kingdom	Zambia	Zimbabwe				

Bilateral agreements under negotiation:

Belarus	Czech Republic	Ethiopia	Eritrea	Iran	Kazakhstan	Mauritius	Mozambique	South Africa	United States of America

PROCESS OF ENTERING INTO A TRADE AGREEMENT

The process of getting into a trade agreement at the national level is governed by the Constitution of Kenya 2010 under article 2(6) and the Treaty Making and Ratification Act no. 45 of 2012 which implements article 2(6) of the Constitution and provides the framework for making and ratifying treaties.

At the EAC level, Article 37 of the Protocol on the Establishment of the East African Customs Union sets out the procedure for which Partner States can enter into trade arrangements with countries and organizations outside of the Customs Union.

It is important to note that the AfCFTA does not prevent a State Party from concluding or maintaining a preferential trade arrangement with Third Parties provided that such agreements do not impede or frustrate the objectives of this Protocol, and that any advantage, concession or privilege granted to a Third Party under such arrangements is extended to other State Parties on a reciprocal basis.

FOR MORE INFORMATION, PLEASE CONTACT

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