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HOW TO NEGOTIATE AN INDUSTRIAL POLICY UNDER AFCFTA

Architecture, Coherence, and the Governance Challenge

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The African Union Summit of February 2026 instructed the African Continental Free Trade Area (AfCFTA) Council of Ministers to negotiate a Protocol on Industrial Policy and Development. This work, handled without adequate preparation, is likely to reproduce the weaknesses it is meant to remedy. This paper is a conceptual mapping exercise, written to raise the preparatory questions before drafting begins, rather than to prescribe outcomes.

It proceeds in five sections:

1. *It works towards a definition of industrial policy narrow enough to be drafted into treaty language and broad enough to capture the instruments that actually drive industrialization, anchoring that boundary work in the AfCFTA's own objectives.*

2. *It maps the landscape the Protocol will enter: the AU's continental instruments, the Regional Economic Community industrial policy frameworks that predate AfCFTA, and the provisions already inside AfCFTA that operate as industrial policy, whether or not they are labelled as such, from tariff schedules and exclusion lists, to product-specific rules of origin, infant-industry and general exceptions, special economic zones, services commitments in industrial-enabling sectors, and the unratified Phase II disciplines.*

3. *It sets out what is realistically negotiable: shared principles, a safe-harbor catalogue of permitted instruments, positive harmonization in targeted areas, and governance and coordination mechanisms, together with the negotiating dynamics that will determine which of these receives binding treatment.*

4. It diagnoses the coordination deficits the Protocol will confront, internal to AfCFTA and external to the wider AU system.

5. It identifies from that diagnosis four governance functions any institutional response must perform: coherence reading, sequencing, external interface, and adjudicative input.

The Protocol's success depends less on the ambition of its text than on the work that precedes drafting: a definition precise enough to bound the instrument's scope; a systematic mapping of the industrialization-relevant provisions already embedded in AfCFTA's architecture; and a candid reckoning with the institutional tensions that have already constrained the agreement's performance. Governance design is therefore not an implementation detail to be settled once the text is agreed. Rather, it is the foundation on which the other options become worth negotiating. The February 2026 mandate was issued against a backdrop of incomplete Phase II ratification and stalled liberalization commitments. These show what is at stake in getting the Protocol right.

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1. INTRODUCTION

In February 2026, African Union (AU) heads of state and government took a decision that was at once straightforward and momentous. Concerned by the global proliferation of protectionist policies and fragmenting effect of those policies on supply chains, the AU Assembly directed the African Continental Free Trade Area (AfCFTA) Council of Ministers to start negotiations on a Protocol on Industrial Policy and Development as an integral part of the AfCFTA legal framework[1].

That same decision sought to address AfCFTA implementation challenges. The Assembly recalled a previous decision urging member states to ratify by the end of 2026 the Phase II Protocols on Investment, Competition Policy, Intellectual Property Rights, Digital Trade, and Women and Youth in Trade[2]. It also expressed concern about the slow pace of tariff reductions, and ordered a comprehensive review of the current modalities, requiring the presentation of revised and enhanced modalities to the 40th Ordinary Session of the Assembly[3]. The decision to start work on a new Protocol was taken despite these serious limitations in advancing the full implementation of AfCFTA.

A Protocol designed without accounting for provisions within the AfCFTA instruments that directly shape industrial policy risks trying to hit a moving target. This paper discusses the risks, offers options to address them, and sheds some light on the stocktaking that is needed before drafting of the Protocol can begin.

African countries have historically argued for the maintenance of policy space to pursue their industrial development objectives (Gnangnon, 2026; Jensen, 2007). For instance, in the multilateral trade system, African countries played an instrumental role in advancing the non-agricultural market access formulae under the World Trade Organization (WTO). They have also been vocal in advancing special and differentiated treatment throughout the negotiation and implementation process (Ismail, 2008; Ismail and Vickers, 2011).

In addition, it is important to note that industrial policy for economic security—notably in an increasingly volatile and unpredictable international environment—is becoming an even more compelling justification than simply reacting to the protectionist policies of others (Collier, 2025; Odijie, 2019). The global shocks that have become normal in an environment of shifting economic and trade relations driven by geopolitics and geoeconomics push Africa to pursue legitimate policies to secure its economic lifelines.

The rationale for an industrial policy is therefore clear: Africa's industrial base, on which depends its ability to shield its economies from new exogenous shocks, remains shallow, narrowly concentrated (though with important exceptions), and disconnected from the continent's own trade flows (Chitonge and Lawrence, 2020). Intra-African trade, while more diversified and sophisticated in composition than Africa's trade with the rest of the world, involves a proportionally larger share of manufactured goods and remains stubbornly low in absolute terms, accounting for only about 16.2% of the continent's total trade[4]. Africa's exports to the rest of the world continue to rebound to pre-2015 levels, dominated by

1. Cf. Para. 7 of Decision on the Report of the First (1st) Meeting of the Assembly Committee of Heads of State and Government on the Implementation of the AfCFTA of 14-15 February 2026 (Assembly/AU/Dec.975(XXXIX)).

2. Cf. Para 5, idem.

3. Cf. Para 14, idem.

4. Intra-African exports. Authors' calculations, UNCTADstat, average 2023-2025. Accessed 18 August 2026.

unprocessed primary commodities (UNECA, 2026, p. 19). Intra-regional trade is increasing slowly but the progress is slow and uneven (AfDB et al, 2026). If AfCFTA has created strong prospects for distributing value-added products, much more is needed to connect this trade with the productive capacity required to fill it with Africa-made goods.

The policy imperative for an industrial policy is also well timed, in a context in which global shocks have become commonplace, trade and geopolitical alliances are shifting dramatically, and well-formulated industrial policies have become critical tools for economic security and resilience (Aiginger and Rodrik, 2020; Juhász et al, 2024).

With this background, the mandate to negotiate a Protocol is intuitive and politically compelling. If AfCFTA is to deliver on its goals of structural transformation, it must become an instrument that stimulates productive capacity alongside market access and cooperation. But the negotiation mandate's simplicity conceals a set of challenges:

1. Industrial policy has been, until recently[5], one of the most contested concepts in development economics and practice. This contestation has left structural marks and constraints in the multilateral trade system, vastly constraining policy space and leaving reduced room for maneuver (Abdenur et al, 2025).

2. Industrialization policy is country-specific, sector-sensitive, and resistant to multilateral harmonization (van der Ven, 2017). Trade agreements, even ambitious ones, have struggled to address it systematically. In this paper, we go so far as to suggest that AfCFTA's industrial policy may be one avenue for convergence toward specific goals that can potentially bridge the gap (Odijie, 2019).

3. AfCFTA's own track record of sophisticated instruments provides little evidence that good intentions will translate into effective instruments (Africa, 2025).

4. There is also a duplication hazard specific to the proposed Protocol. As the AU already maintains a large body of industrial instruments and at least one standing structure on industrial development, namely the Specialized Technical Committee (STC) on Trade, Industry and Minerals, a Protocol negotiated without mapping against existing structures risks creating parallel obligations and parallel institutions, rather than connective tissue[6].

This paper contributes to scoping these problems before negotiations begin in earnest. It is organized as a conceptual exercise. The first task is to understand what AfCFTA already contains, and to make an initial attempt to map the landscape of continental industrial policy instruments. The next task is to make an honest assessment of what the negotiation will actually require, not just in terms of its text, but in terms of institutional design and political will. The task of defending this instrument, in whatever form it takes, being articulated against existing international norms, will be for the member states—the coalition of the willing—to take on.

5. On the return of industrial policy to the center of mainstream economic debate, see Block et al (2024) and Juhász et al (2024).

6. In the context of the preparations for Phase II negotiations, a similar argument was made cautioning negotiators against fragmentation of the AU legal arsenal, and in favor of ensuring both internal and external AfCFTA coherence (UNECA et al, 2019, Chapter 2).

2. INDUSTRIAL POLICY AND TRADE POLICY: DEFINING THE TERMS

2.1. What is Industrial Policy and Why Does the Definition Matter?

Industrial policy is not new, nor is it the exclusive preserve of the Global South (Block et al, 2024; Juhász et al, 2024). What is new is that it has returned to the center of global mainstream policy debate after decades of being treated as a relic of import-substitution economics. As observed by Juhász et al (2024), the "knee-jerk opposition" of mainstream economists to industrial policy is increasingly outmoded (p. 214). New empirical work has produced a more nuanced and contextual understanding that yields a generally more positive assessment.

Yet, this commitment to industrialization has never been relegated to a backburner issue for African countries. On the contrary, the matter has remained centered in the policy discourse, but the space to push the agenda forward has been limited by the factors mentioned above (UNCTAD, 2013; UNECA, 2016a). Furthermore, the developmental regionalism strand of the literature has also supported the view (Adejumobi and Kreiter, 2020; Ismail, 2021), though it remains to be developed into a theorized and empirically researched agenda.

Three features may reinvigorate the African commitment to place the industrialization agenda at the center, and will surely shape the Protocol negotiation:

1. The major economies are now openly competing and reaffirming geoeconomic ambitions through industrial policy[7];
2. This competition increasingly operates through trade instruments, such as subsidies, local-content and sourcing conditions, rules of origin, and public procurement, rather than through tariffs alone (van der Ven, 2017);
3. The same definitional debate that this section sets out is being conducted, with real stakes, in those jurisdictions where what counts as legitimate industrial policy is precisely what the major powers are now contesting. There is no better time than the present to contest the existing definition and to write one that works for developing countries and, more specifically, for Africa (Ahumada and Chang, 2025).

What distinguishes industrial policy from generic economic policy is intentionality. Industrial policy is broad-based and involves deliberate structural targeting. A stable macroeconomic environment matters for industrialization, but it is not itself an industrial policy. Industrial policy involves the conscious allocation of resources, regulatory attention, and institutional support to specific sectors, technologies, or value-chain development.

Different countries have approached the design of these policies from different angles, intending to counter or get ahead of various considerations. For the United States, industrial policy has been about adopting a predatory stance. For China, it has been about expanding its dominance across manufacturing and technology, with a focus on self-sufficiency, in some cases across the entire value chain. For the European Union (EU), the

7. For instance, the CHIPS and Science Act in the United States, the EU's European Green Deal Industrial Plan, and China's Made in China 2025 strategy.

policy has been seemingly restrained, balancing between autonomy and openness under stringent conditions (Hauge et al, 2025). Consequently, in terms of the scope of what these policies can cover, one can comfortably claim that virtually anything could serve to support industrial ambitions. China's trajectory illustrates how wide this band can be. The 'Made in China 2025' policy, started in 2015, began as an upgrading-and-localization strategy aimed at substituting domestic for foreign technology in ten priority sectors. A decade on, it describes a strategy that has broadened into cross-sectoral dominance, extending from upstream inputs and industrial equipment to downstream applications and frontier technologies. It has reshaped global supply chains and deepened foreign dependence on Chinese production (Li, 2023).

However, this paper does not advocate emulating the Chinese, or any other, model. We highlight that 'industrial policy' spans everything from a narrow infant-industry tariffs to a strategic roadmap to reconfigure value chains. Any definition that does not specify where the new Protocol fits on that spectrum will not be drafting-ready. This clarification matters acutely for the negotiations on the Protocol. If defined too broadly, almost any government measure could qualify, and the Protocol's scope will become unmanageable. Defined too narrowly, the Protocol would miss the full range of instruments that actually drive industrialization.

The paper also aligns with the guidance of Chang et al (UNECA, 2016b) and avoids distinguishing between horizontal and vertical measures, instead leveraging the existing decade-long definitional evolution: purpose (UNECA & AUC, 2014), process, and institutions (UNECA & AUC, 2015); the trade interface (UNECA, 2016a); and finally an explicit concept (UNECA, 2017), whilst keeping the scope broader than just manufacturing.

This paper also attempts to anchor the definition in boundary work informed by AfCFTA's trade mandate. A working definition could thus be worded as *'measures that operate through or alongside trade mechanisms to produce deliberate structural effects on productive capacity'*. Following the objectives of the AfCFTA Agreement, industrial policy measures are thus understood as sensitive to the "sustainable and inclusive socio-economic development, gender equality and structural transformation of the State Parties"[8].

For the purposes of this paper, industrial policy is limited to AfCFTA-related government measures—regulatory, fiscal, financial, and institutional—that are designed deliberately to shift a State Party's productive structure toward higher-value activities, greater technological intensity, increased employment, and deeper integration into regional and global value chains. This encompasses, but is not limited to, measures related to trade in goods, trade in services, digital economy, investment, and intellectual property (Aiginger and Rodrik, 2020; Cimoli et al, 2010).

2.2. The Relationship Between Industrial Policy and Trade Policy

For much of the post-war era, trade liberalization and industrial policy were presented as opposing instruments. This framing, associated with the Washington Consensus era, is now broadly regarded as a mischaracterization of how effective industrial policies actually are (Aiginger and Rodrik, 2020; Juhász et al, 2024). Recent publications suggest that the World Bank and International Monetary Fund have begun to align with a broader perspective, acknowledging that markets alone are insufficient to foster meaningful structural

8. Art. 3(e) of the AfCFTA Agreement.

transformation.[9] Government intervention is necessary and industrial policies are critical tools. The debate now is on what this intervention should look like.

A more accurate framing recognizes industrial policy and trade policy as complements, provided their relationship is managed appropriately. Trade policy shapes the incentive environment for industrial investment. Industrial policy determines whether market access created by trade agreements translates into productive activity, or merely into import penetration.

This is visible in current trade tensions, which are increasingly disputes about industrial policy, rather than about tariffs as such. The EU's Critical Raw Materials Act, for example, sets binding 2030 targets for domestic extraction, processing, and recycling, and caps reliance on any single third country for a strategic raw material at 65%—an explicit sourcing rule directed at supply-chain concentration, China's in particular[10]. Similarly, the EU Net-Zero Industry Act seeks to enhance European manufacturing capacity for net-zero technologies and their key components, and sets a goal for net-zero manufacturing capacity to meet at least 40% of the EU's annual deployment needs by 2030[11].

U.S. measures on semiconductors and clean-energy inputs operate to similar effect. The lesson for the AfCFTA Protocol is that the line between trade policy and industrial policy is eroding in practice in exactly those jurisdictions whose rules African exporters must navigate. An instrument that treats trade and industrial policy as separate will be drafting against the grain of where global rulemaking is heading.

AfCFTA rests on this complementary logic. Its founding provisions reference structural transformation, value-added exports, and reduced commodity dependence, which are industrial-policy objectives. The problem is that this logic is asserted in the preamble and Article 3 of AfCFTA without being operationalized in the agreement's provisions. The Protocol, at least in principle, will be the instrument to close that gap.

2.3. The Developmental Context

The relationship between industrial policy and trade policy looks different depending on where a country sits in the development process. For late industrialisers—meaning most African economies—trade policy is an instrument of industrial catching-up: a means of creating protected space and preferential access while domestic industries develop. World Trade Organization rules recognize this, as do AfCFTA's own provisions and the AU's broader normative framework[12].

The Protocol must be designed with this developmental reality as its primary reference

9. See, for instance, Baquie et al. (2025); Fernandes & Reed (2026)

10. Regulation (EU) 2024/1252 (Critical Raw Materials Act), in force May 2024, sets 2030 benchmarks (10% extraction, 40% processing, 25% recycling of annual consumption), and a 65% single-third-country sourcing ceiling for strategic raw materials; see European Commission. The December 2025 RESourceEU action plan proposed further amendments amid the "heightened geopolitisation" of these materials (Council of the EU).

11. Regulation (EU) 2024/1735 of the European Parliament and of the Council of 13 June 2024 on establishing a framework of measures for strengthening Europe's net-zero technology manufacturing ecosystem and amending Regulation (EU) 2018/1724; referred to as Net-Zero Industry Act.

12. The developmental-asymmetry logic is expressly embedded in the AfCFTA Agreement, which lists special and differential treatment and flexibility for least-developed economies among its general principles (cf. Art. 5 of the AfCFTA Agreement). It mirrors the WTO's own special and differential treatment provisions for developing and least-developed members (Sommer and MacLeod, 2019). See also UNECA (2016a) on the case for sequencing productive-capacity building alongside liberalization.

frame. That does not mean the internal consistency of WTO disciplines or AfCFTA are irrelevant. It means the developmental logic comes first, and trade disciplines are constraints to be navigated, not insurmountable barriers. This same logic is embedded in AfCFTA's own founding instruments.

3. INDUSTRIAL POLICY IN AFRICA: THE CURRENT LANDSCAPE

Before designing a new Protocol, a prior situational analysis is necessary. Africa is not starting from a blank slate, from either a research or a formulated-policy perspective (Chitonge and Lawrence, 2020). Consequently, and as has been the practice for every new Protocol, a stocktaking of the existing landscape helps inform, and reduces the risk of creating the very coherence deficit it is meant to address.

3.1. AU-level Instruments

Africa's continental industrial policy architecture is substantial on paper and uneven in operation. The main instruments are as follows:

Agenda 2063 and its Implementation Plans

Adopted by the AU in 2013, Agenda 2063 positions AfCFTA as the continent's flagship trade instrument for driving structural transformation. The forthcoming Industrial Policy Protocol must therefore be read as, and must explicitly read as, an implementing instrument of Agenda 2063's structural transformation agenda.

The AU Accelerated Industrial Development of Africa (AIDA)

Adopted in 2008, AIDA is the AU's dedicated continental industrial policy framework. Its six priority clusters (product and export diversification; natural resources management; infrastructure; human capital, innovation, science, and technology; standards and compliance; legal, institutional, and regulatory frameworks) are the most systematically developed statement of continental industrial policy priorities available. AfCFTA was developed largely in parallel with AIDA, rather than as its trade-implementing vehicle. The two coexist without a robust coordination mechanism.

The only thing in place is the country-level impact assessment on the implementation of the respective instrument provisions (AUC et al, 2024). That exercise does come with a coordination mechanism. A tripartite structure brings together AUDA-NEPAD (African Union Development Agency-New Partnership for Africa's Development), the AUC and the AfCFTA Secretariat, with delivery at country level running through the AfCFTA National Implementation Committee focal person. Operationalisation proceeds in two phases, beginning with a voluntary pilot and moving to continental scale-up. The African Trade Observatory serves as the central data repository, and the three agencies provide capacity building and technical support. This is, however, a mechanism for monitoring how member states implement each instrument. It does not monitor whether the AfCFTA's evolution remains consistent with AIDA's industrial priorities.

Sectoral Instruments

Beyond AIDA and Agenda 2063, a range of sectoral instruments carry industrial policy expectations that the Protocol must take into account. These include, among others: the Africa Mining Vision (2009) on resource-based industrialization; the Pharmaceutical Manufacturing Plan for Africa (PMPA) on industrial capacity in medicines; the AU Blue Economy Strategy; the Continental Automotive Strategy; the Single African Air Transport Market (SAATM), which is directly trade-affecting and raises subsidiarity questions; and the Science, Technology, and Innovation Strategy for Africa (STISA-2024), relevant to technology transfer and industrial upgrading. None has a formal interface with the AfCFTA architecture[13].

These instruments are furthermore cross-referenced and recognized as enablers in multiple AfCFTA-relevant AU Summit decisions, including:

- January 2012 Decision on Boosting Intra-African Trade and Fast-Tracking the Continental Free Trade Area (CFTA) (Assembly/AU/Dec.394(XVIII)), which endorsed both the CFTA Framework/Roadmap and the Action Plan for Boosting Intra-African Trade (BIAT). Para. 5 specifically requires development of a Rules of Origin framework by December 2012;
- July 12 Decision on Boosting Intra-African Trade and Fast-Tracking the CFTA (Assembly/AU/Dec.426(XIX)) is more explicit on industrialization than the January Decision. Paras 5 and 7 call specifically for "productive capacity building" and "value-added products", and explicitly reference Programme for infrastructure development in Africa)PIDA, AIDA (Action Plan for the Accelerated Industrial Development of Africa, and Comprehensive African Agriculture Development Programme) (CAADP) as complementary frameworks; and,
- February 2022 Decision on AfCFTA (Assembly/AU/Dec. 831(XXXV)) provides three anchors: the AfCFTA Automotive Fund for the development of the automotive sector, to support industrialization in Africa; the AfCFTA Trade and Industrial Development Advisory Council tasked with advisory functions on the industrial policy within the AfCFTA framework; and the finalization of the special economic zones (SEZs) and infant industries.

3.2. REC-level Industrial Policy Frameworks

AfCFTA is built on the trade regimes of Africa's Regional Economic Communities (RECs)[14]. Several RECs have industrial policy frameworks that predate AfCFTA and, in some cases, are more operationally developed than anything the continental level has produced. The most developed are the Economic Community of West African States's (ECOWAS) West Africa Common Industrial Policy (2010–2030), the East African Community (EAC) Industrialization Policy and Strategy (2012–2032), the Southern African Development Community (SADC) Industrialization Strategy and Roadmap (2015–2063), and the Common Market for Eastern and Southern Africa (COMESA) Industrial Policy Framework.

However, a high-level reading of the REC track records is sobering and relevant to expectations for the Protocol. Continental diagnostics find that intra-regional production networks remain underdeveloped, and that manufacturing's share of intra-REC trade is

13. A full provisional inventory is provided in Annex A.

14. Cf. Art. 5(b) of the AfCFTA Agreement.

still low. Across the major communities, exports remain dominated by raw and primary products, while intermediate-goods trade is weak, and export-diversification scores cluster around or below the African average[15].

The structural causes are well documented. They include overlapping and multiple memberships that generate competing obligations, incomplete customs union and common market implementation, financing and capacity constraints, and the absence of mechanisms linking trade policy to industrial policy (AfDB et al, 2012, 2013; UNECA et al, 2019; UNECA and AUC, 2006). The implication is not that an AfCFTA Protocol should therefore treat the REC frameworks as a source of convergence to build on. Rather it is that replicating their drafting ambition without addressing their implementation deficits would reproduce their results.

AfCFTA's conflict-of-laws provision[16] addresses cases of incompatibility between continental and regional trade disciplines. It is reasonable to assume that conflicts between AfCFTA and REC industrial policy frameworks would be managed through the same mechanism. However, this assumption needs to be tested against what REC industrial policies actually contain.

3.3. What Already Functions as Industrial Policy Instruments Within AfCFTA?

AfCFTA already contains substantial trade-related provisions that have first-order consequences for industrial development, not because they were designed as industrial-policy instruments, but because their design choices directly shape the incentive environment for industrial investment. The new Protocol cannot be drafted sensibly without first mapping these provisions as a system. The major categories are as follows.

Trade in Goods

Tariff Liberalization Schedules and Sensitive Products

AfCFTA's modalities require 90% of tariff lines to be liberalized (five years for non-LDCs (least-developed countries), ten for LDCs), with up to 7% designated as sensitive, and up to 3% eligible for exclusion[17].

The choice of what appears on sensitive and exclusion lists is, in every case, an industrial policy decision. Yet, in a context in which most African countries have very similar productive structures, the maintenance of protection while competing in the same market segments is likely to greatly diminish the gains expected from liberalization, leading to the development of "sectors whose products cannot be exported to regional markets due to exclusion lists" (Odijie, 2019, p. 188). However, those lists have never been read at the continental level as an aggregate industrial geography, and the current state of play suggests that the sluggish pace of negotiation and implementation is why the Assembly sought to do away with them

15. See, e.g. diagnostics on regional integration and diversification report that intermediate-goods trade remains weak and regional production networks underdeveloped across RECs (AfDB et al, 2026).

16. Article 19 of the AfCFTA Agreement.

17. Cf. para. 4 of the Decision of the AfCFTA of the 32nd Ordinary Session of the Assembly (Assembly/AU/Dec.714(XXXII)).

altogether[18]. This gap is particularly consequential given the Assembly's current directive to review and revise the tariff modalities. Of the various consequences that this revision process can have, one can be the reconsideration of the exclusion list, in line with the continental ambition to industrialize.

Rules of Origin (RoO)

The Product-Specific Rules (PSRs) in Annex 2 of the Protocol on Trade in Goods are AfCFTA's single most granular industrial policy lever.

The PSRs were negotiated primarily as trade instruments, despite being explicitly elevated as an objective[19]. Critically, AfCFTA rules of origin are approaching revision; this renegotiation presents an opportunity to explicitly align the PSRs with the industrial-policy objectives that the Protocol will articulate[20]. The connection between the Protocol process and the RoO revision process should be deliberately built into the negotiation design.

Infant-industry Provisions and Exceptions

The Protocol on Trade in Goods provides a procedural framework for invoking infant-industry protections and GATT (General Agreement on Tariffs Trade) Articles XX and XXI-style general and security exceptions. These provisions exist but are underspecified, and the criteria for invoking them are not fully worked out. Their limited use to date reflects the broader lag in AfCFTA implementation, rather than a settled judgment that members do not need them. The Industrial Policy Protocol has an opportunity to do two things. The first will be to re-examine whether this exception is even necessary for a continent committed to industrializing through regional value chains. If the exemption is considered necessary, the second step will be to establish substantive, sufficiently-clear criteria for invocation, to give member states confidence to invoke these provisions without fear of challenge.

Special Economic Zones

SEZs are referenced in the Protocol on Trade in Goods and the RoO Annex. They are potent industrial policy instruments on the continent (Azuelos et al, 2025), and their treatment under AfCFTA preferences represents a practical entry point with immediate commercial consequences. A dedicated SEZ discipline, taking into account the relevant primary[21] and secondary[22] legal instruments, is among the Protocol's most concrete contributions.

Trade in Services

Services Liberalization and Priority Sectors

The AfCFTA Protocol on Trade in Services identifies five priority sectors: transport, communications, finance, tourism, and business services[23]. Four of the five are industrial enablers: the availability, cost, and quality of financial services, transport infrastructure,

18. Though the list of excluded goods should be phased out as per para 15 of Decision on the Report of the First (1st) Meeting of the Assembly Committee of Heads of State and Government on the Implementation of the AfCFTA of 14-15 February 2026 (Assembly/AU/Dec.975(XXXIX)).

19. Cf. Art. 3(d) of Annex 2 to the Protocol on trade in goods.

20. Cf. Report of the 18th AfCFTA Council of Ministers, July 2026.

21. Protocol on Trade in Goods and appended instruments.

22. Ministerial Regulations 1/2023on the Treatment of Products from the Special Economic Arrangements or Zones of State Parties to the Agreement Establishing the African Continental Free Trade Area.

23. Cf. para. 3 of the Decision of the AfCFTA of the 31st Ordinary Session of the Assembly (Assembly/AU/Dec.692(XXXI)).

and communications determine directly whether industrial investment is viable. Services commitments in these sectors are therefore industrial policy decisions, and need to be taken into account as the Protocol is negotiated.

Given the industrialization-oriented services sector, due consideration might also be given to fast-tracking the liberalization of complementary sectors, including energy, construction, distribution, and environmental services.

Mutual Recognition of Professional Qualifications

The AfCFTA Protocol on Trade in Services recognizes the importance of upholding high standards pertaining to education or experience obtained, requirements met, or licenses or certifications granted by another State Party. Such recognition may be achieved through harmonization, mutual recognition, or otherwise, subject to bilateral or regional negotiations[24].

Phase II Disciplines: Investment, Competition, and Intellectual Property

The Investment Protocol is framed around sustainable and inclusive development. It recognizes host-state rights to regulate investment for development, thereby offering leeway for industrialization purposes[25]. The Competition Protocol's provisions will determine the legal space available for industrial subsidies, mergers, and other market dominance-related risks. The Intellectual Property Protocol's flexibility provisions affect technology access and industrial property rights for industrial development. None of these Protocols has entered into force. The Industrial Policy Protocol's design must track and be consistent with all three.

This raises a sequencing question the negotiation should not leave implicit: whether members are expected to implement the relevant Phase II Protocols before, or in parallel with, the Industrial Policy Protocol. Because the industrial-policy space created by the Protocol will depend on the investment, competition, and intellectual-property disciplines, a State Party that has not ratified the prior instruments may be unable to use parts of the Industrial Policy Protocol, even after acceding to it. The negotiation should decide whether the Industrial Policy Protocol presupposes Phase II implementation, accommodates phased entry, or stands independently. This should be specified in the text, rather than left to later interpretation. This connects directly to the leapfrogging question, discussed below.

24. Negotiations under the ambit of the AfCFTA Secretariat are still at an early stage, with no significant progress made so far. Cf. Report of the 16th AfCFTA Council of Ministers, October 2025.

25. See Art. 8 of the AfCFTA Investment Protocol.

4. WHAT DOES IT MEAN TO NEGOTIATE INDUSTRIAL POLICY UNDER A TRADE AGREEMENT?

4.1. The Fundamental Challenge: Industrial Policy is Not Like Tariffs

Negotiators involved in the AfCFTA possess extensive experience of managing tariff schedules and service commitments. These negotiations follow a structured framework: parties present their offers and requests, exchange concessions, and establish schedules that are precise, bilaterally symmetric, and enforceable. The end result is a tariff schedule is both measurable and legally unequivocal.

Industrial policy does not work this way. It is country-specific, sector-specific, and sensitive to institutional capacity and stage of development. A local-content requirement that makes sense for South Africa's automotive sector may be entirely unsuitable for Niger's agri-processing sector. An infant-industry protection that is time-limited and performance-conditioned in one country may become a permanent shelter for unproductive firms in another.

However, this heterogeneity is not a problem to be resolved by finding the right formula. It is a structural feature of industrial policy that the Protocol's design must accommodate. It is needless to state that the negotiation cannot produce a single industrial policy for Africa. It can produce a shared framework, principles, permitted instruments, procedural disciplines, and coordination mechanisms, within which member states pursue their own industrial-policy objectives coherently, and without undermining each other.

4.2. What is Actually Being Negotiated: A Menu of Options

The realistic objects of negotiation fall into several categories that are not mutually exclusive. The negotiation will likely involve some combination of them. The question is which will receive binding treatment. In practice, the substantive core is likely to be built from four possible options: a shared list of principles, a catalogue of permissible tools, a positive list of harmonization priorities, and a clarified governance structure.

Option A: Shared Principles

A Protocol that establishes shared principles to guide member states' industrial policies would help interpret other provisions of AfCFTA, though it would not inherently create specific obligations. This approach is viable across a diverse membership, but risks merely replicating the aspirational-text issue prevalent in existing African instruments.

There is a precedent to map here; the AU's established instruments already outline shared principles for industrial policy, with AIDA's six priority clusters and Agenda 2063's objectives for structural transformation being particularly significant. Additionally, REC frameworks offer converging statements of principle on value addition, local content, and regional value chains. Therefore, drafting under this option would be primarily a task of consolidation. The principles already embraced by continental and regional instruments could be synthesized into a single authoritative statement, rather than negotiating new principles from the ground up.

Option B: Permitted Instruments Catalogue

With this option, the Protocol would explicitly outline the industrial-policy instruments that State Parties can deploy without facing challenges under AfCFTA, providing a 'safe harbor' list. This includes specific types of subsidies, local-content requirements that adhere to defined criteria, preferences in public procurement, and limited-time protections for infant industries. Acknowledging other international commitments, State Parties would agree not to contest these instruments through forum shopping. This provision would aim to alleviate the uncertainty that often deters governments from employing measures they fear may be challenged, while also necessitating adequate legal precision to ensure effectiveness.

The safe-harbor catalogue must be constructed with reference to the existing international commitments of AfCFTA State Parties. The WTO Agreement on Subsidies and Countervailing Measures restricts certain subsidy types and related local-content requirements; the Agreement on Trade-Related Investment Measures disciplines investment measures, including local-content requirements; and commitments under bilateral investment treaties and external trade agreements may impose additional constraints. A list that claims to protect instruments that are, in fact, prohibited by these commitments, would leave users vulnerable to challenges in alternative forums. Therefore, the catalogue should be drafted with an awareness of the relevant WTO disciplines and the Phase II Investment and Competition Protocols, clearly identifying the policy space available.

Option C: Positive Harmonization of Specific Areas

The Protocol would facilitate harmonization in targeted areas of industrial policy by establishing a common framework for SEZs, including consistent origin treatment, aligned criteria for infant industries, and shared industrial standards. This approach is essential to develop regional production networks, yet it represents one of the most challenging aspects to negotiate and implement. The EU's experience provides valuable insights into what is realistically achievable in the short term. Importantly, harmonization requires specific value chains to be identified for integration[26]. Therefore, the Protocol should strategically sequence its harmonization initiatives based on these established priorities, rather than try to address all sectors simultaneously.

Option D: Governance and Coordination Mechanisms

A fourth option emphasizes the need for institutional infrastructure, rather than focusing solely on substantive content: establishing a dedicated industrial policy committee with a cross-Protocol mandate, creating a mechanism to translate AU-level industrial instruments into AfCFTA-relevant obligations, and implementing a monitoring function to track member states' industrial-policy measures. As the AU Commission itself has identified, Africa's state of industrialization results from weak policy processes and institutions, rather than policy

26. Priority value chains have already been identified at African level. The International Trade Centre, in collaboration with the AU Commission and the European Commission, identified 94 high-potential value chains for intra-African trade, with pharmaceuticals, baby food, cotton, clothing, and automotive flagged as especially promising (ITC, 2022). The AfDB's 2026 'Made in Africa, Marketed in Africa' agenda reinforces this value-chain framing.

content (UNECA, 2016a). In this light, governance design may be a key component in ensuring systematic monitoring, evaluation, accountability, and learning from regional and continental efforts. Consequently, this option serves as a prerequisite for the others, not an alternative.

The mechanism would necessitate the resource gap to be addressed directly by instituting financing mechanisms, technical-assistance frameworks, and capacity-building obligations. For many smaller and lower-capacity member states, it is the lack of financing and technical support, not the absence of well-designed policies, that is the critical constraint on industrial-policy implementation.

4.3. Negotiation Dynamics: Predictable Risks

In contrast to the relatively straightforward and quantifiable nature of tariff negotiations, industrial policy is complex and varied, differing significantly across countries and sectors depending on their developmental stages, institutional capacities, and economic contexts. One major challenge in incorporating industrial-policy considerations into the AfCFTA framework is the need for a coherent and flexible approach. Member states must be able to pursue their national industrial objectives while also cultivating a collaborative and supportive regional environment, echoing the long-standing discussions surrounding special and differentiated treatment. By establishing a shared framework that accommodates the diverse industrial aspirations of its member states, an AfCFTA Industrial Policy Protocol can effectively further the overarching goals of sustainable and inclusive economic development across Africa.

The Lead-economy Dynamic

The AfCFTA negotiations have been significantly influenced by the positions of the larger African economies. In the context of industrial-policy negotiations, this dynamic is likely to intensify further. Larger economies will aim to safeguard their existing policy spaces, while smaller economies, which arguably need greater industrial-policy flexibility to develop effectively, may struggle to articulate and defend their interests. This pattern is familiar in African regional integration; the Protocol's governance design must intentionally counteract it.

Moreover, there is a pressing need for better metrics to define what constitutes a leading economy. At the margin, there is very little to differentiate many African countries across various aspects of their economies. Yet, the arguments about these differences often constrain boldness in policy and implementation. Before this argument can be allowed to influence the design of the Industrial Policy Protocol, agreement must first be found on the metrics that will be used to delineate leading economies from those that are lagging.

In these discussions, the most sophisticated economies have advocated for origin thresholds that align with their current production capabilities. Conversely, less-diversified members, who stand to benefit significantly from rules that promote new capacity, are often the least equipped to express and defend their positions. To prevent this asymmetry from recurring in industrial-policy negotiations, it is essential to deliberately design the process to address these disparities. This could include provision of dedicated technical support to lower-capacity members, and implementation of decision-making rules that prevent outcomes from simply reflecting existing industrial strengths.

The AUC Versus AfCFTA Secretariat Dynamic

The AfCFTA Secretariat will oversee the negotiation under the direction of the Council of Ministers. But industrial policy remains a domain in which the AU Commission has long-standing competence. In this light, there is a risk the two centers will lack a well-functioning coordination mechanism. While the AUC, through its Department for Economic Development, Trade, Tourism, Industry and Minerals "is responsible for the overall coordination, development and implementation of industrial policy in areas" (AUC, 2023, p. 109), the AfCFTA Secretariat's responsibilities are yet to be defined by the Council of Ministers[27]. For the Industrial Policy Protocol, which requires precisely the kind of cross-cutting coordination that this structure does not support, this gap is a central governance risk.

Tensions With the RECs

The interface between the RECs and the AfCFTA presents a significant challenge. RECs often have overlapping memberships (AfDB et al, 2012; UNECA and AUC, 2006), apply different rules of origin (Gérout, 2021; Gérout and Addo-Obiri, 2019; WCO, 2024, 2025), and work to varying liberalization schedules (Desta and Gérout, 2018). Additionally, the member-driven process has at times generated tensions, including in customs unions, when constitutive members held divergent views that were reflected in the negotiation dynamics (Luladay Berhanu Mengistie, 2021).

A continental Industrial Policy Protocol will inherently influence the actions of RECs on industrial policy. The principle of subsidiarity is the framework for addressing this tension, but it is not clearly defined within the AfCFTA context[28]. The Protocol negotiations will clarify these issues, either explicitly or implicitly, and the decisions made will thus have significant political implications.

Speed Versus Quality

There will be pressure to conclude the Protocol quickly. While this pressure has always existed, rushing the process risks harming coordination and causing legal uncertainty. A hastily concluded Protocol without proper mapping and governance would be more detrimental than no Protocol at all.

Two key questions need to be addressed early.

1. Can a member accede to the Industrial Policy Protocol without ratifying the entire AfCFTA framework? This is crucial because the Protocol's policy space relies on Phase II instruments—Investment, Competition, and Intellectual Property—that many members have not yet ratified. Practice in the other Phase II protocol suggests that state parties can indeed start work towards implementing Phase II protocols without implementing in some cases ratifying phase I.

2. The current design offers little incentive for early membership, as there's no additional cost for joining later. If the Protocol aims to reward members who engage in preparatory work, negotiations should consider differentiated entry terms that align with AfCFTA's open-membership principle.

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27. Art. 13(4) of the AfCFTA Agreement provides for the Council to determine the roles and responsibilities. Though the issue was regularly included in AfCFTA ministerial and AU Summit meetings from 2020, most decisions have concerned budgetary issues. To date, no evidence of the decision per Art. 13(4) could be found.

28. The subsidiarity principle is a useful conceptual tool for managing this tension, but subsidiarity in the AfCFTA context is underspecified. Some doctrinal work has started emerging (Amao, 2018; Amao et al, 2021).

4.4. Coordination Problems the Governance Design Must Address

In navigating the complexities of AfCFTA, several internal coordination challenges have emerged that hinder effective implementation and alignment with broader industrial-development goals. Areas of concern include tariff-schedule analysis, product-specific rule formulation, cross-protocol interactions, and the disconnect between service sectors and industrial priorities. Additionally, the external coordination challenges between AfCFTA and the African Union's broader industrial strategies emphasize the need for cohesive monitoring and integration mechanisms, to ensure that trade policies holistically support Africa's industrial ambitions. Addressing these challenges is essential to realize the transformative potential of AfCFTA in fostering sustainable economic growth and development across the continent.

Internal Coordination Problems Within AfCFTA

Aggregate-schedule reading. No organ currently reads the AfCFTA's tariff schedules and sensitive and exclusion lists at continental level as an aggregate industrial geography. Their combined effect on continental industrial production is unknown.

Product-specific rules-to-industrial-strategy cross-reading. The Sub-Committee on Rules of Origin, a technical trade body, develops product-specific rules without systematic input from industrial strategy. AfCFTA's most granular industrial policy lever is thus being operated with an industrial-development narrative, but without any policy guidance.

Cross-Protocol coordination. The Phase II Protocols each contain industrial-policy provisions, but each has its own committee with no cross-cutting coordination. The combined effects of their provisions on what member states can do is not assessed as a system.

Services-industrial cross-reading. Services schedules and industrial priorities are developed in entirely separate forums. The industrial enabling services—transport, finance, communications—are being liberalized without systematic reference to industrial-development needs. Additionally, some sectors may act as enablers beyond the five priority sectors (in addition to transport, finance, and communications, tourism and business services are enabling sectors).

Implementation sequencing. Trade facilitation, non-tariff barrier elimination, and standards harmonization are not sequenced according to their importance regarding coherent industrial policy.. Implementation proceeds by negotiating convenience, rather than industrial-development logic.

External Coordination Problems Between AfCFTA and the Broader AU System

AIDA alignment monitoring. No designated body monitors whether AfCFTA evolution remains consistent with AIDA's industrial priorities.

Sectoral instrument interface. No standing mechanism translates sectoral AU instruments into Industrial Protocol-relevant substance. The Africa Mining Vision, the Blue Economy Strategy, the PMPA, and the Continental Automotive Strategy each create industrial-policy expectations that AfCFTA provisions can support, constrain, or undercut without a translation mechanism; this relationship is managed ad hoc.

Institutional management. AfCFTA's interface with other implementing institutions, such as the African Organisation for Standardisation and the Pan-African Quality Infrastructure for technical requirements, the African Regional Intellectual Property Organization and African Intellectual Property Organization for intellectual property, is formalized loosely through contextual references in the relevant instruments, such as the annexes to the Protocol on Trade in Goods, or the Protocol on Intellectual Property Rights. This situation creates ambiguity when neither full implementation nor formal deferral is in place. The gap is notable in the high-level principles of the Constitutive Act and the Abuja Treaty, which remain aspirational anchors with no substantive linkages beyond selective references[29].

4.5. Four Governance Functions the Protocol Must Deliver

To respond to the coordination problems detailed above, four governance functions are essential. These are functional requirements, not proposals for which body should do it.

Coherence Reading

A function producing cross-Protocol and cross-instrument synthesis of industrial-policy effects across AfCFTA's existing provisions, reading the tariff schedules, product-specific rules, services commitments, and Phase II disciplines together as a system, producing an ongoing assessment of their combined industrial-policy impact.

Sequencing

A function prioritizing implementation of AfCFTA disciplines by industrial-policy criticality, ensuring that the measures most critical for industrial investment are prioritized in implementation timelines.

External Interface

A function managing AfCFTA's relationship with the AU instruments above it, the REC frameworks alongside it, and third-party free-trade agreement negotiations around it. This is the most complex function, and will almost certainly require a network or hub-and-spoke design, rather than a single body.

Adjudicative Input

A function providing interpretive guidance to the AfCFTA's dispute settlement system on industrial policy-relevant cases, ensuring that panels interpreting the general exceptions, infant-industry provisions, state-aid disciplines, and performance requirements in the Investment Protocol do so in light of the AU's industrial policy framework, not by default through WTO jurisprudence.

29. Cf. AfCFTA Preamble and para. 16 of of Decision on the Report of the First (1st) Meeting of the Assembly Committee of Heads of State and Government on the Implementation of the AfCFTA of 14-15 February 2026 (Assembly/AU/Dec.975(XXXIX)).

5. CONCLUSION: WHAT THE NEGOTIATION CANNOT AVOID

The February 2026 mandate to negotiate a Protocol on Industrial Policy and Development is the right response to a real set of problems. Africa's industrialization gap is real. AfCFTA's failure to systematically operationalize its developmental commitments is real, as is the incoherence between AfCFTA and the AU's broader industrial policy framework. A Protocol that addresses these problems effectively would be among the most consequential developments in African economic governance, **especially if what is designed has actual bite.**

The geopolitical case is also real. The mandate was issued against a backdrop of concern about global protectionism and supply-chain fragmentation. In a world in which the major economies compete through industrial policy, and increasingly through trade-borne industrial measures, the absence of a common African position is itself a strategic exposure. A Protocol that establishes shared principles is, on this reading, not only a developmental instrument but a precondition for Africa to negotiate the coming wave of industrial-policy-driven trade arrangements from a unified position, rather than one member state at a time.

The history of African regional integration—including the history of AfCFTA—is also full of instruments that sought to address real problems through aspirational texts that sat alongside, rather than connected and operationalized, existing commitments. The risk that the Protocol on Industrial Policy repeats this pattern is not a worst-case scenario. It is the default outcome if the negotiation proceeds without the preparatory work we have mapped in this paper.

Essential elements include a working definition of industrial policy precise enough to be drafted into treaty language; a systematic mapping of the trade-industrialization provisions already embedded in AfCFTA, to be completed before drafting begins; a candid reckoning with the institutional tensions (AUC versus Secretariat, and AfCFTA versus RECs) that will shape the negotiation's outcome; an explicit decision about the Protocol's legal nature; and a governance design sufficient to meet the coordination challenge—not as an implementation detail to be resolved after the text is agreed, but as a first-order agenda item in the first substantive negotiating round.

None of these is purely technical. Each involves political choices about institutional authority, policy space, and the balance between continental ambition and national sovereignty. Negotiations that start with those choices clearly framed will produce a better instrument than those that deal with these issues ad hoc in the drafting room or, worse, leave them to be resolved via dispute settlement.

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Annex A: Continental and AU-Level Industrial Policy Instruments — Provisional Inventory

Note: This inventory is provisional. Adoption dates, titles, and operational status require verification against canonical AU documentation before relying on this annex in any official capacity.

Instrument	Layer	Year	Status	Relationship to Protocol
Agenda 2063 / First Ten-Year Implementation Plan	Strategic	2013 / 2014	Active	The AfCFTA is Agenda 2063's flagship project; Protocol should implement structural transformation objectives explicitly, not merely reference them
AIDA (Action Plan for Accelerated Industrial Development of Africa)	Programmatic-horizontal	2008	Active (operationally uneven)	Central subsidiarity tension; Protocol must take explicit position: implement AIDA, coexist, or broaden preservation-of-acquis reading
Boosting Intra-African Trade (BIAT) Action Plan	Programmatic-horizontal	2012	Active	Seven-cluster framework; Protocol implements the productive-capacity cluster
Africa Mining Vision	Programmatic-sectoral	2009	Active	Sets resource-based industrialisation expectations; constrains extractive-sector RoO and investment provisions
Pharmaceutical Manufacturing Plan for Africa (PMPA)	Programmatic-sectoral	2007 (revised)	Active	Shapes IP flexibility expectations and industrial subsidy treatment for pharma sector
AU Blue Economy Strategy	Programmatic-sectoral	2019	Active	Relevant to fisheries RoO, maritime industry provisions, coastal processing
African Continental Automotive Strategy	Programmatic-sectoral	2023	Active / Contested	Sets expectations for automotive value-chain provisions; analogous to USMCA RoO dynamics
Single African Air Transport Market (SAATM)	Programmatic-sectoral	2018	Contested (partial implementation)	Trade-affecting; raises subsidiarity question on aviation services within AfCFTA services commitments
Science, Technology and Innovation Strategy for Africa (STISA-2024)	Programmatic-horizontal	2014	Active	Relevant to technology transfer and IP flexibility provisions in industrial upgrading
African Continental Investment Framework	Programmatic-horizontal	2021	Contested / Emerging	Parallel governance risk with Investment Protocol; subsidiarity to be adjudicated

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