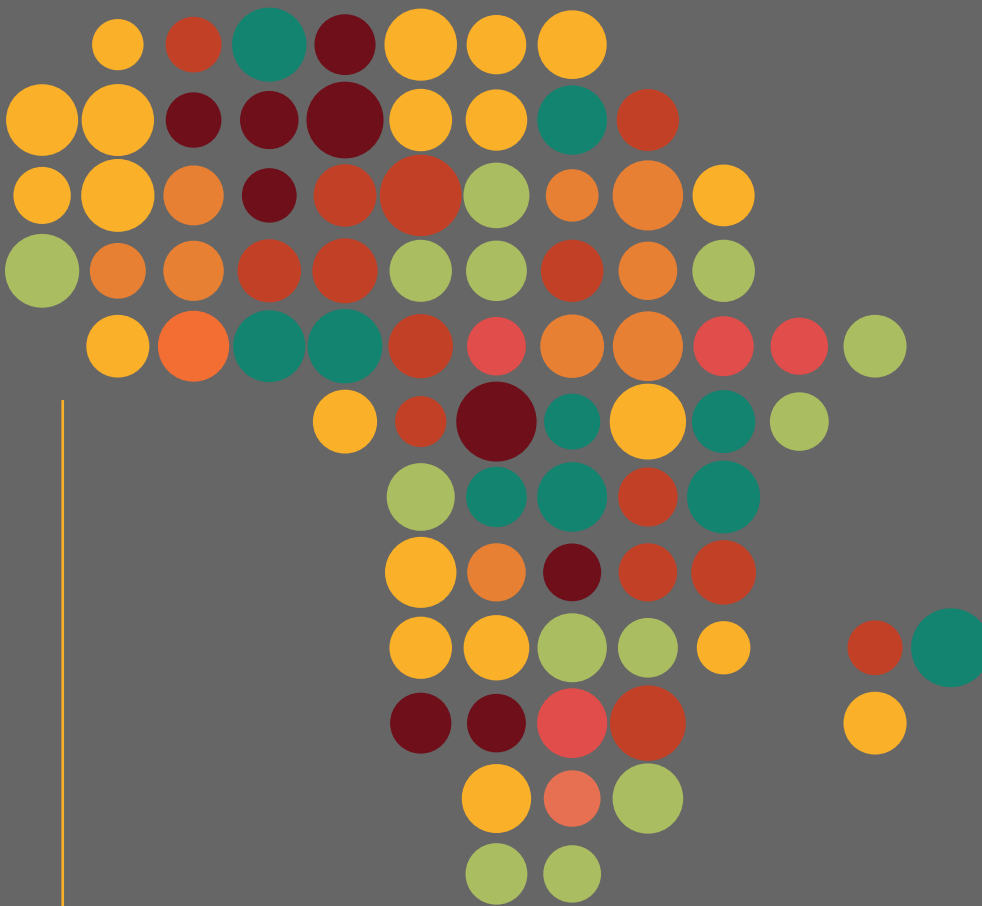




Ministry for Foreign
Affairs of Finland

TRADE UNIONS AND TRADE

A Guide to the African Continental
Free Trade Agreement (AfCFTA)



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LRS Labour
Research
Service



**Ministry for Foreign
Affairs of Finland**

Knowledge is too important to leave in the hands of the bosses

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List of Abbreviations

AfCFTA	African Continental Free Trade Area	ISDS	Investor State Dispute Settlement
ATO	The African Trade Observatory	ITUC-Africa	African Regional Organisation of the International Trade Union
AU	African Union	LDC	Least Developed Countries
CAR	Central African Republic	LRS	Labour Research Service
CEMAC	Economic and Monetary Community of Central Africa	MFN	Most Favoured Nation
CENSAD	Community of Sahel-Saharan States	MNC	Multinational Corporation
CET	Common External Tariff	NAFTA	North American Free Trade Agreement
CLS	Core Labour Standards	NEPAD	New Partnership for Africa's Development
COMESA	Common Market for Eastern and Southern Africa	NGO	Non-Governmental Organisation
COMESA	Common Market for East and South Africa Confederation	NLC	Nigeria Labour Congress
COSATU	Congress of South Africa Trade Unions	NTB	Non -Tariff Barriers
COTU-K	Central Organisation of Trade Unions of Kenya	REC	Regional Economic Communities
DRC	Democratic Republic of the Congo	RoO	Rules of Origin
EAC	East African Community	SACU	Southern African Customs Union
ECCAS	Economic Community of Central African States	SADC	South African Development Community
ECOWAS	Economic Community of West African States	SASK	Trade Union Solidarity Centre of Finland
EFTA	European Free Trade Association	SME	Small and Medium Enterprises
EU	European Union	TFTA	Tripartite Free Trade Area
FTA	Free Trade Agreement	TRALAC	Trade Law Centre
GATS	General Agreement on Trade in Services	TRIPS	Trade Related Intellectual Property
ILO	International Labour Organisation	TUC Ghana	The Trades Union Congress Ghana
		WAEMU	West African Economic and Monetary Union
		WTO	World Trade Organisation



INTRODUCTION

Trade union engagement in AfCFTA today will shape the Africa inherited by future generations.

The African Regional Organisation of the International Trade Union Confederation (ITUC-Africa), in collaboration with the Labour Research Service (LRS), supported by the Trade Union Solidarity Centre of Finland (SASK), is working to strengthen the capacity of the trade union movement in Africa to engage on matters relating to the African Continental Free Trade Area (AfCFTA). The AfCFTA came into effect on 1 January 2021 and from a population perspective represents the largest free trade area in the world. It has been signed by 54 of the 55 African Union members. There is a multitude of positive projections and ambitions made with regards to the AfCFTA. It is, among others, expected to lead to the creation of a single African market for goods and services, facilitate the long-awaited free movement of people, mobilize regional investments and be the necessary building impetus towards the establishment of a Continental Customs Union. In the same breath, history and trade unions' own experiences have taught us that trade liberalization can have detrimental consequences on jobs and a country's ability to meet the Decent Work Agenda.

Despite the complexities associated with AfCFTA and the risks for workers and communities within such large-scale trade liberalization, the inclusion of trade unions in the process has been limited. Trade unions as representatives of workers thus urgently have an important role to play to ensure the democratic participation of workers in the AfCFTA negotiations and implementation processes. While this may be true, it is acknowledged that not all union bodies have had experience with agreements such as AfCFTA and that it can be very intimidating at first. As part of a broader project titled "Trade unions in AfCFTA," this guide provides an initial step-by-step approach to understanding the AfCFTA and reasons why trade unions need to urgently get involved. The project will run over a five-year period in which real-time exchanges between trade unions and training will be facilitated. These processes will be supported by research studies providing trade unions with evidence of the possible negative impact of AfCFTA to strengthen their advocacy campaigns.

Within this context, this guide starts with a basic understanding of what a Free Trade Agreement (FTA) is. Terms such as trade barriers, Most Favoured Nation (MFN) and Rules of Origin (RoO) are touched on before being further unpacked within the AfCFTA context further on in the guide. We view this section as particularly important as not all union members will be familiar with the complexities of the trade landscape on the continent.

The guide then provides a broad overview of why trade unions should be concerned about AfCFTA. It is easy to be misled by impressive projections of economic growth and job creation. The reality, however, tells a completely different story in which decent jobs stand to be lost, precariousness increased, and union power decreased. Higher female employment is, for example, promoted as part of AfCFTA. We show that while this may be true, jobs are created in which women do not receive adequate protection or support.

The third section reveals how AfCFTA, despite a global increase in the inclusion of labour provisions in FTAs, have omitted them completely. It is very disappointing to learn that AfCFTA does not include any labour provisions or any reference to the creation of decent work. To prepare trade union members to advocate for the inclusion of labour provisions in AfCFTA, this section provides an overview of exactly what labour provisions in FTAs are and in which formats they have historically been included. In addition, the guide argues that there is room to improve on the manner that labour provisions have previously been included in

FTAs. Labour provisions should not just be an additional chapter or section within an FTA. They should rather form an essential part of agreements and should be integrated and mainstreamed in every section.

With the objective of integrating labour provisions, the fourth section then takes the first step towards a critical assessment of AfCFTA from a labour perspective. The relevant stakeholders, the role of existing regional agreements, seven Protocols as well as accompanying processes are all taken into consideration to help trade unions identify possible areas of concern and formulate their demands.



WHAT IS A FREE TRADE AGREEMENT (FTA)?

A Free Trade Agreement (FTA) is an agreement between two or more countries to reduce barriers to imports and exports or the movement of goods and services across borders. FTAs can be found across the globe, and it is reported that in 2016, more than 400 FTAs existed with the World Trade Organisation (WTO) (Engen, 2017). An FTA can either be between two countries as a bilateral FTA or, as is the case with AfCFTA, between more than three countries and represent a multilateral FTA. If a person can imagine borders as hard walls kept up to protect those on the inside by putting various rules and costs in place, free trade agreements represent the softening of these walls. Costs and rules are decreased to allow for the flow of goods and services and allow more interaction between countries. It is also referred to as the liberalization of trade through the removal of trade barriers.

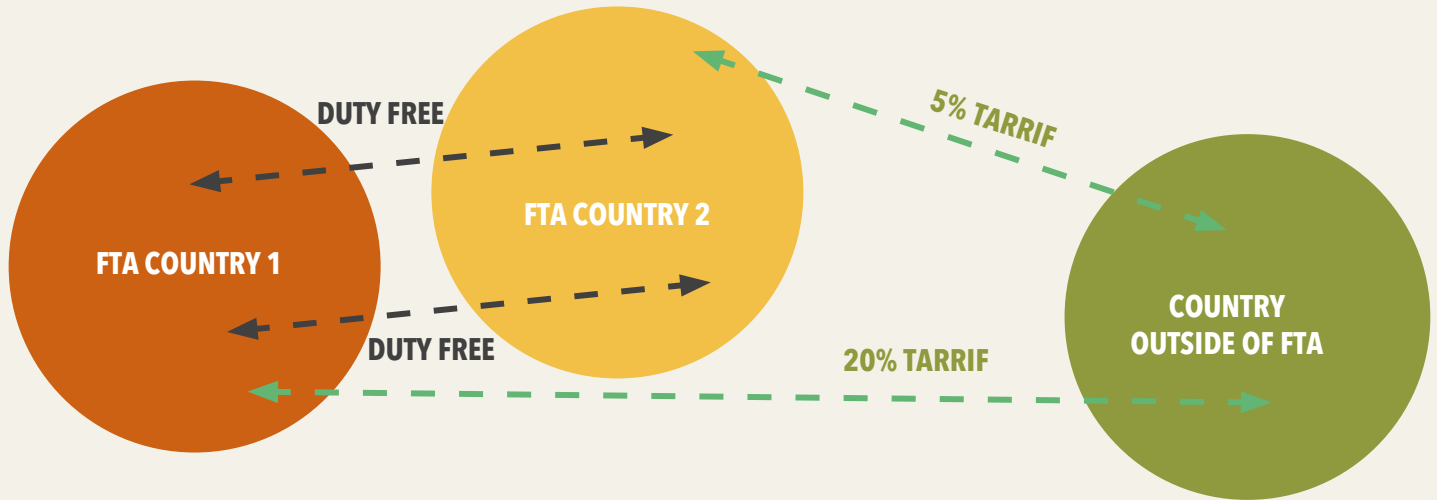
Trade barriers can, on the one hand, be in the form of financial barriers. Such barriers are associated with the cost of bringing a product or service into a country or taking it out. They are referred to as tariffs and are usually collected by a country's customs authorities. Each country will, under normal circumstances, publish a list of goods and their associated tariffs, which is called a tariff schedule. On the other hand, trade barriers can also be non-monetary such as regulations, standards, quotas, subsidies or certification procedures. These are called non-tariff barriers. It is the goal of FTAs to reduce both tariff barriers and non-tariff barriers towards opening or liberalizing markets.

It is important to note that the aforementioned barriers will only be adjusted or removed for the countries that form part of an FTA. To ensure that all the countries that form part of the agreement receive the same treatment, they are given the Most Favoured Nation (MFN) status. Through the MFN principle, it is guaranteed that Ghana, for instance, cannot give special treatment to only Chad within AfCFTA. Ghana must apply the same tariffs to all countries that form part of the agreement. What is of further importance is that the tariffs must be applied on a reciprocal basis. This means that a country can only receive a tariff reduction if it grants the same tariff reduction (Signé & van der Ven, 2019).



WHAT IS A FREE TRADE AGREEMENT (FTA)?

It is an agreement between two or more countries to reduce barriers to imports and exports or the movement of goods and services across borders.



Free Trade Agreement Pros and Cons

PROS

- Increased Economic Growth
- Lower Government Spending
- Technology Transfer

CONS

- Increased Jobs Outsourcing
- Poor Working Conditions
- Degradation of Natural Resources

An FTA aims to facilitate trade and remove TRADE BARRIERS

- Tariffs:** Fees normally collected by a country's customs authorities
- Non-tariff barriers:** Regulations, standards, quotas, subsidies, certification procedures etc.



Duty free flow of goods and services between FTA countries if it satisfies the RULES OF ORIGIN (RoO)

- RoO will determine if a product can be considered as originating within the FTA
- RoO is the passport allowing the free flow of a product

In an FTA, countries receive MOST FAVOURED NATION (MFN) status



- To ensure that all the countries that form part of the agreement receive the same treatment, all the relevant countries are given MFN status
- The same tariffs must be applied to all countries that form part of the AfCFTA

Pros and cons of Most-Favoured-Nations Status



PROS

- Access to a larger market
- Lowered cost of exports
- Products become more competitive
- More opportunities for growth

CONS

- No protections against cheaper goods produced by foreign countries
- Local agricultural industry still can't compare with subsidised U.S. and E.U. markets

An FTA is the opposite to PROTECTIONISM

- An FTA aims to liberalize trade, allowing for the free flow of goods and services

But an FTA does not remove all forms of PROTECTIONISM

Trade unions have an opportunity to demand policies that will continue to protect communities and jobs as well as the creation of decent jobs.

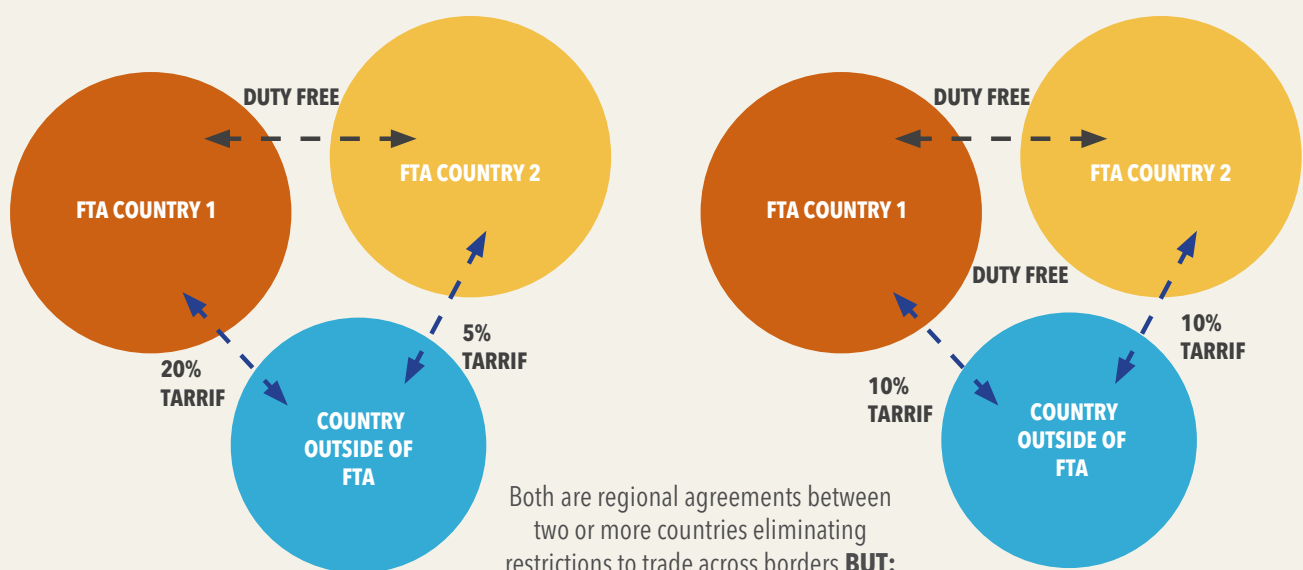


Given the African trade context, an important distinction is to be made between an FTA such as the AfCFTA and a customs union. While the AfCFTA will represent a continental FTA, there are multiple existing Regional Economic Communities (RECs) on the continent. It is reported that in 2019 there were more than **15** regional integration arrangements with overlapping memberships of various countries (Abrego, de Zamaróczy, Gursoy, Issoufou, Nicholls, Perez-Saiz, & Rosas, 2020). Under the Abuja Treaty of 1991, it is the objective that all the RECs should become customs unions (Erasmus & Hartzenberg, 2020B). This is, however, not yet the case, and only SACU, UEMOA, CEMAC, and the EAC have customs

unions (Capon, 2021). In addition, it is the long-term goal of AfCFTA to develop a continental customs union (Luke, 2020). As this guide will unpack in detail further on, existing and planned customs unions will be maintained under AfCFTA. Subsequently, the reason why it is important to understand the difference between a customs union and an FTA is that negotiations within each are done differently.

As illustrated in the figure below, an FTA and a customs union might come across as similar at first, but upon closer inspection, there are clear differences that will be central to how AfCFTA is implemented.

WHAT IS THE DIFFERENCE BETWEEN A FREE TRADE AGREEMENT and a CUSTOMS UNION?



In an FTA:

- Each member can negotiate tariffs individually with countries outside of the agreement.
- Each member will have different tariff arrangements with outside countries (for example, **5%** and **20%**).
- The free movement of goods is only allowed between member countries if it satisfies the RoO of the FTA.

In a customs union:

- Negotiations must be done as a customs union representing all members.
- All members apply the same common customs tariff (for example, **10%**) against a country outside of the agreement.
- The free movement of goods is allowed between member countries.

In the AfCFTA negotiation processes, trade unions need to take notice that there will be various overlaps with regional customs unions and existing regional FTAs.

In an FTA, each member can negotiate tariffs individually with countries outside of the agreement and establish different rates (Yoichi, 2018). Country A, for example, can negotiate a **20%** tariff on maize with China while Country B negotiates **5%**. Within a customs union, negotiations must be done as a single entity representing all members (ibid.). Should AfCFTA establish a continental customs union, it will mean that where Country A and Country B could previously negotiate their own rates with China, they would now be bound to the rate negotiated under the customs union.

Another key difference between an FTA and a customs union is that within the latter, the free movement of goods and services is allowed among member states. In an FTA, this is only allowed if the goods satisfy the relevant Rules of Origin (RoO). UNCTAD (2019) describes RoO as follows:

“Rules of Origin are a ‘passport’ enabling goods to circulate duty-free within a free trade area (FTA) as long as these goods qualify as originating within the FTA. The rules define the criteria that must be met for a product to be considered as having its origin in an exporting country within the FTA and qualify for preferential treatment (zero import tariffs) inside the FTA. In other words, they determine the economic origin of goods within an FTA” (UNCTAD, 2019)

Rules of Origin are thus the rules that will allow a product to originate from an area. It should already be noted that the RoO is a complex principle that requires the attention of trade unions. It will, for example, determine if a T-shirt made in China but packaged in Uganda will qualify as originating from that area. If the RoO are not approached correctly, the AfCFTA can easily be abused by foreign companies. These complexities are further unpacked later on in the guide.

While this section describes the basic building blocks of an FTA, ITUC (2008) explains that FTAs are more complex than agreements under the WTO. As we will see with AfCFTA, FTAs includes areas such as competition policy, investment, and intellectual property.

In conclusion, there are some advantages to trade liberalization but also various disadvantages. The latter is especially relevant when participating countries do not have the capacity and resources to implement the national programmes meant to assist an FTA in reaching goals. It is no different to a historic village that does not interact with other villages. The advantage is that the isolated village can develop the way it wants to and protect its residents. In economic terms, this is referred to as protectionism or economic isolationism. Under a protectionism approach, the development of the village will be limited to what is available on its territory. It will have to survive with the water and food resources available. It could also fall behind in terms of development which could leave them vulnerable in conflict situations. In contrast, the advantage of exchanges with other villages is that residents will have more access to goods that could improve their overall wellbeing. As an example, another village might have access to a medicinal herb that could increase the villager’s life expectancy. While this may be true, the village also becomes exposed to various unpredictable external elements. These could include theft or people losing interest in their own produce, with artisans and farmers losing their livelihoods. It is thus necessary to find a balance through adequate rules and regulations to balance out the disadvantages of absolute isolation compared to complete exposure. In this sense, an FTA has the advantage that it does not require a government to abandon all protectionist policies. It is said that few trade agreements do result in complete trade liberalization (Scott, 2020). It is within these negotiations to reach a balance between trade liberalization and protectionism that trade unions have a central role to play. It is here that policies can be developed to protect vulnerable local industries and jobs.



WHY SHOULD TRADE UNIONS BE CONCERNED ABOUT AfCFTA?

The potential impact



THERE ARE SO MANY POSITIVE PREDICTIONS ABOUT WHAT AfCFTA COULD LEAD TO...



Income gains as high as **5% and US\$ 60 billion** could be added to export values



Intra-Africa trade could increase by **8% - 12% to the value of \$5.7 billion - \$8.7 billion**



AfCFTA can lift **30 million people from extreme poverty** and **68 million people** from moderate poverty



Lower trade costs will lower import prices and **increase the purchasing power of consumers**



As it becomes **cheaper for companies to export within Africa**, they will do so



Better customs administration and trade facilitation and improved domestic governance could decrease the cost of trading immensely

SURELY IT IS ALL GOOD?



UNFORTUNATELY, THE REALITY IS NOT...



Positive projections are **not guaranteed**



Unfair competition: SMEs cannot compete with large companies



Supporting national policy and physical environment should be in place for AfCFTA to be a success: Is this the case in Africa?



Jobs, workers' protection, social security, and union rights could be seriously hampered



Without assistance, **workers will not instantaneously transition to a new sector**



Higher female employment but **not decent jobs**



Quality of jobs decreases and demands for flexible workforces



Increased power to large global MNCs

In terms of population, AfCFTA will be the largest free trade area in the world. More than 1.2 billion people are located within the geographical boundaries of the agreement (Abrego et al., 2020). At the same time, Africa is considered to be the poorest continent on earth, with nearly every second person in Sub-Saharan Africa (SSA) living below the poverty line (SOS Children's Village, undated). It is thus

easy to understand why the AfCFTA with its projections of economic growth appears attractive to all member states. To prepare trade unions to engage in discussions on the potential impact of AfCFTA, this section firstly provides an overview of some of the positive expected results of AfCFTA, after which it will discuss the potential negative consequences with which they should be concerned.

THE PREDICTED POSITIVE IMPACT: AfCFTA will lead to economic growth and the creation of jobs

When considering the potential positive impact of AfCFTA, the projections made can be quite overwhelming. Some estimate that the income gains related to AfCFTA could be as high as **5%**, and **US\$ 60 billion** could be added to export values (Abrego et al., 2020). Countries such as Ivory Coast and Zimbabwe could see a **14%** increase, while countries like Madagascar, Malawi, and Mozambique will experience a **2%** increase (The World Bank Group, 2020). The impact will thus vary between the different countries, but the overall impact is predicted to be positive. Others make estimations that intra-Africa trade could increase by **8% - 12%** to the value of **\$5.7 billion - \$8.7 billion** (vivedeconomic. 2019). It is even projected that AfCFTA could lift 30 million people from extreme poverty and 68 million people from moderate poverty (The World Bank Group, 2020).

The main logic behind this approach is that the lower trade costs will lower import prices and increase the purchasing power of consumers (Albert, 2019). It will also provide consumers with a greater range of products. As it becomes cheaper for companies to export within Africa, they will do so. In this way, trade liberalization stimulates domestic and international economies by increasing consumption and diversifying economies (ibid.). Within AfCFTA, it is believed that it is interregional manufacturing that would benefit significantly from the agreement (The World Bank Group, 2020). The development of continental supply chains and the upgrading of production towards more complex and higher value goods and services are foreseen (vivedeconomic, 2019). TRALAC (2020) therefore highlights

the fact that such value chain developments could fast-track the industrialisation process. They are further of the opinion that smaller businesses will have increased opportunities through established continental value chains. It is also within the industrialisation process and value chain development that AfCFTA promises to decrease unemployment on the continent. Currently, the continental economy is dominated by the extractive industries which are capital intensive. It is said that the development of the manufacturing sector will directly result in more employment creation (ibid.). The services sector is further anticipated to be an area in which **90%** of countries would see their volume of services grow under AfCFTA (The World Bank Group, 2020).

Hartzenberg (2020) acknowledges that while agreements such as AfCFTA do not guarantee trade, "it does change the incentives to make trade with other partners to that agreement more accessible and attractive". It is said that better customs administration and trade facilitation and improved domestic governance could have more benefits for trade on the continent than the removal of tariffs (Erasmus, 2020B). A study conducted calculated that "if the time for trucks to deliver goods in Africa was decreased by just 20% this would increase intra-African trade by a greater percentage increase than fully liberalizing all intra-African trade" (Capon, 2021). Such numbers do not reflect well on the existing non-tariff barriers such as border crossings. Further positive results anticipated through AfCFTA are the possible transfer of expertise and technology from global companies.

While these projected positive impacts might be attractive, this guide shows that unless approached correctly and ensuring that all the necessary national policy and supportive frameworks are in place, workers, women, and communities could experience dire negative consequences under AfCFTA. In its current form, AfCFTA does not include any form of labour provisions which the following negative potential consequences will show should be viewed with great concern.

If the time for trucks to deliver goods in Africa was decreased by just 20% this would increase intra-African trade by a greater percentage increase than fully liberalizing all intra-African trade





THE REALITY: Trade liberalization could jeopardise the most vulnerable through unfair competition

Given the main argument for trade liberalization, that it will stimulate domestic economies by increasing consumption and diversifying economies, there is already a reason for caution. While some might consider a company having increased market access as positive, the reality is that it also increases competition and could prevent market access to small companies. The counter-argument will then again be that such competition will stimulate innovation, but here, the unique composition of the African economy should be taken into account. It is estimated that **86%** of employment on the continent is within the informal economy represented by Small and Medium Enterprises (SMEs). This is compared to **69%** in Asia and **40%** in the Americas (ILO, 2018 in Abrego et al., 2020). There exist high levels of vulnerability within the informal sector, especially for women. Informal SMEs have limited access to capital, innovation, and technology, which are associated with a competitive edge. Unless their capacity shortages and lack of basic infrastructure, including internet access, across the continent, are first addressed, this will not provide a fair, competitive playing field. SMEs stand to lose from the starting point. Small scale producers and agro-manufacturers, in particular, will need sector orientated protection. Unless protective measures are put in place, small scale agricultural role players will not be able to compete with commercial and global firms.

A further word of caution should be taken from the work of Myant (2017) who questions the claimed positive impact of trade agreements:

“Despite assertions from political leaders that trade agreements will lead to more trade and hence more prosperity and employment, the studies that they rely on by academics and consultancy firms show very modest benefits. The claim that opening economies leads to growth has been hotly disputed (Elliot and Freeman 2003: 14-15). A famous study on the effects of joining GATT and the WTO showed no difference in trade, let alone GDP, between countries that did join and those that did not (Rose 2004)” (Myant, 2017: 37).

In addition to the positive impact of trade agreements being questionable, the author indicates that any success within AfCFTA will be reliant on the necessary infrastructure and services being available on a national level (ibid.). This guide supports this view and discusses how, in the absence of national interventions and willingness, AfCFTA will not succeed.



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It is estimated that

86%

of employment on the continent is within the informal economy represented by Small and Medium Enterprises (SMEs).



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ACHIEVING THE DECENT WORK AGENDA: Quality above quantity is not assured within trade liberalization

Jobs, workers' protection, social security and union rights, and thus a country's ability to achieve the Decent Work Agenda could be seriously hampered should AfCFTA not be approached correctly. The agreement must deal with the question of how a more integrated African market will guard against AfCFTA being used as a conduit for the influx of goods and services from outside of Africa that could undermine domestic production, with serious implications for job creation and economic transformation. Gathii, Burnett, Changwe Nshimbi & Dommen (2017) explain the possible negative implications of trade interventions on jobs:

“Trade theory often assumes that those who lose their jobs from new trading patterns will instantaneously transition to a new sector, but this assumption has limited real-world validity. This is especially true of small-scale operators who lack transferable skills, and who may have other obligations that do not allow for mobility and transition and as such may not be able to find alternative employment. The effects of trade on employment vary at the country level, depending on factors such as asset distribution, on the type of trade (bilateral, multilateral or regional) as well as on the sector and skill-set of workers” (Gathii et al., 2017: 104 – 105)



It is said that trade liberalization depends heavily on the availability of a flexible formal workforce (Abrego et al., 2020). However, workers can become exposed to extensive working hours with very little protection. It is thus very important to not only look at the number of jobs created or lost but also qualitative indicators such as pay, conditions of employment and employment security.

The case study below is based on the commercialization of farming in Kenya during the 1990s. It clearly illustrates how small-scale farmers, workers and women stand to lose in the process of trade liberalization. The displacement of small-scale farmers and precarious jobs were the order of the day. While commercial farmers ensured a higher female employment rate, health and safety were not guaranteed, and thus, decent jobs were not created.

Box 1: THE COMMERCIALIZATION OF FARMING IN KENYA AND THE NEGATIVE CONSEQUENCES FOR SMALL-SCALE FARMERS, WORKERS AND WOMEN

“As export market opportunities opened up for Kenya’s fruit and vegetable sub-sector in the 1990s, small-scale production was displaced by large-scale farms and small-scale farmers who were unable to supply this market lost their incomes. Commercial farming provided employment for landless women, and processing plants, particularly in urban areas, employed young single women. However, commercial farming has increased risks to workers’ health as a result of pesticide handling and application. Whilst commercialisation of vegetable and fruit production can provide new employment, it often produces only casual employment in the food and transport sectors. These jobs are unlikely to have pension, material, annual leave or sickness benefits. High dependence on processing plant employment is subject to the high seasonality of these jobs. These jobs also provide little to no opportunity for skills development and upward job mobility. These gender differentiated outcomes are inconsistent with African States’ obligations to ensure that they do not discriminate against women” (Gathii et al., 2017: 105)

Institutions such as the World Bank are quick to promote the potential positive impact of agreements such as AfCFTA. In the same breath (and far less emphasised), they acknowledge that the positive consequences will not be possible unless the necessary national interventions are in place. With regards to employment numbers, they over-optimistically estimate the following:

“Implementation of AfCFTA would increase employment opportunities and wages for unskilled workers and help to close the gender wage gap. The continent would see a net increase in the proportion of workers in energy-intensive manufacturing. Agricultural employment would increase in 60% of countries, and wages for unskilled labor would grow faster where there is an expansion in agricultural employment. By 2035, wages for unskilled labor would be 10.3% higher than the baseline; the increase for skilled workers would be 9.8%. Wages would grow slightly faster for women than for men as output expands in key female labor-intensive industries. By 2035, wages for women would increase 10.5% with respect to the baseline, compared with 9.9% for men” (The World Bank Group, 2020: 7).

While such estimations could be impressive at first sight, the Kenyan case study above illustrates how questions regarding the quality of these jobs, especially for women, become crucial. After providing such impressive employment estimations, the World Bank then goes further, acknowledging that these estimations can only be achieved should the necessary interventions and policies be available on national levels:

“Labour market results would vary by country, and some workers would lose jobs even as others gain new job opportunities and higher wages. Governments will need to focus on facilitating a smooth and inclusive transition by supporting flexible labour markets, improving connectivity within countries, and maintaining sound macro-economic policies and a business environment that is friendly to domestic and foreign investors. Policy makers will need to carefully monitor AfCFTA’s distributional impacts—across sectors and countries, on skilled and unskilled workers, and on female and male workers. Doing so will enable them to design policies to reduce the costs of job switching and provide effective safety nets where they are needed most” The World Bank Group, 2020: 7).



Ndonga, Laryea, & Chaponda (2020), in a case study of the potential impact of AfCFTA in Malawi, raise their concerns that less developed, small, landlocked countries may benefit less from the agreement. Malawi and other less developed countries have subsequently applied for differential treatment in the implementation of the provisions on the elimination of import duties and other tariffs (ibid.). This is but one example of how the AfCFTA negotiations and implementation can vary between countries. The outcome of these processes will have a direct impact on the country's fiscal and the available funds for required infrastructure investments as well as educational and social programmes.

All workers, communities, women and vulnerable groups should therefore have an interest in the implementation of AfCFTA.

The impact on small-scale business, farmers, women, food security and sustainable development are further areas of concern. National AfCFTA impact studies commissioned to complement this guide will further expand on the potential impact of the agreement, but, as shown in this section, the positive projections regarding AfCFTA should be approached with great caution. This guide will now take the reader through AfCFTA step-by-step and highlight areas of concern.





LABOUR PROVISIONS IN FREE TRADE AGREEMENTS – THE COMPLETE LACK THEREOF IN AfCFTA AND WHAT DO WE WANT THEM TO LOOK LIKE?

Trade liberalization implemented through agreements such as AfCFTA can have dire consequences for jobs, workers' protection, social security and union rights. It could thus hamper the implementation of the Decent Work Agenda across the continent. Labour is a central part of trade and should therefore be included in agreements. In this regard, it is very disappointing to learn that AfCFTA does not include any labour provisions or any reference to the creation of decent work. This is despite an increasing global trend in the inclusion of labour provisions in FTAs. To prepare trade union members to advocate for the inclusion of labour provisions in AfCFTA, this section provides an overview of exactly what labour provisions in FTAs are, and in which formats they have historically been included. Also, the guide argues

that there is room to improve on the manner that labour provisions have previously been included in FTAs. Labour provisions should not just be an additional chapter or section within an FTA. They should rather form an essential part of agreements and should be integrated and mainstreamed in every section. This section further reveals that there is limited evidence of labour provisions improving labour conditions in a particular country. The literature states that this is partly due to the complexities of measuring such impacts. In bridging this gap, we identify trade unions and civil society as central monitoring agents to ensure labour provisions lead to the desired outcomes.



WHAT ARE LABOUR PROVISIONS?

"...any standard which addresses labour relations or minimum working terms or conditions, mechanisms for monitoring or promoting compliance, and/or a framework for cooperation" (ILO, 2016: :11, cited in Engen, 2017)



AfCFTA DOES NOT INCLUDE ANY FORM OF LABOUR PROVISIONS



So, what can we do? Where do we start?



BUILD YOUR ARGUMENT

Get to know the arguments for and against the inclusion of labour provisions and always remember, without labour provisions in AfCFTA, stakeholders cannot be held accountable.



DECIDE WHICH STANDARDS AND COMMITMENTS SHOULD BE INCLUDED

Reference to ILO norms, Decent Work Agenda, mutually agreed standards, domestic standards, clause not to weaken labour law to attract investment etc.



DEMAND THAT LABOUR SHOULD NOT ONLY BE INCLUDED AS AN ADDITIONAL SECTION BUT AS AN INTEGRAL PART OF AfCFTA

AfCFTA negotiations are still ongoing and unions must demand that labour is included and recognised in all sections in addition to a dedicated labour section.



MAKE CLEAR DEMANDS FOR THE INCLUSION OF GENDER IN LABOUR PROVISIONS



ENCOURAGE PROMOTIONAL COMPLIANCE MECHANISMS

- Promoting labour standards through knowledge sharing, dialogue, capacity building and technical assistance.
- Strengthening of domestic labour institutions.



TAKE CAUTION OF THE WORDING USED!

"shall strive to ensure that its laws provide for labour standards consistent with the internationally recognized labour rights"

VS

"shall not fail to effectively enforce its labour laws"



UNIONS AND CIVIL SOCIETY AS MONITORING AGENTS IS THE ONLY WAY TO ENSURE SUCCESS

Trade unions and civil society should take on the responsibility of monitoring agents . The inclusion of any form of labour provisions in AfCFTA will not necessarily translate to any positive impact on decent work creation in a country. It will need to be taken as a tool through which trade unions can demand accountability and monitor progress.



1

LABOUR PROVISIONS AND ACHIEVING THE DECENT WORK AGENDA

The ILO (2016, cited in Engen, 2017) defines labour provisions as follows:

“...any standard which addresses labour relations or minimum working terms or conditions, mechanisms for monitoring or promoting compliance, and/or a framework for cooperation” (ILO, 2016:11, cited in Engen, 2017: 13)

Labour provisions within FTAs can subsequently be considered as a step towards giving substance to the ILO’s Decent Work Agenda. By incorporating the four Decent Work Pillars - employment creation, social protection, rights at work and social dialogue - into FTAs, this will significantly contribute towards social justice for all workers.

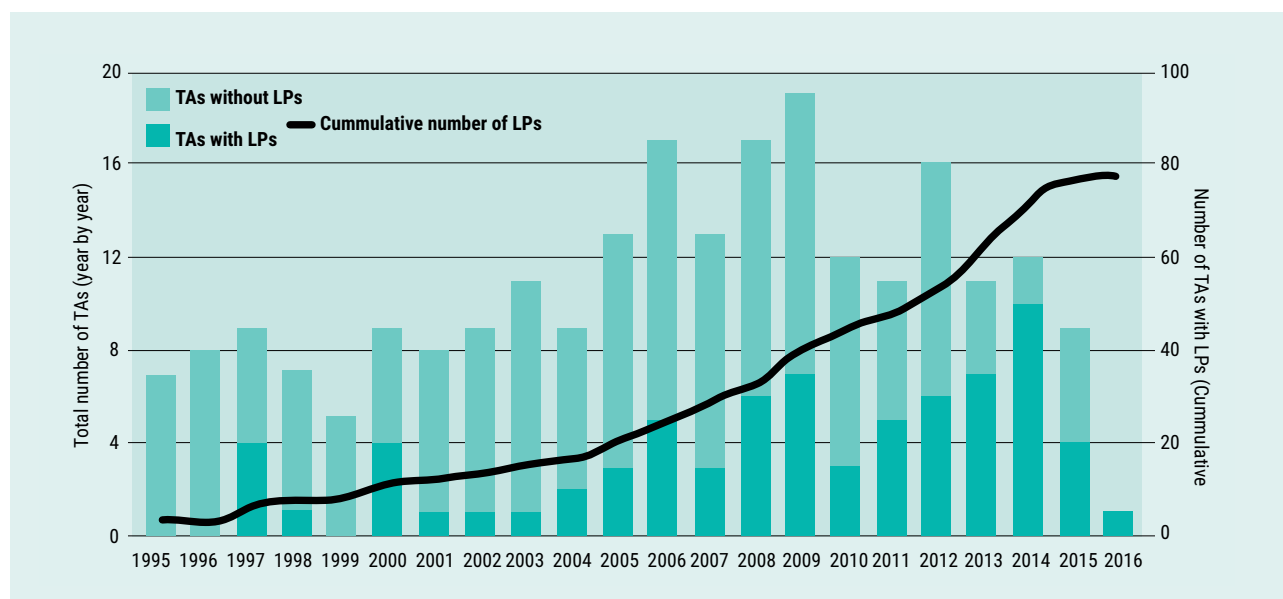
2

AN INCREASE IN LABOUR PROVISIONS BUT STILL A LONG WAY TO GO

The intersection between labour provisions and trade has already been under debate for a long time. As far back as the eighteenth century, writers referred to labour standards and issues of competitive advantage (ILO, 2017). In these times, the concern was that inadequate labour provisions in one country would make it difficult for a country wanting to implement decent standards of work to do so (Engen, 2017). The post-war international economic order accompanied by the liberalization of trade and investment has further highlighted the relevance of these intersections. Interestingly, at the first WTO Ministerial Conference in Singapore in 1996, it was developing countries that blocked developed countries from including a labour related clause in the WTO. It was said that developing countries regarded such clauses as protectionism from the developed world. They felt economic growth would bring the necessary improvements in labour provisions (ibid.).

Despite such rejection in 1996, labour provisions have increasingly been found in FTAs over the last 15 years. The first was included in the North American Free Trade Agreement (NAFTA) in 1994. Currently, **28%** of FTAs include labour provisions (Engen, 2017). While this may be considered an improvement, it still means that three-quarters of FTAs do not make provision for labour. The ILO (2017) further states that two-thirds of the agreements that contain labour provisions came into effect after 2008 (Figure 2).

Figure 2: Trade agreements with and without labour provisions, 1995-2016



3

COMPLETE ABSENCE OF LABOUR PROVISIONS IN AfCFTA – IT IS NOT TOO LATE

Despite an increase in labour provisions inclusion in recent years, not all FTAs include them. AfCFTA contains no reference to any labour provisions, either as an integral part of an additional chapter. At first one might think this is because the regional trade agreements contain labour provisions. Unfortunately, as shown below, AfCFTA and the majority of African regional trade agreements have contributed to the number of agreements without any reference to labour regulations.

The United States, European Union (EU), Canada and Chile have contributed the most to the increase in FTA labour provisions observed above (Engen, 2017). Posthum (undated) also reports that there is a rise in the number of South-South agreements and that the focus of these is on capacity building, expertise exchanges and information sharing.

Given the number of FTAs worldwide (400 in 2016), it is necessary to reflect on the reasons why only over a hundred of them have some form of labour provisions in them. The counter-arguments for their inclusion are something trade unions will have to be able to confront.

Table 1: Overview of policy areas covered in AfCFTA and regional trade agreements

	East African Community (EAC)	Common Market for East and South Africa (COMESA)	South African Development Community (SADC)	Economic Community of West African States (ECOWAS)	West African Economic and Monetary Union (WAEMU)	South African Customs Union (SACU)	Economic and Monetary Community of Central Africa (CEMAC)	African Continental Free Trade Area (AfCFTA)
Tariffs on manufactured goods	✓	✓	✓	✓	✓	✓	✓	✓
Tariffs on agricultural goods	✓	✓	✓	✓	✓	✓	✓	✓
Export taxes	✗	✓	✓	✗	✓	✗	✓	✓
Customs	✓	✓	✓	✓	✗	✓	✗	✓
Competition policy	✓	✓	✓	✗	✓	✓	✓	✓
State aid	✓	✓	✓	✗	✗	✗	✓	✗
Antidumping	✗	✓	✓	✓	✗	✗	✓	✓
Countervailing measures	✗	✓	✓	✗	✗	✗	✗	✓
STEs	✗	✗	✗	✗	✗	✗	✗	✓
TBTs	✓	✓	✓	✗	✗	✓	✓	✓
GATS	✓	✓	✓	✓	✓	✗	✓	✓
SPS measures	✓	✓	✓	✗	✗	✓	✓	✓
Movement of capital	✓	✓	✗	✓	✓	✗	✓	✓
Public procurement	✓	✗	✗	✗	✗	✗	✗	✗
IPRs	✓	✗	✗	✗	✗	✗	✗	✓
Investment	✓	✓	✓	✗	✗	✗	✗	✓
Environmental laws	✓	✓	✗	✓	✗	✗	✓	✗
Labor market regulations	✓	✓	✗	✗	✗	✗	✗	✗

Source: Based on Hofmann, Osnago, and Ruta (2017).

Note: ✓ = policy area covered; ✗ = policy area not covered; AfCFTA = African Continental Free Trade Area; GATS = General Agreement on Trade in Services; IPRs = intellectual property rights; PTAs = preferential trade agreements; SPS = sanitary and phytosanitary; STEs = state trading enterprises; TBTs = technical barriers to trade.

Source: World Bank Group, 2020



From the table above, it further becomes evident that as the AfCFTA currently stands, it also does not speak to issues of state aid (subsidies), public procurement, and environmental law. In terms of reaching the Sustainable Development Goals (SDGs), the agreement becomes questionable. Given that the Common Market for Eastern and Southern Africa (COMESA) and the East African Community (EAC) are said to include labour regulations, this provides a unique opportunity for trade unions to share their experiences thereof. A lack of experience will similarly be important to share as it will be an indication of the effectiveness of their inclusion.

What is of critical importance here is that while the World Bank Group (2020) recognizes that labour provisions have been excluded, they further state the following:

“The exclusion of these policy areas in AfCFTA does not prevent countries from aiming for common regulations at a later stage and does not affect the commitments made by countries in the context of the sub regional PTAs” (ibid.: 18).

This is in line with the work of Fagbayibo (2019) who states that:

“Although the AU failed to stipulate meaningful consultation as an integral part of the negotiation process, there is still an opportunity to ensure that after it comes into force, member states are mandated to implement the AfCFTA within a more democratic context” (ibid.: 13).

Given that the AfCFTA process has not yet been concluded, this then provides an important opportunity for trade unions to intervene and advocate for a more democratic process that will lead to the inclusion of labour provisions - and thus move towards securing decent jobs for all.



4

HOW DO WE ARGUE FOR THE INCLUSION OF LABOUR PROVISIONS IN AfCFTA?

For someone in the trade union movement who has seen the direct impact of free-market systems on jobs, there will be no question as to why labour provisions should form part of FTAs. However, union members who advocate for decent jobs in the AfCFTA need to be prepared for counter-arguments against the inclusion of labour provisions. This sub-section provides an overview of the key arguments against and for the inclusion of labour provisions in FTAs.

Currently, the WTO does not force countries to include labour regulations in their agreements. Engen (2017: 4) states that this *“should not be mistaken for a lack of agreement on the role of labour standards in general; on the contrary, the debate is mainly concerned with the appropriateness of involving labour issues in the global trade regime”*. We put forward an argument that there is no doubt regarding the inclusion of labour provisions in FTAs and simultaneously acknowledge the central role trade unions must play in ensuring their effectiveness.

Why do some argue that it is not appropriate to include labour provisions in FTAs?



They believe trade will lead to improved labour standards

The main argument from those against the inclusion of labour provisions in FTAs is that trade will lead to an improvement in labour standards (Engen, 2017). Trade unions can testify that this is not the case, especially in different contexts. If trade leads to the improvement of labour standards in one country, what is to say it will lead to the same impact in another? Questions should also be asked as to how this improvement is estimated, as there is little evidence of the effectiveness of labour provisions in FTAs. The exclusion of labour provisions in FTAs further creates a scenario where no country can be held accountable for labour malpractices.



Developing countries see labour provisions as developing nations trying to remove their competitive advantage, the availability of cheap labour

In the context of AfCFTA, there are important lessons to be learned from historic opposition to the inclusion of labour provisions in FTAs. In the past, developing countries have opposed labour provisions as they viewed them as a form of protectionism from developed nations. They believed by imposing similar trade regulations, developed countries were prohibiting developing countries from using their competitive advantage, the availability of cheap labour (Engen, 2017). Despite this belief, there is said to be very little proof that this is indeed the case. There is rather proof that improving labour conditions can lead to economic growth (Bazillier, 2008 in Engen, 2017).



Why do we argue that it is appropriate to include labour provisions in FTAs?

Trade will lead to a “race to the bottom” where workers will be the biggest losers

Within trade liberalization, countries become exposed to competition. In the AfCFTA context, this will be between similar developing countries but also countries much more developed than others. To become more attractive for investors, governments are forced to lower their regulations and, as a result, the cost of labour. A “race to the bottom” is created in which countries undercut each other to be the most preferred option. Achieving decent jobs with adequate social protection will thus not be possible if a standard in labour regulations is not set.



The inclusions of labour provisions will increase labour market access for women

Of further importance is AfCFTA's commitment to gender equality and creating opportunities for women. It is, however, difficult to understand how the agreement is set to achieve these goals without the inclusion of labour provisions. The ILO (2017) reveals evidence that women's labour market access is increased under agreements with labour provisions, compared to those without. The inclusion of labour provisions in the Cambodia-United States Bilateral Textile Agreement led to a reduction in the gender wage gap of **80%** (ibid.). In this regard, the inclusion of labour provisions is also critical to ensure decent protected jobs for women and not just a job. Given the high percentage of women active in the informal sector in Africa and their level of vulnerability, not only the inclusion of labour provisions becomes a necessity, but also the integration of labour within all aspects of AfCFTA.



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5

STANDARDS AND COMMITMENTS

Standards and commitments are what make an agreement binding or accountable according to a certain set of principles. Posthum (Undated) writes how the overall trend in agreements can be summarized by the following:

- Reference to ILO norms
- Commitment to minimum labour standards
- Enforcement of national law - Consultative mechanism
- Clause to not weaken labour law to attract investment and trade

Three categories of commitments including the ILO conventions and the Decent Work Agenda

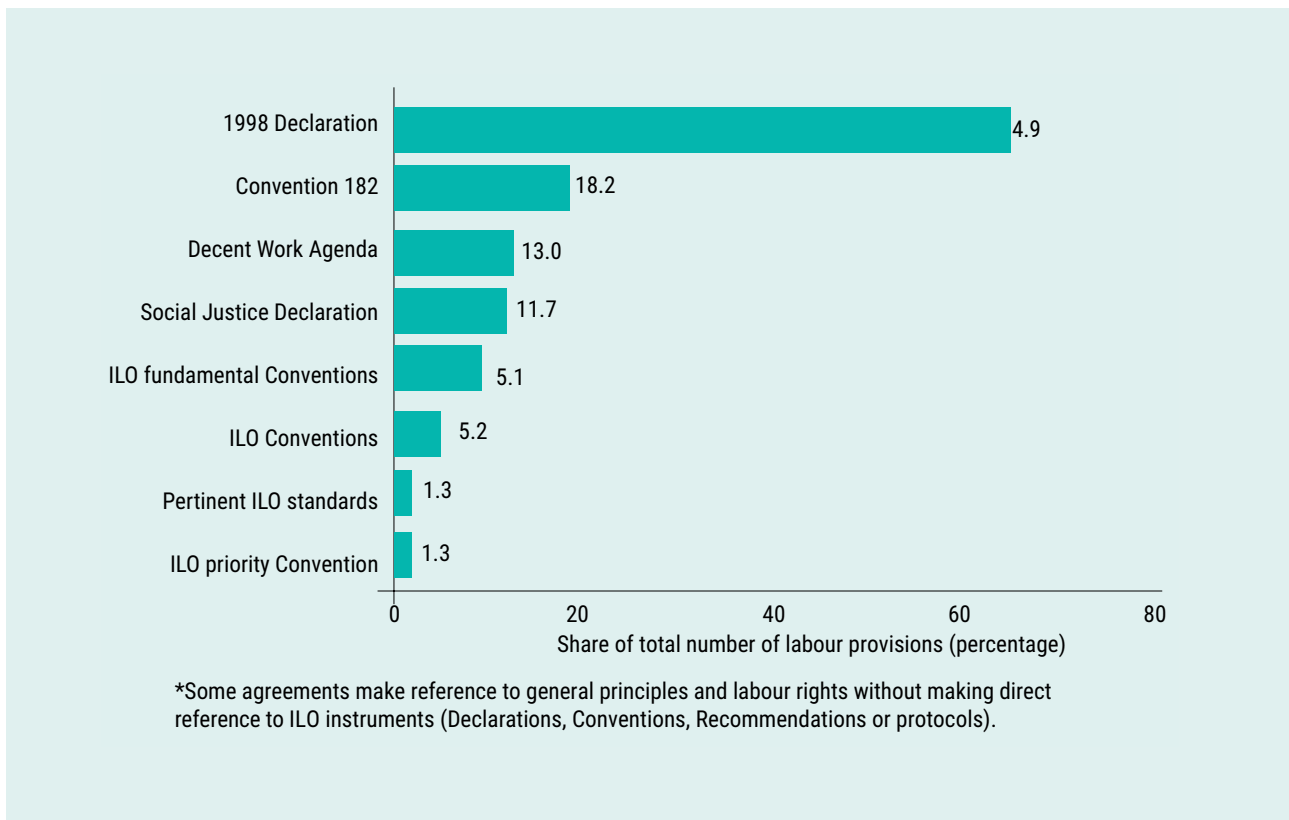
Expanding on these trends, there are generally three categories of commitments in FTAs; international labour standards, mutually agreed standards and domestic labour law.

The first and by far the most popular are the international labour standards. Within international labour standards, the ILO (2017) indicates that nearly **65%** of trade agreements refer to the Core Labour Standards of the 1998 Declaration. The Core Labour Standards (CLS) are:

- Freedom of association and the effective recognition of the right to collective bargaining
- The elimination of all forms of forced or compulsory labour
- The effective abolition of child labour
- The elimination of discrimination with respect to employment and occupation.

Other ILO Labour Conventions also mentioned including the Decent Work Agenda in 13% of agreements as illustrated below.

Figure 3: Reference to ILO instruments in trade agreements, 2016





This guide regards the inclusion of the Decent Work Agenda as central to placing AfCFTA on a path towards social justice. Stoll, Gött & Abel (2017) provides an example of what a clause on Decent Work in an agreement could look like:

“Article X.12 - General obligation to ensure and promote decent working conditions in accordance with the ILO Decent Work Agenda, as expressed in the ILO Declaration on Social Justice for a Fair Globalisation of 2008, and in accordance with its other international commitments, each Party shall ensure and promote decent working conditions. Comments: Art. X.12 serves as a “catch-all” general obligation to maintain and promote decent working conditions, including those not covered by the specific issues covered by the next three articles” (Stoll et al., 2017: 17).

The main advantage of the inclusion of ILO Conventions is that they are monitored by the ILO. It further creates coherence between different agreements (Engen, 2017).

The second category is when labour standards are mutually agreed upon rather than international standards. The third category refers to partner countries’ existing domestic laws. Engen (2017) explains that:

“...most agreements the domestic labour standard commitments are combined with agreed labour standards (either international labour standards or mutually agreed ones) to limit the sectors of the domestic labour laws that are affected by the agreement” (Engen, 2017: 21).

Labour provisions must speak to gender

Given the emphasis on gender within the AfCFTA, the ILO (2017) explains that gender references can be exclusively mentioned in labour provisions. To ensure AfCFTA commits to gender equality, it will thus be necessary to demand the inclusion thereof in any labour provisions.

Take caution: Wording plays a determining role in labour provision

An important and concluding point regarding standards and commitments in labour provisions is that wording plays a determining role. There is a clear difference between a clause such as:

“shall strive to ensure that its laws provide for labour standards consistent with the internationally recognized labour rights”

and

“shall not fail to effectively enforce its labour laws” (Engen, 2017: 22)

Unions must demand the latter in any type of labour provision to ensure it represents a provision to which parties can be held accountable in the court of law.



6

WHAT SHOULD LABOUR PROVISIONS IN AfCFTA LOOK LIKE? – WE ADVOCATE FOR AN INTEGRATED APPROACH

Format – Labour should be an integrated part of the AfCFTA

Historically, labour provisions have been included in FTAs as one of two options (Engen, 2017, Posthum, Undated & Schweisshelm, 2015):

1. **A memorandum attached to the FTA**, with or without reference thereof in the actual agreement.
 - Examples include the Chile-China Trade Agreement and Transpacific Partnership Agreement

2. **In the main text of the agreement**, normally as a labour chapter or in chapters on sustainability, cooperation or investment.
 - An example is the Taiwan-Nicaragua Trade Agreement

Figure 4 represents an example of a labour provision chapter and the relevant sub-sections.

Figure 4: Free Trade Agreement Labour Chapter Example

FREE TRADE AGREEMENT LABOUR CHAPTER EXAMPLE

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The inclusion of labour provisions in a chapter format provides a valuable tool for trade unions. It becomes an instrument through which those in violation of labour provisions can be held accountable. However, it also represents separate sections that could easily be avoided if a particular party chose to. Labour provisions should therefore be integrated into every section of the agreement. Each process involved should be sensitive to the creation of decent jobs. In addition to the historic labour provision section included in FTAs, we advocate for the following:

3. Labour as an integral part of an FTA where each section incorporates labour provisions, and they are not viewed as an additional component.

- To date, FTAs have not taken this approach which would contribute to explaining why the desired results have not been achieved.

Unions should thus advocate for labour provisions to be incorporated as an integral part of trade agreements to avoid any loopholes through which they can be bypassed. The AfCFTA negotiations are still ongoing, which presents unions with an opportunity to demand the inclusion of labour provisions throughout. If the Decent Work Agenda is to be met, the restructuring of economies across Africa should have labour as an integral component.

How is compliance with labour provisions encouraged in Free Trade Agreements?

To ensure labour provisions in FTAs are adhered to, compliance mechanisms need to be put in place. In this regard, there are two main categories; enforcement compliance mechanisms such as sanctions and incentives, or promotional compliance mechanisms using dialogue and capacity building. A combination of the two can be used, but in 2013 it was found that 60% of agreements with labour provisions had promotional elements (Engen, 2017). In this section, we provide an overview of the different options which can enable unions to engage in negotiations on different possible measures. Given the capacity shortages within many African states and labour organisations, we encourage unions to promote promotional compliance mechanisms. In this manner, capacity building can be enacted and countries do not stand to be punished rather than helped. Reference to the pre-ratification approach is also made although, given the current ratification status of AfCFTA, the approach is, unfortunately, less applicable.

A ENFORCEMENT COMPLIANCE MECHANISMS – CAUTION OR PUNISHMENT

Enforcement mechanisms can either be incentive-based (softer approach) or sanction-based (harder approach).

The first and softer approach involves the resolution of non-compliance through consultation, social dialogue, reviews, and technical assistance. This approach is taken instead of imposing sanctions or fines (Posthum, Undated). In this approach, committees or panels of experts, for example, will be utilised to mediate and resolve disputes. The EU has made use of the incentive-based approach in all but one of its agreements (Engen, 2017).

The second approach, which is sanction-based goes further than mediation through consultation. In these cases, economic penalties either through fines or sanctions, can be imposed. Engen (2017) notes that in most cases the sanction-based approach is used in combination with the incentive or consultative approach. Only when no agreement can be found between the relevant parties will an economic penalty be given.

Within the sanction-based approach, disputes can be settled either in a separate mechanism or through the FTAs main dispute settlement arrangements. In the former, a monetary punishment can be given. Fines can be arranged to be paid into a special fund for the remediation of labour rights violations (Posthum, Undated). Using the main FTA dispute settlement mechanisms entails holding back the preferential tariffs and is referred to as "trade sanctions" (Engen, 2017).

To date, there has been little proof of the direct effect of hard or soft enforcement mechanisms. The main reason is that, to date, none of the few hard enforcement approaches enacted has been concluded. On the other hand, case studies show that soft enforcement approaches through dialogue and cooperation have been effective as no form of punishment was necessary.

B PROMOTIONAL COMPLIANCE MECHANISMS – STRENGTHENING THE CAPACITY TO ENFORCE LABOUR STANDARDS

In contrast to the enforcement mechanisms identified above, the promotional approach focuses on promoting labour standards through knowledge sharing, dialogue, capacity building and technical assistance (Posthum, Undated). The objective becomes the strengthening of domestic labour institutions. Legal assistance to workers can be provided as well as assistance to trade unions (Engen, 2017). Within this context, it becomes a win-win situation. Countries are not given a punishment that their already stretched resources cannot afford. They are rather provided with the opportunity to improve their capacity to enact labour standards. Studies have shown that there is indeed a correlation between an improvement in state capacity and an improvement in labour rights in a country (ibid.).

C PRE-RATIFICATION APPROACH – AN OPPORTUNITY MISSED

A third compliance option is the pre-ratification approach, in which the improvement of labour standards is a pre-condition for the ratification of the agreement (Vangeel, 2016). Across the literature, and despite not often being implemented, this approach is identified as the most effective (Vangeel, 2016 & Engen, 2017). Given the large number of countries which have already ratified AfCFTA, this option represents the least appropriate but is still worth noting for trade unions in possible future negotiations of agreements.



7

THE IMPACT OF LABOUR PROVISIONS IS DIFFICULT TO MONITOR WHICH MAKES TRADE UNIONS CENTRAL TO THEIR SUCCESSFUL IMPLEMENTATION

The impact of labour provisions on labour standards in countries represents a largely under-researched area (ILO, 2017). The lack of proof of the relevant impact can easily be used as an argument against their provision. As described below, the direct impact of labour provisions on decent work creation in a country is not easily quantifiable:

“In summary, while labour provisions have been implemented in agreements for over 20 years, their exact impact is not immediately clear from the existing literature. A central issue is that wide quantitative studies fail to capture the nuances and heterogeneity of labour provisions, while narrow case studies say little about the overall impact. In broad terms, most large-scale surveys find that labour provisions, in general, have no impact on labour standards.” (Engen, 2017: 30).

While the impact of labour provisions represents an under-researched area, the critical role of the labour movement and civil society in ensuring the implementation of labour provisions has been proven (ILO, 2017). Labour provisions within FTAs can be considered as a tool the labour movement can use to stimulate debate, monitor efforts and initiate labour disputes. Vangeel (2016) adequately describes this role:

“To sum up, it’s clear that the effectiveness of both the conditional and the promotional labour provisions, crucially depends on the political will of partner countries. Therefore, the role of accompanying advocacy action by civil society actors, in particular workers’ organizations, has been instrumental in activating the different dimensions of labour provisions. Civil society keeps on reminding governments that they have the responsibility to make sure labour provisions don’t remain hollow phrases and are actually turned into action” (Vangeel, 2016: 5).



TRADE UNION RESPONSE 1: THE INCLUSION OF LABOUR PROVISIONS IN AfCFTA – Demands for a dedicated labour section as well as its integration in unison with gender

Within the context of AfCFTA, the labour movement together with the broader civil society movement have a dual role to play. Firstly, there is an urgent need to demand the inclusion of labour provisions in AfCFTA. For labour provisions to meet their ultimate goal, it is necessary to demand that labour provisions are not only included as a separate chapter or section within the agreement. They need to be incorporated into every aspect of AfCFTA. All processes should be developed taking into consideration the Decent Work Agenda and also the SDGs.

Secondly, trade unions should take on the responsibility of monitoring agents together with the broader civil society movement. The inclusion of any form of labour provisions in AfCFTA will not necessarily translate to any positive impact on decent work creation in a country. It will need to be taken as a tool through which trade unions can demand accountability and monitor progress.

With regards to the inclusion of labour provisions in AfCFTA, trade unions need to deliberate and demand the following:

- Labour provisions should become an integrated part of the AfCFTA agreement. There should be a dedicated section to labour in addition to labour integrated or mainstreamed into all sections. Labour must become a determining factor in all decisions and processes.
- Labour provisions must include a commitment to adopt and maintain the ILO core labour rights, Decent Work Agenda and domestic labour laws (including laws on minimum wages).
- AfCFTA must acknowledge and respect national labour laws and legislative frameworks.
- Trade unions need to take advantage of the fact that AfCFTA negotiations are still ongoing to make their demands and ensure the integration of labour.
- Take caution for misleading word use within AfCFTA. Clauses must be clear without any room for misinterpretation.
- Promote the inclusion of promotional compliance labour mechanisms. In this manner, capacity building can be enacted, and domestic labour institutions strengthened. Countries should be helped rather than punished. It will also work towards bridging the capacity shortages within many African states and labour organisations.
- Should promotional compliance labour mechanisms prove to be unsuccessful, enforceable compliance mechanisms can be implemented. Fines and penalties could be awarded. Preferential treatment given under the agreement could also be removed or sanctioned. Fines can be arranged to be paid into a special fund for the remediation of labour rights violations.
- Unions need to take note that the pre-ratification approach in which the improvement of labour standards is a pre-condition for the ratification of the agreement has historically proved to be the most successful. Unfortunately, given the large number of countries which have already ratified AfCFTA, this option represents the least appropriate but is still worth noting for trade unions in possible future negotiations of agreements.
- AfCFTA should become the tool through which the abuse of worker's rights in the African value chains are brought to an end.
- Gender mainstreaming should happen in unison with labour mainstreaming in AfCFTA. It must be realised by those involved within AfCFTA that without the inclusion of labour provisions, the gender objectives set out in the agreement will not be achieved.
- AfCFTA must respect human rights spelt out in the African Charter on Human and Peoples' Rights.
- There must be transparency throughout the planning, negotiations and monitoring of labour provisions in AfCFTA. The inclusion of trade unions and civil society actors is essential.

The inclusion of labour in AfCFTA will have limited results unless trade unions become active monitoring and evaluation mechanisms. This research has shown how it is difficult to measure the direct impact of labour provisions in trade agreements. The only positive results have been when they are supported by a strong labour movement who can share their experiences and hold those responsible for malpractices accountable. A labour sensitive AfCFTA should become the tool through which unions can demand accountability.



UNPACKING THE AFRICAN CONTINENTAL FREE TRADE AGREEMENT (AfCFTA)

The African Continental Free Trade Area (AfCFTA) came into effect on 1 January 2021. It has been signed by 54 of the 55 African Union members. As a flagship program, the agreement (the AfCFTA) responds to the African Union (AU) Agenda 2063 aspirations 1, 6 and 7, which aim to “*attain a prosperous Africa based on inclusive growth and sustainable development, an Africa whose development is people-driven, relying on the potential of African people, especially its women and youth and an Africa that is a strong, united, resilient and an influential global player and partner*”. The agreement is expected to lead to the creation of a single African market for goods and services, facilitate the long-awaited free movement of people, mobilise regional investments and be the necessary building impetus towards the establishment of a Continental Customs Union. In the same breath, across the literature, it is acknowledged that should AfCFTA not be implemented correctly, the ability of this instrument to meet the aspirations of Africa’s people for economic transformation, development and integration is not a foregone conclusion.

Despite the complexities associated with AfCFTA and the risks for workers and communities within such large-scale trade liberalization, the inclusion of trade unions in the process has been limited. Trade unions, on the other hand, have not yet developed an agreed, well-formulated policy position on the AfCFTA. This guide acknowledges that developing such a policy position is not a simple task especially given that trade unions face their own resource and capacity shortages varying across national and regional boundaries. This section thus represents the first step in assisting trade unions to develop their own policy positions and engage AfCFTA with confidence across continental, regional and national levels. The overarching objectives, relevant stakeholders and each AfCFTA Protocol are explained and deliberated in the subsequent sections. Trade unions are ideally placed to advocate not only for their constituencies and workers but also for the broader communities in which they are located.

AfCFTA OBJECTIVES AND POLICY INTEGRATION

Intra-Africa trade currently stands at a mere

15%

(TRALAC, 2020).

This number is extremely low compared to Europe with 67% and Asia at 58%. It is currently more expensive for a country to export inside Africa than outside. The main objective of AfCFTA is thus to boost this percentage of intra-Africa trade by eliminating tariffs and barriers (ibid.).

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The AfCFTA has eight general objectives as set out in the treaty document:

- a. “create a single market for goods, services, facilitated by movement of persons in order to deepen the economic integration of the African continent and in accordance with the Pan African Vision of ‘An integrated, prosperous and peaceful Africa’ enshrined in Agenda 2063;
- b. create a liberalized market for goods and services through successive rounds of negotiations;
- c. contribute to the movement of capital and natural persons and facilitate investments building on the initiatives and developments in the State Parties and RECs;
- d. lay the foundation for the establishment of a Continental Customs Union at a later stage;
- e. promote and attain sustainable and inclusive socio-economic development, gender equality and structural transformation of the State Parties;
- f. enhance the competitiveness of the economies of State Parties within the continent and the global market;
- g. promote industrial development through diversification and regional value chain development, agricultural development and food security; and
- h. resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes” (AfCFTA, 2020: 4).

The absence of any mention of the creation of decent work and protection of workers is quite noticeable. Reference is made to “inclusive socio-economic development”, but the objectives lack clear reference to employment creation, social protection, rights at work, and social dialogue, as part of the Decent Work Agenda.



In addition to the general objectives, the agreement provides seven specific objectives:

- a. “progressively eliminate tariffs and non-tariff barriers to trade in goods;
- b. progressively liberalise trade in services;
- c. cooperate on investment, intellectual property rights and competition policy;
- d. cooperate on all trade-related areas;
- e. cooperate on customs matters and the implementation of trade facilitation measures;
- f. establish a mechanism for the settlement of disputes concerning their rights and obligations; and
- g. establish and maintain an institutional framework for the implementation and administration of the AfCFTA” (AfCFTA, 2020: 4).

The specific objectives include the seven protocols of AfCFTA that this section of the guide discusses in further detail below.

With regards to how AfCFTA will integrate with existing development initiatives, TRALAC (2020B) explains the following:

“Agenda 2063 is Africa’s framework for structural transformation. It builds on and aims to facilitate the implementation of existing continental initiatives (AIDA, PIDA, BIAT and CAADP). The establishment of the AfCFTA, a single African air transport market (SAATM), and the free movement of people are Agenda 2063 flagship projects. The AU has adopted legal instruments for the effective implementation of these flagship projects. Importantly, the UN Agenda 2030’s 17 SDGs are incorporated in the 20 goals of Agenda 2063. By implementing Agenda 2063, Africa will also meet its global commitments under the SDGs” (TRALAC (2020B: 2).

THE DEVELOPMENT OF AFCFTA: WHERE DID IT START AND WHERE ARE WE NOW?

A. LOOKING BACK

The AfCFTA is being established by the 55 member states of the AU’s history. The main objective is to create a single continent-wide market for goods and services and to promote the movement of capital and natural persons.

The development of AfCFTA stretches as far back as 2012 when it was conceived at the African Union’s 18th Session in Addis Ababa. Six years later, on 21 March 2018 in Kigali, Rwanda, it was formally established with the signing of the Agreement on the Establishment of the African Continental Free Trade Area by 44 Heads of State. Since then, a further ten member states have signed the agreement (vivedeconomic, 2019). According to Article 23 of the Agreement, AfCFTA could come into effect 30 days after 22 countries ratified it. The agreement subsequently came into effect on 30 May 2019 (TRALAC, 2021C). Albert (2019)

explains that the speed at which the 22 ratifications were submitted was unprecedented in the AU history. It took only one year and ten days to reach the threshold.

Of importance is that Nigeria was the only country reluctant to sign the agreement. The country has done much to develop local manufacturing and farming and raised serious concerns regarding low-priced goods that will flood the market as a result of AfCFTA. They did finally sign the agreement which was important for the overall agreement as Nigeria is considered the biggest economy on the continent (Albert, 2019). After Nigeria added their signature the operational phase of AfCFTA was officially launched during the 12th Extraordinary Session of the Assembly of the AU in Niamey, Niger on 7 July 2019 (TRALAC 2021B).

Box 2**THE NIGERIAN CASE STUDY – The only country to raise concerns regarding AfCFTA driven by concerns in the Manufacturing Sector**

“Nigerian consumers and traders, and certain Nigerian industries, including its financial and telecommunications services industries, potentially stand to benefit from the AfCFTA and are therefore broadly supportive of Nigeria’s participation in the AfCFTA. However, these stakeholders are less well organised and less politically influential than the country’s manufacturing industries, who are more sceptical about the AfCFTA. Having long benefited from the significant protection afforded by Nigeria’s highly restrictive trade regime, Nigeria’s Manufacturing Sector initially lobbied against the AfCFTA and have urged the Nigerian government to ensure that Nigeria’s large domestic market doesn’t become a ‘dumping ground’ for foreign products, thereby harming local manufacturing firms who already have to contend with a highly unfavourable business environment” (Woolfrey, Apiko & Pharatlhathe, 2019).

“The importance of centering democratic norms in the implementation of the AfCFTA cannot be under-emphasised. As shown in the Nigerian case, lack of consultation with broader civil society can prove to be an obstacle. Despite Nigeria’s active involvement in the negotiations and drafting of the AfCFTA Agreement, the government made a last minute decision not to sign the Agreement as a result of pressure from stakeholders such as the Nigerian Labour Congress (NLC) and the Manufacturing Association of Nigeria (MAN).

The Nigerian president, Muhammadu Buhari, later released a statement citing the need to engage in more domestic sensitisation and consultation before signing the Agreement. Had such process preceded the plan to sign the Agreement, the Nigerian government would not have been entangled in an avoidable embarrassing diplomatic situation. Another factor that points to the imperative of democratic norms in the AfCFTA operational matrix is that the independence and quality of national institutions such as the judiciary, parliamentary and technocratic agencies are central to ensuring that citizens meaningfully benefit from the AfCFTA arrangement. In the same vein, the choices regarding tariff and non-tariff barriers are bound to affect citizens in multi-dimensional ways, and as such accord them the right to engage” (Fagbayibo, 2019: 3).

Towards the end of 2019, the world started entering a period in which lives and global trade were severely disrupted. The global pandemic, COVID-19 is still ongoing, and AfCFTA represents one of the many processes globally that were derailed as a result. It is still not known what the long-term effects of the pandemic will be, but it does, among others, raise serious questions regarding African countries’ vulnerability to disruptions in international trade. It is legitimate to wonder how the COVID-19 pandemic will interact with the AfCFTA and influence the prospects of the agreement for generating economic opportunities and accelerating the process of structural transformation for Africa’s development.

In 2020, Phase I of the AfCFTA negotiations commenced, but the official starting date for the agreement was on 1 January

2021. AfCFTA is one of the rare agreements that came into force before negotiations were completed:

“The AfCFTA is unlike other FTA agreements in that it has come into force before its own negotiations have been fully concluded. This was namely for political reasons and although it creates momentum and may sustain momentum, it has the disadvantage of resulting in a Free Trade Area (FTA) agreement being in force legally, but not operationally” (Capon, 2021).



AFCFTA: WHERE DID IT START AND WHERE ARE WE NOW?

Looking Back

1991

ABUJA TREATY: Vision of an African Economic Community Progressive approach to regional integration in Africa, the establishment of Regional Economic Communities (RECs) and a plan for creating an African Economic Community by 2028 (Albert, 2019)

NIGERIA, ONLY COUNTRY RELUCTANT TO SIGN THE TREATY TO PROTECT ITS INDUSTRY FROM LOW-INCOME GOODS

Nigeria has done much to encourage local manufacturing and expansion of agriculture in the country. Concerned that low-priced goods will flood the market.

Finally signed the agreement on 7 July 2019 – big boost for AfCFTA as they represent the biggest economy

2012

DECISION TO ESTABLISH AfCFTA at the African Union's 18th Session in Addis Ababa AU adopts Action Plan to boost intra-African trade

2019

30 May 2019

AfCFTA AGREEMENT ENTERED INTO FORCE

30 days after the 22-country ratification threshold

2013

AGENDA 2063 LAUNCHED at the 50th Anniversary of the Organisation of African Unity

April 2019

The Gambia becomes the 22nd state to ratify AfCFTA Only one year and ten days after its signing, the threshold of 22 countries required for the entry into force of the agreement, was reached. The timelines of this ratification process are unprecedented in the AU history.

2017

2012 target for removal of trade barriers

Target missed

Jan 2018

Signing of the Protocol to the Treaty Establishing the African Economic Community relating to the Free Movement of Persons, Right to Residence and Right to Establishment.

18 Mar 2018

ESTABLISHMENT OF AfCFTA

In **Kigali, Rwanda** Signed by 44 heads of state and governments

7 July 2019

AfCFTA OPERATIONAL PHASE LAUNCHED during the 12th Extraordinary Session of the Assembly of the African Union in Niamey, Niger

2020

COVID-19
GLOBAL
PANDEMIC

BORDER
CLOSURES

February 2020

OPERATIONAL PHASE LAUNCH at the 33rd Ordinary African Union Assembly, supported by:

1. The agreed AfCFTA Rules of Origin.
2. Dashboard of the AU Trade Observatory.
3. AfCFTA Trade in Goods Password Protected Dashboard; iv) Pan-African Payments and Settlements System; and
4. Continental Online Mechanism for Monitoring, Reporting and Elimination of Non-Tariff Barriers.

19 March 2020

Mr. Wamkele Mene APPOINTED FIRST SECRETARY GENERAL AND SECRETARIAT TO BE HOSTED BY GHANA PHASE LAUNCH

5 Feb 2021

36 Countries have signed and deposited their instruments of AfCFTA ratification with the AUC Chairperson

1 Jan 2021

AfCFTA OFFICIAL STARTING DATE

Agreement comes into force before negotiations have been concluded!

- For political reasons - creates momentum and may sustain momentum

Opportunity for trade unions to influence negotiations

5 Dec 2020

VIRTUAL AU SUMMIT: Approved the start of AfCFTA

16 Nov 2020

Preparatory Meetings for Commencement of Trading under the AfCFTA AU Head of State and Government urged Member States to prepare national strategies for utilizing and benefiting from the AfCFTA

30 May 2020

PHASE 1 NEGOTIATIONS: TRADE IN GOODS, SERVICES AND DISPUTE SETTLEMENT - LEGAL INSTRUMENTS CAME INTO FORCE BUT NOT CONCLUDED

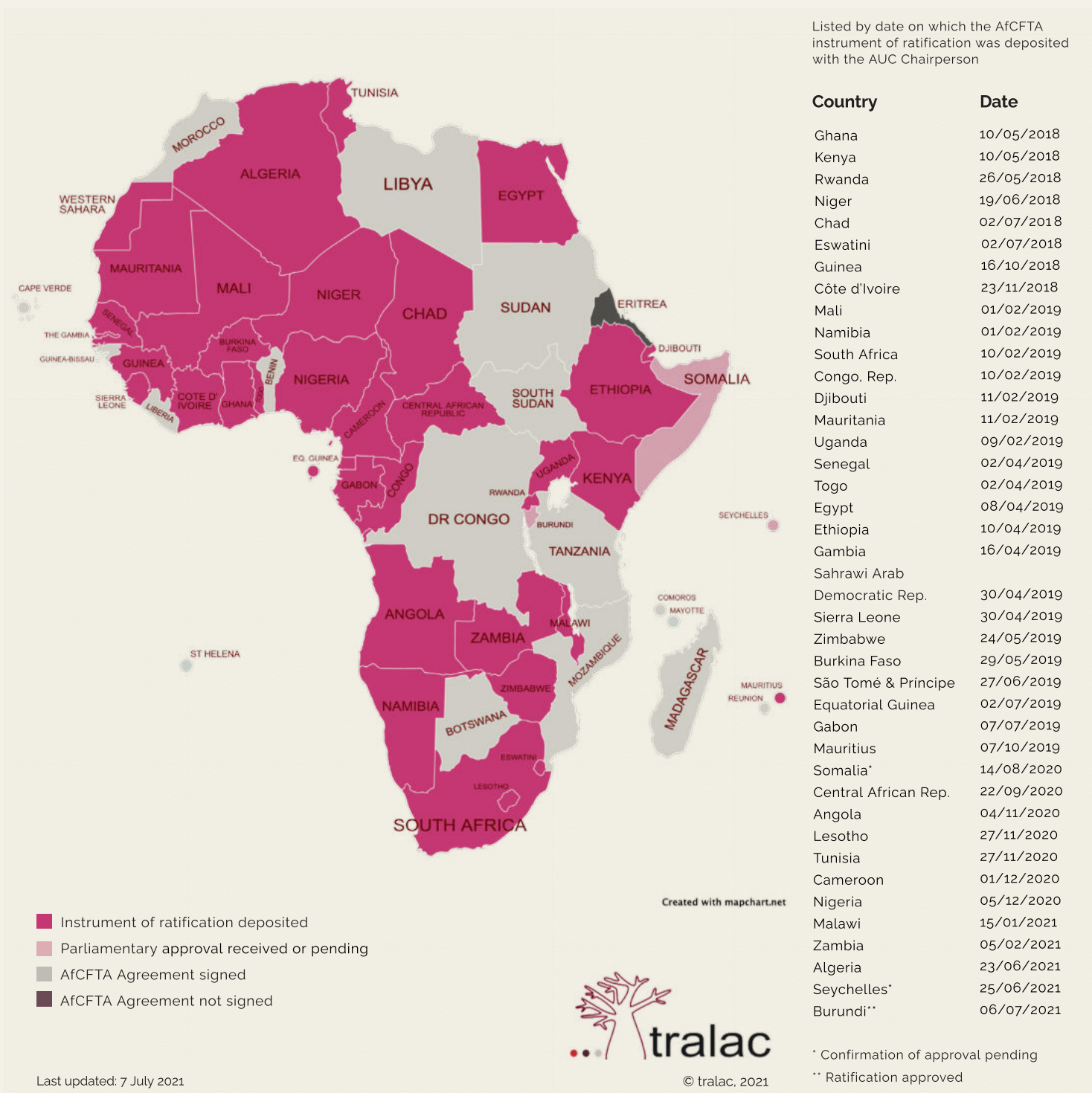
2020

COVID-19
GLOBAL
PANDEMIC

INTERNATIONAL
TRADE DISRUPTED



WHICH COUNTRIES HAVE RACTIFIED THE AfCFTA AGREEMENT?



Listed by date on which the AfCFTA instrument of ratification was deposited with the AUC Chairperson

Country	Date
Ghana	10/05/2018
Kenya	10/05/2018
Rwanda	26/05/2018
Niger	19/06/2018
Chad	02/07/2018
Eswatini	02/07/2018
Guinea	16/10/2018
Côte d'Ivoire	23/11/2018
Mali	01/02/2019
Namibia	01/02/2019
South Africa	10/02/2019
Congo, Rep.	10/02/2019
Djibouti	11/02/2019
Mauritania	11/02/2019
Uganda	09/02/2019
Senegal	02/04/2019
Togo	02/04/2019
Egypt	08/04/2019
Ethiopia	10/04/2019
Gambia	16/04/2019
Sahrawi Arab Democratic Rep.	30/04/2019
Sierra Leone	30/04/2019
Zimbabwe	24/05/2019
Burkina Faso	29/05/2019
São Tomé & Príncipe	27/06/2019
Equatorial Guinea	02/07/2019
Gabon	07/07/2019
Mauritius	07/10/2019
Somalia*	14/08/2020
Central African Rep.	22/09/2020
Angola	04/11/2020
Lesotho	27/11/2020
Tunisia	27/11/2020
Cameroon	01/12/2020
Nigeria	05/12/2020
Malawi	15/01/2021
Zambia	05/02/2021
Algeria	23/06/2021
Seychelles*	25/06/2021
Burundi**	06/07/2021

* Confirmation of approval pending
 ** Ratification approved

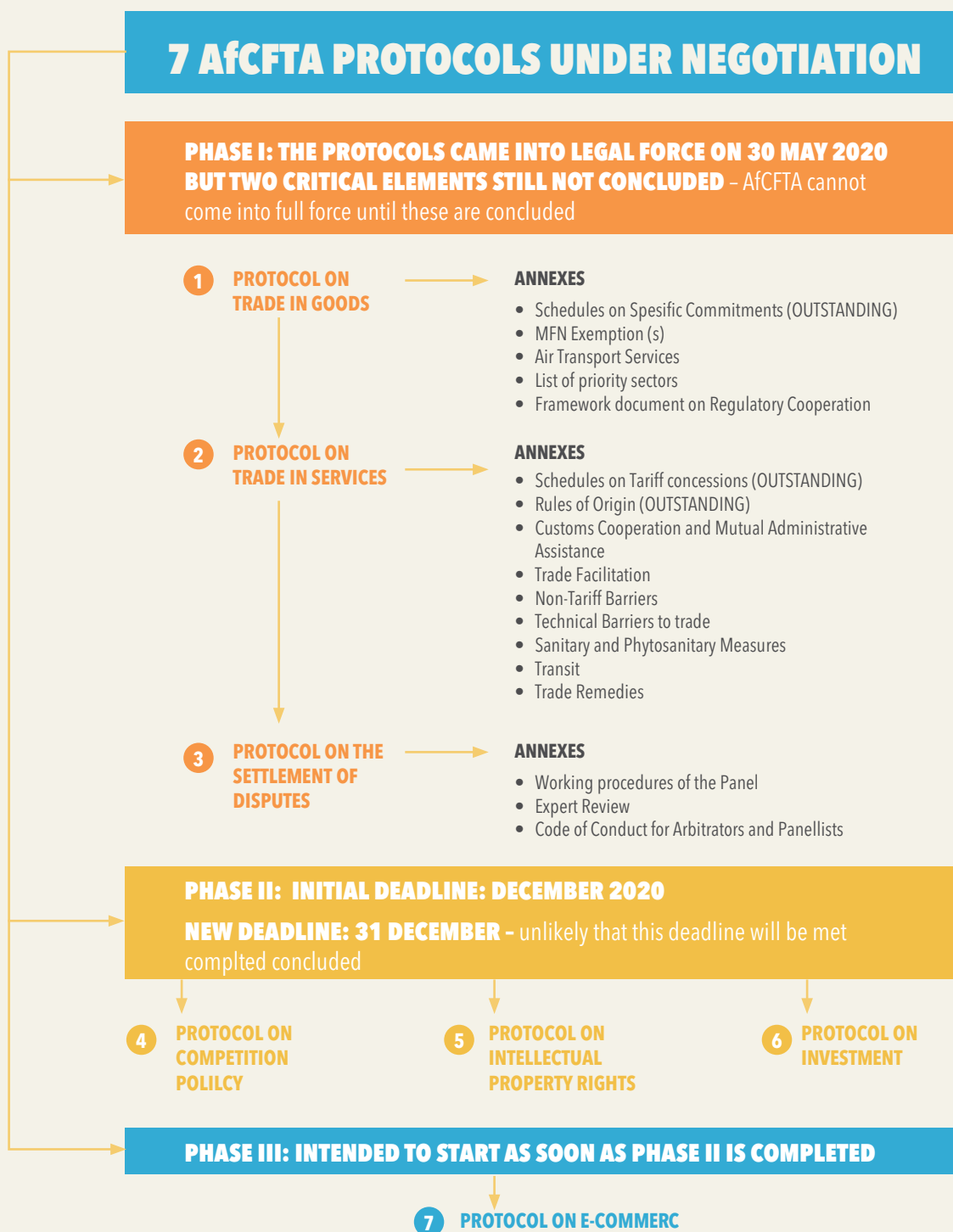


B. WHERE ARE WE NOW: THE THREE NEGOTIATION PHASES AND UNCONCLUDED AREAS FOR TRADE UNION INFLUENCE

The AfCFTA negotiations are set to take place in three phases. The first was set to be concluded already, but this has not yet been the case. This sub-section provides an overview of

where we are in terms of the different areas of negotiation to demand their inclusion and formulate their demands accordingly

WHERE ARE WE NOW?





PHASE I: Trade in goods, services, and dispute settlement – not completed

In Phase I of the AfCFTA negotiations, the following three Protocols are being negotiated:

1. Protocol on Trade in Goods
2. Protocol on Trade in Services
3. Protocol on Rules and Procedures on the Settlement of Disputes

Although these negotiations entered into legal force on 30 May 2020, three critical sub-elements have not yet been concluded (Chidede, 2021):

1. Schedules of preferential tariff concessions
2. Preferential rule of origin
3. Schedules of specific commitments on the five priority service sectors (business services; communications; finance; tourism; and transport)

Without these areas negotiated, AfCFTA cannot come into force as an FTA. They represent the minimum requirements for an FTA (Hartzenberg, 2020). While this may be true and as will be discussed further on in this guide, negotiating these elements represents a complicated task:

“When 54 states at very different levels of economic development must adopt tariff cuts for 90% of tariff lines (not 90% of trade) as well as rules of origin, while maintaining existing Regional Economic Community (REC) structures and benefits, difficult and complicated compromises must be reached. The principles for trade in the five priority services sectors, including specific commitments, must also be agreed” (Erasmus & Hartzenberg, 2020B).

As a result, Phase I of the AfCFTA negotiations are far from over. The new completion date is set for June 2021 (Chidede, 2021). This being said, the outstanding negotiation issues are very complex and negotiating them could take much longer than anticipated. Another one to four years can easily be expected.

PHASE II: Competition Policy, Intellectual Property Rights and Investment – due 31 December 2021, but realistic?

In Phase II of the AfCFTA negotiations, the following three Protocols are set to be negotiated:

1. Protocol on Competition Policy
2. Protocol on Intellectual Property Rights
3. Protocol on Investment

The official procedures for the adoption of these Protocols are the following:

“The outcomes of the negotiations of Phase II and III issues shall be constituted into Protocols on IPRs, Investment, Competition Policy, and E-Commerce and shall form part of the single undertaking upon subject to entry into force (Art. 8 of the AfCFTA Agreement). The Protocols will have to be adopted by the AU Assembly and ratified according to the constitutional rules and procedures of member states. The Protocols will enter into force 30 days after the deposit of the 22nd instrument of ratification (Art. 23.2 of the AfCFTA Agreement). For acceding member states, the Protocols shall enter into force on the date of the deposit of the instrument of accession” (Chidede, 2021).

The Protocols will thus only come into force thirty days after 22 member states have ratified them. The initial completion date of December 2020 was missed due to the Covid-19 Pandemic. The new date is set for 31 December 2021 (Chidede, 2021).

PHASE III: E-commerce – due 31 December 2021, but realistic?

The final phase of the AfCFTA negotiations is concerning the Protocol on E-commerce. The negotiations are meant to start immediately after Phase II has been concluded and is also set to be completed on 31 December 2021 (Chidede, 2021).

C. LOOKING FORWARD – OPPORTUNITY TO INFLUENCE AfCFTA IN REAL-TIME

As described above, all three negotiation phases are still set to be completed. The complex nature of these negotiations could see them take anything from months to years to complete. The advantage thereof is that where unions were previously excluded from negotiations, they now have a window of opportunity to influence the remaining Protocols.

Also, the actual implementation phase of AfCFTA is foreseen to take time and present a gradual process. Countries will have to bilaterally negotiate product for product within the parameters of the AU mandate. The existing RECs will also have to negotiate among themselves and other member states (TRALAC, 2020). These negotiations represent further areas of involvement for unions. It is also worth noting that Eritrea has still not signed the consolidated AfCFTA Agreement.

Looking beyond the immediate implementation of AfCFTA,

it is necessary to realise that the AU have ambitions for the continent beyond AfCFTA. There is a hope that AfCFTA will lead to the following (Albert, 2019):

- An African Single Market
- Establishment of a Continental Customs Union
- The integration of RECs into a SINGLE AFRICAN FREE TRADE AREA
- Creation of an African Monetary Union (AMU).

While some of these objectives seem unrealistic given the cultural and political divisions on the continent, trade unions should demand inclusion in any form of negotiations. It would be worthwhile building networks with stakeholders who can inform trade unions of any possible movement in these regards. This way, AfCFTA and other relevant initiatives or negotiations can be monitored in real time.



TRADE UNION RESPONSE 2: THE AfCFTA NEGOTIATIONS HAVE NOT BEEN CONCLUDED – Much needed opportunity for influence

The AfCFTA negotiations have not yet been concluded. To ensure the integration of labour provisions within AfCFTA, unions have the opportunity to influence the agreement in real time. The following represent some of the key areas:

1. Negotiations Phase I with a focus on Schedules on Tariff Concessions and Rules of Origin
 2. Negotiations Phase II
 3. Negotiations Phase III
 4. Bilateral “product for product” negotiations
 5. Initiatives beyond the implementation of AfCFTA such as the development of a single African Free Trade Area
- Demand a seat at all AfCFTA negotiation tables going forward.
 - Demand that your local government do not conduct any AfCFTA related negotiations such as tariff reductions without your input.
 - Trade unions need to take a negotiating position based on their evaluation of the impact on their members.

Trade unions must be included in all AfCFTA negotiations going forward. It is not only of importance on a continental level but also at national levels:

A transformative AfCFTA can only be achieved if all relevant stakeholders are included in negotiations and if it is transparent in its approaches. It has to show that it has a people-centred approach rather than a business focus.



WHAT IS NEXT?

2021?

ERITREA IS STILL TO SIGN THE AfCFTA AGREEMENT

Jun 2021

COMPLETION OF PHASE I NEGOTIATIONS

REALISTIC??? Complex negotiations that could take much longer to conclude.

31 Dec 2021

COMPLETION OF PHASE II and PHASE III NEGOTIATIONS

REALISTIC??? Complex negotiations that could take much longer to conclude.

Future

BILATERAL PRODUCT BY PRODUCT NEGOTIATIONS

Will take time.

5 years from AfCFTA completion

NON LEAST DEVELOPED COUNTRIES (LDCs) HAVE 5 YEARS TO ACHIEVE 90% LIBERALIZATION

10 years from AfCFTA completion

LEAST DEVELOPED COUNTRIES (LDCs) HAVE 10 YEARS TO ACHIEVE 90% LIBERALIZATION

FAR FUTURE GOALS

AfCFTA to lead to an **AFRICAN SINGLE MARKET**

Establishment of a **CONTINENTAL CUSTOMS UNION**

Integrate RECs into a **SINGLE AFRICAN FREE TRADE AREA**

Creation of an **AFRICAN MONETARY UNION (AMU)**

Looking forward

Two to three years of ongoing negotiations before AfCFTA will be finalised

WHO WILL IMPLEMENT AfCFTA AND WHO WILL HAVE DECISION-MAKING POWER?

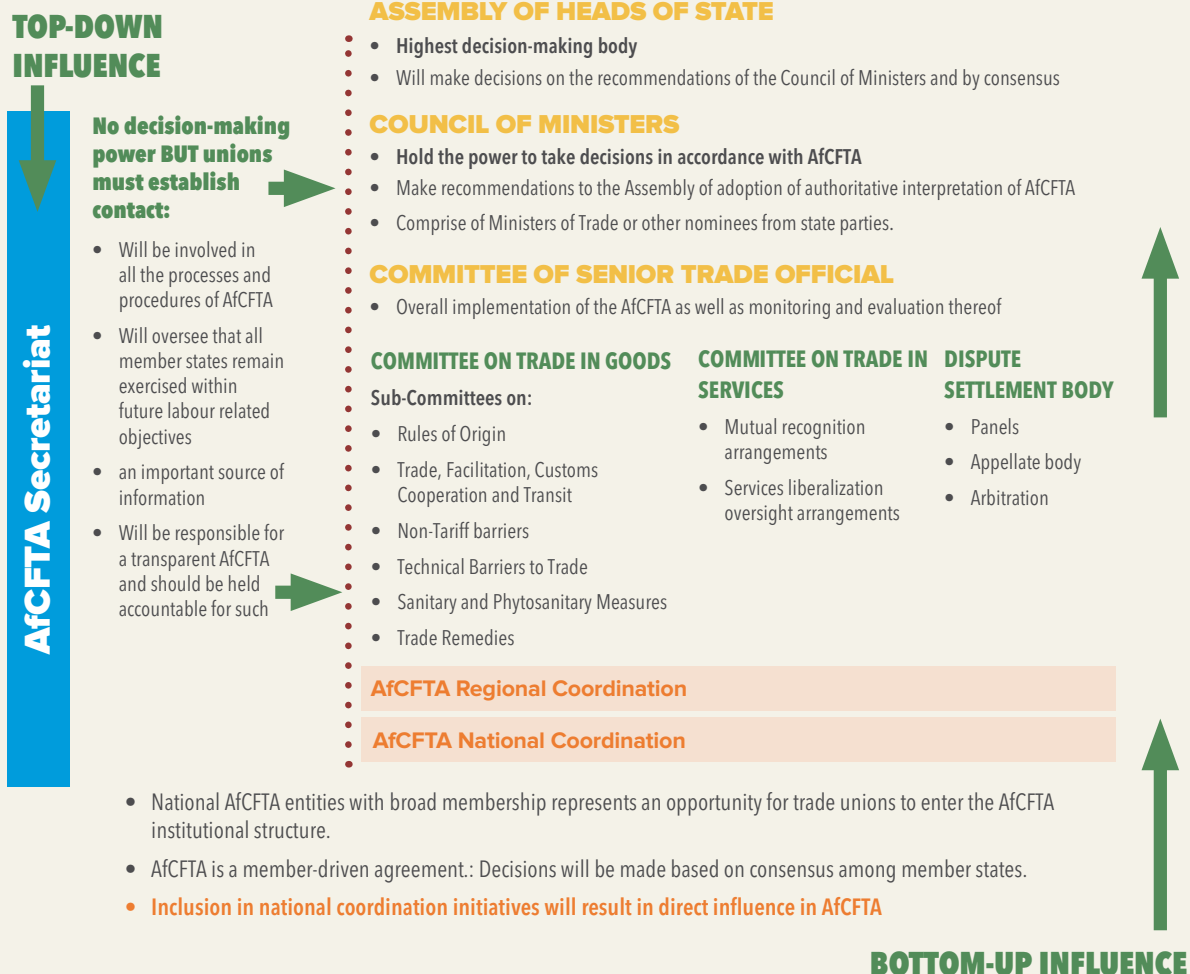
The AfCFTA will be governed by an institutional structure that ranges from a permanent Secretariat to regional and national committees. To target the right stakeholders as part of trade unions' advocacy campaigns, it is necessary to unpack the power and decision-making dynamics within these structures. As a starting point, it is important to understand that AfCFTA is designed to be a member-driven arrangement. Decision-making power will ultimately be located in the

hands of the various member states, on a consensus basis, as part of the Council of Ministers (Erasmus, 2020B). No new international organisation or supranational institution will be created to support AfCFTA (Erasmus & Hartzberg, 2020A). Representatives of the different state parties will be located across all the institutional levels apart from the Secretariat (ibid.).

WHO WILL IMPLEMENT AfCFTA AND WHO WILL HAVE DECISION MAKING POWER?

- AfCFTA is designed to be a **MEMBER-DRIVEN ARRANGEMENT**
- Decision making power will be in the hands of the various member states on a consensus basis

DECISION MAKING INFLUENCE WILL LARGELY BE LOCATED ON NATIONAL LEVELS





A. THE AfCFTA SECRETARIAT: Permanent Administrative Organ

The AfCFTA Secretary-General is located in Accra, Ghana. Their main objective will be to coordinate the implementation of AfCFTA. While the Secretary-General will not hold any decision-making powers, they will be more than an administrative body. It can be said that they will “project manage” AfCFTA in everything from implementation of the vast agenda and capacity building, to playing a possible role in future negotiations (Erasmus, 2021B).

Some noteworthy points regarding the AfCFTA Secretary-General (Albert, 2019., Luke, 2020 & Erasmus, 2020B & 2021B):

- The roles and responsibilities of the Secretariat shall be determined by the Council of Ministers of Trade.
- The Secretariat is to be a functionally autonomous institution within the African Union system.
- This status is equivalent to that of other African Union organs, such as the New Partnership for Africa's Development (NEPAD).
- It is estimated that the AfCFTA Secretariat could have **50 to 70** professional and administrative staff.
- The relevant budget will be derived from the African Union budget and is estimated to be between **US\$5 and 7 million**.

- The budget and the Secretariat's mandate will need to be adequate to cover the following:
 - Perform administrative and support functions
 - The implementation of the vast AfCFTA agenda
 - The development of technical capacity within the State Parties
 - The coordination of the activities of the technical bodies to implement the Protocols and Annexes
 - Blending the RECs and other existing African trading arrangements into one continental Free Trade Area
 - The steady flow of and reliable access to official information about State Party policies, laws and measures

The last point holds particular importance as it will ensure a transparent AfCFTA process which unions should at all times demand. Erasmus (2021B) also importantly explains that given that the Secretariat is not yet fully staffed and capacitated, the way its institutional role will play out is still to be seen.



TRADE UNION RESPONSE 3: THE AfCFTA STAKEHOLDERS – The Secretary-General as an important contact and source of information

While the Secretary-General will not have any decision-making power, they will be involved in all the processes and procedures of AfCFTA. It is subsequently important for unions to establish contact with the Secretary-General. As trade union demands for the integration of labour provisions in AfCFTA materialises, it will be the Secretary-General who will oversee that all member states remain exercised within such objectives.

As administrative support to AfCFTA, the Secretariat further represents an important source of information regarding ongoing processes and negotiations. In the absence of the availability of such information, the Secretariat should be held accountable. Trade unions should at all times demand a transparent AfCFTA process from the Secretariat.

B. ASSEMBLY OF HEADS OF STATE AND GOVERNMENT: Highest decision-making power

The Assembly of Heads of State and Government will be the highest decision-making body:

“The Assembly shall have the exclusive authority to adopt interpretations of this Agreement on the recommendation of the Council of Ministers. The decision to adopt an interpretation shall be taken by consensus” (AfCFTA, 2020: 7).

Any decision that is outside of the mandate of the Council of Ministers will be referred to the Assembly of Heads of State and Government.

C. THE COUNCIL OF MINISTERS: General decision-making power

The Council of Ministers will hold the power to make decisions in accordance with AfCFTA. The Council also holds the power to make recommendations to the Assembly of adoption of an authoritative interpretation of AfCFTA. The Council shall meet twice a year in ordinary sessions and when needed in extraordinary sessions. The Council will comprise Ministers of Trade or other nominees from state parties.

The key points included in their mandate are the following:

- “to take decisions in accordance with the Agreement
- ensure effective implementation and enforcement of the Agreement
- adopt necessary measures for the promotion of the objectives of the Agreement and other instruments relevant to AfCFTA
- to work in collaboration with the relevant organs and institutions of the AU
- to consider reports and activities of the Secretariat and take appropriate actions
- make regulations, issue directives and make recommendations in accordance with the provisions of the Agreement
- consider the organisational structure of the Secretariat and submit for adoption by the Assembly through the Executive Council

- approve the work programs of the AfCFTA and its institutions” (AfCFTA, 2020: 7 & 8).

D. THE COMMITTEE OF SENIOR TRADE OFFICIALS: Implementation as well as Monitoring and Evaluation

The Committee of Senior Trade Officials will have less decision-making power and rather focus on the overall implementation of the AfCFTA as well as monitoring and evaluation thereof. It can be considered the technical implementation team. It will be able to submit recommendations to the Council of Ministers. The Committee will consist of Permanent or Principal Secretaries or other officials designated by each State Party. Importantly, the RECs will be included in the Committee in an advisory capacity.

The focus of the Committee of Senior Trade Officials will be to:

- “implement the decisions of the Council of Ministers as may be directed
- be responsible for the development of programmes and action plans for the implementation of the Agreement
- monitor and keep under constant review and ensure proper functioning and development of the AfCFTA in accordance with the provisions of the Agreement
- establish committees or other working groups as may be required
- oversee the implementation of the provisions of the Agreement and for that purpose, may request a Technical Committee to investigate any particular matter
- direct the Secretariat to undertake specific assignments; and
- perform any other function consistent with the Agreement or as may be requested by the Council of Ministers” (AfCFTA, 2020: 9).

Each committee will focus on a particular protocol and appoint sub-committees for the operationalization of the Annexures (TRALAC, 2020B). It can be deduced that upon the integration of labour provisions in AfCFTA, the Committee of Senior Trade Officials will be responsible for overseeing their implementation as well as monitoring and evaluation.



E. REGIONAL COORDINATION

It is the objective of AfCFTA to build on the existing RECs. These dynamics are discussed in the following sub-sections. For the purposes of this section, it is important to note that the AfCFTA Institutional Structure could include regional coordination committees or initiatives.

F. NATIONAL COORDINATION: Trade Union’s potential entry point into AfCFTA

While AfCFTA is a continental agreement, its implementation will take place mostly at a national level:

“... implementation on the ground is the key to delivering on the expectations of the AfCFTA. In certain instances, the AfCFTA agreement explicitly requires implementation through national arrangements including national committees on trade facilitation and non-tariff barriers. National implementation mechanisms should ideally function within the structure of the AfCFTA country strategy to ensure policy coherence and effective domestication of the AfCFTA. This requires national AfCFTA entities to be created with broad membership that reflects the wide range of stakeholders and interests.” (Luke, 2020: 26).



TRADE UNION RESPONSE 4: THE AfCFTA STAKEHOLDERS – Influencing AfCFTA from a national level

National AfCFTA entities with broad membership represent an opportunity for trade unions to enter the AfCFTA institutional structure. As previously indicated, AfCFTA is a member-driven Agreement. Decisions will be made based on consensus among member states.

Trade unions subsequently could influence decisions on national levels that will be brought forward to the different institutional levels within AfCFTA. Should enough pressure be applied, influence could reach as far as the highest decision-making body, the Assembly of Heads of State and Government.



TRADE UNION RESPONSE 5: Approach stakeholders from the top and bottom

For trade unions to be able to apply pressure within their own countries and across the continent, it is necessary to build networks of influence. This section has illustrated how AfCFTA can either be approached from the top through building relationships within the Secretariat or from the bottom through ensuring their place in national AfCFTA committees. In both instances, building networks of influence is critical.

On a national level, this can be done in unison with civil society organisations and other relevant stakeholders. Transnational networks such as those supported through ITUC will further be crucial in approaching and confronting the AfCFTA institutions on a continental level. Trade unions have the opportunity to share their experience and build a continental voice that cannot be ignored.

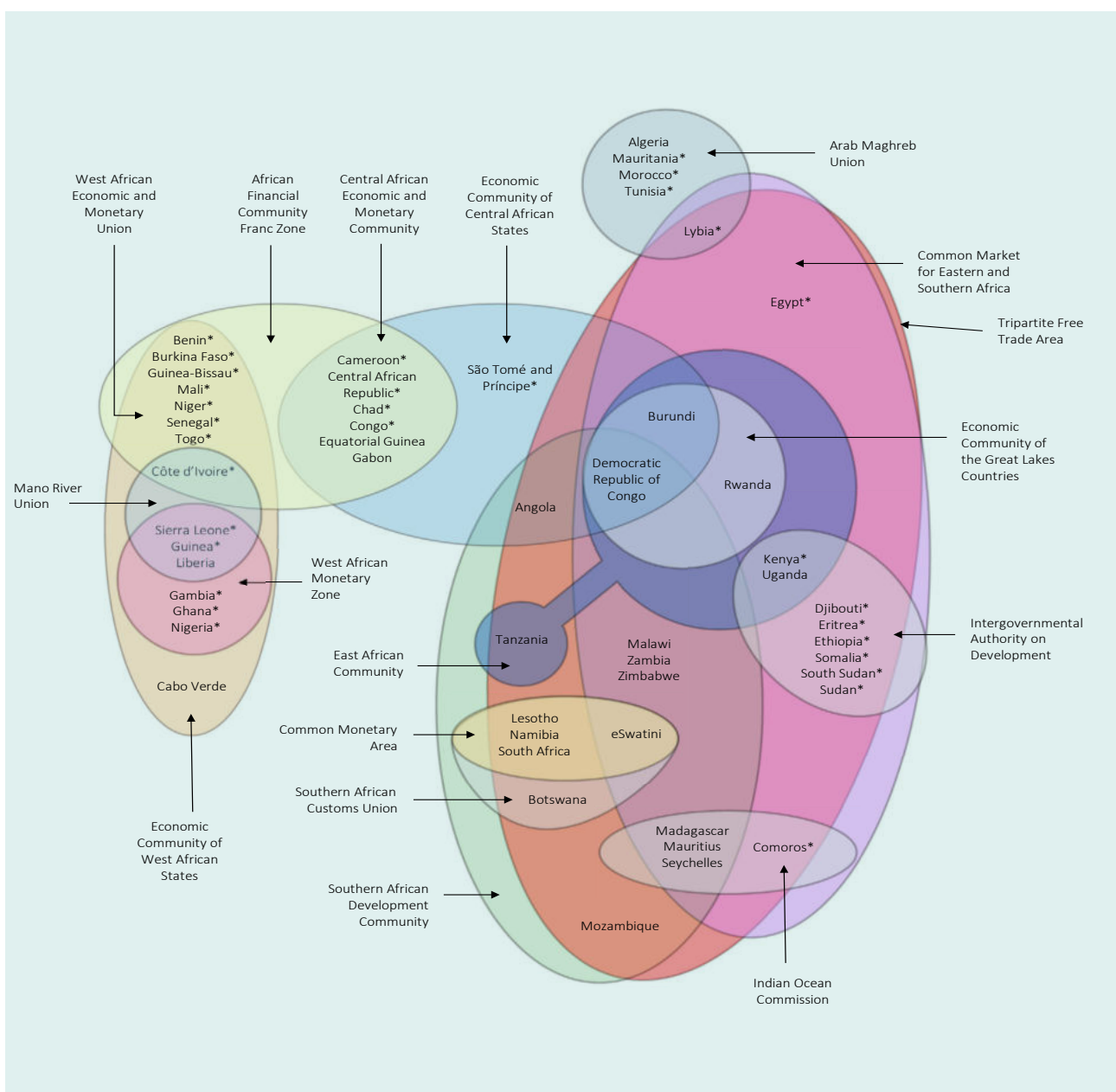
AfCFTA AND THE EXISTING REGIONAL TRADE AGREEMENTS

THERE ARE MULTIPLE REGIONAL TRADE AGREEMENTS IN AFRICA AND THEY WILL REMAIN IN PLACE

It is reported that in 2019 there were more than 15 regional integration arrangements across the African continent with overlapping memberships of various countries (Abrego et al., 2020). Countries within a regional trade agreement are often

also referred to as Regional Economic Communities (RECs). The existing regional agreements are illustrated in the figure below.

Figure 5: Existing trade agreements across the African Continent, 2019



Source: Adapted from Economic Integration in Africa in Abrego et al. (2020)



One of the immediate questions with the implementation of AfCFTA then becomes, what will happen to all the existing regional agreements? The answer is that they will remain in place and become building blocks on which AfCFTA will be constructed. Within AfCFTA, it is described as follows in Article 19(2):

“State Parties that are members of other regional economic communities, regional trading arrangements and customs unions, which have attained among themselves higher levels of regional integration than under this Agreement, shall maintain such higher levels among themselves” (AfCFTA, 2020: 13).

Existing customs unions such as the Southern African Customs Union (SACU) and others that might still be planned will thus be maintained. Hartzenberg (2020) explains that one of the key reasons for keeping the RECs in place is that existing intra-Africa trade is concentrated within these communities. It is said that more than 65% of intra-Africa trade currently takes place within SACU. While this may be true, it also has to be acknowledged that despite a large number of existing agreements, they are considered as underperforming. Global value chains within Africa are still dominated by the exports of raw materials (Abrego et al., 2020). Some of the reasons cited for the underperformance are a “lack of complementary domestic reforms to improve domestic supply responses and a low

level of implementation of the arrangements, owing partly to the absence of strong institutional frameworks supporting them” (ibid.: 9). These challenges could persist within the implementation of AfCFTA and should be acknowledged in open participative social dialogues if AfCFTA is to operate in parallel.

A second question that can be asked is how will all these agreements, with all their complexities, become integrated under AfCFTA? It is not yet clear, but as previously indicated, the long-term vision for the continent is to integrate all the RECs into a Single Africa Free Trade Area. The idea is that as AfCFTA becomes more established, there should be more policy alignment and simplification of rules across the different RECs (Hartzenberg, 2020). Time will tell as to the feasibility of this approach, and in the meantime, unions need to take note of these complexities and see regional agreements as another opportunity to assert influence and make their demands.

WHO WILL NEGOTIATE WITH WHOM?

How AfCFTA is foreseen to exist in parallel with existing regional agreements is referred to by some as “overlapping parallelism” (Capon, 2021). This term sounds complicated exactly because it is. In our first section, we referred to the difference between a trade agreement and a customs union. It is within this context that understanding these differences between the two becomes relevant. An example of a question relating to these complexities is provided below.

Box 3

COMPLEXITIES OF OVERLAPPING PARALLELISM BETWEEN RECS AND AfCFTA

“Let’s start by asking if countries will negotiate tariff phase downs with other countries bilaterally? In theory, this should only happen in cases where both countries do not belong to a customs union. Now, we know that a large proportion of African countries do belong to customs unions – SACU, UEMOA, CEMAC, and the EAC. Let’s focus on SACU and its tariff negotiations within the AfCFTA negotiations to illustrate what the implications of ‘overlapping parallelism’ are. Given the existence of the Tripartite Free Trade Area (TFTA), SACU has already concluded negotiations with the EAC because all SACU members are SADC members, and SADC and the EAC have agreed. Therefore, in the AfCFTA tariff negotiations, SACU will be negotiating with ECOWAS and CEMAC and they will need to make a common offer agreed upon by all their Member States.

Additionally, however, there are State Parties like Ethiopia and Egypt who SACU will need to negotiate with bilaterally, and with different offensive and defensive interests in mind, because these States do not belong to a customs union and the nature of SACU's trade with each of them is distinct. This means that there will be negotiations within SACU, then offers from SACU to other African customs unions, and then offers from SACU to individual State Parties of the AfCFTA. Each of these will include distinct tariff offers and the first offer may not be accepted, in which case further negotiations will ensue. Now, keep in mind that tariff phase downs are one of three outstanding areas of the agreement that are still in negotiation and have not been concluded yet. This example should illustrate what the practical implications of 'overlapping parallelism' are for the ongoing and future negotiations of the AfCFTA" (Capon, 2021).



WHO WILL CEMAC BE NEGOTIATING WITH?

African continental free trade area negotiations WHO is negotiating with WHOM?

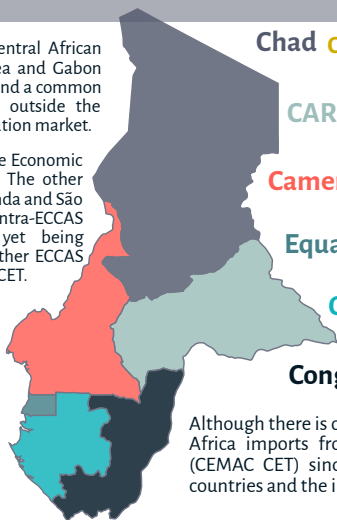
Economic and Monetary Community of Central Africa (CEMAC)

CEMAC has six member states - Cameroon, Central African Republic (CAR), Chad, Congo, Equatorial Guinea and Gabon with the free movement of goods intra-CEMAC and a common external tariff (CET) levied on imports from outside the common customs area irrespective of the destination market.

All six CEMAC countries are also members of the Economic Community of Central African States (ECCAS). The other ECCAS countries are Angola, Burundi, DRC, Rwanda and São Tomé and Príncipe. A preferential tariff for intra-ECCAS trade has been negotiated, but is not yet being implemented. Accordingly, any imports from other ECCAS countries into CEMAC are still levied the CEMAC CET.

Apart from ECCAS, CAR and Chad are also members of CENSAD. However, there are currently no trade arrangement in place among CENSAD countries.

As a Customs Union with a CET, the CEMAC countries will be negotiating together, but Cameroon and CAR have not yet ratified the AfCFTA. Also, CAR, Chad and Equatorial Guinea are beneficiaries of the unilateral preferential market access granted by Morocco.



Chad CEMAC, ECCAS & CENSAD

CAR CEMAC, ECCAS & CENSAD

Cameroon CEMAC & ECCAS

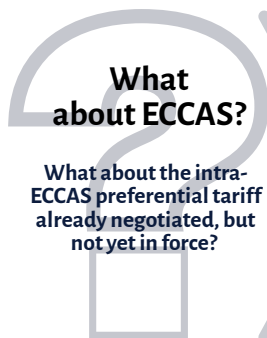
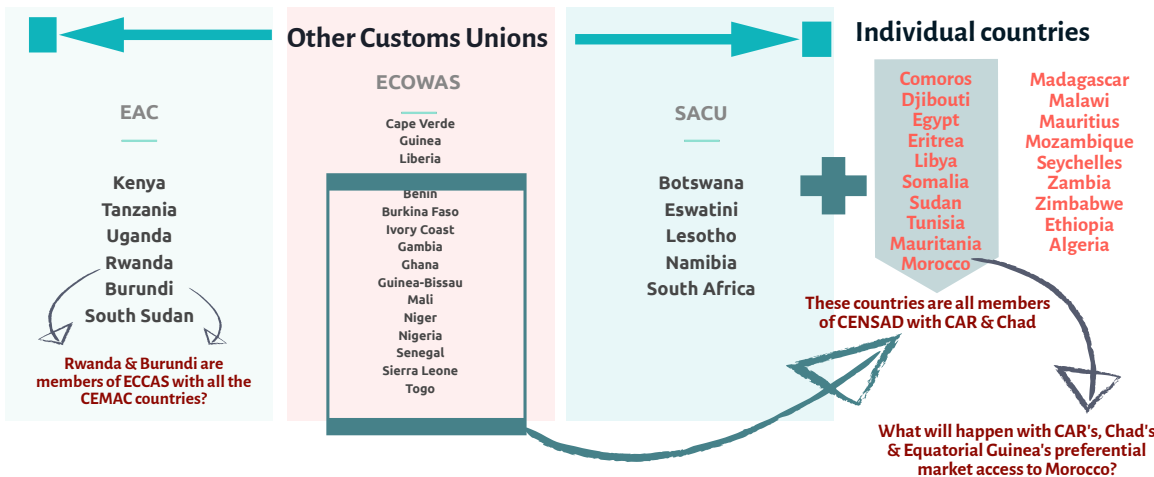
Equatorial Guinea CEMAC & ECCAS

Gabon CEMAC & ECCAS

Congo CEMAC & ECCAS

Although there is overlapping membership with other African RECs all intra-Africa imports from outside CEMAC are levied the MFN applied tariff (CEMAC CET) since there is no trade arrangement among the CENSAD countries and the intra-ECCAS preferential tariff is not yet implemented.

Who will CEMAC be negotiating with?



Burundi & Rwanda
Members of EAC



Angola
DRC
São Tomé and Príncipe

Not members of any other REC or REC FTA with the CEMAC countries

Cameroon, CAR, Chad
Congo, Equatorial Guinea
Gabon

Members of CEMAC



ECOWAS

Economic Community of West African States (ECOWAS)

1 Members and the Common External Tariff

ECOWAS has 15 member states all of which are part of the ECOWAS FTA with duty-free access for unprocessed goods, traditional handicrafts and certain industrial products of ECOWAS origin. ECOWAS also has a common external tariff (CET) which is levied on imports from outside the ECOWAS region (Cape Verde is currently still in the process of bringing its tariffs in line with the ECOWAS CET).

2 Other RECs and trade agreements

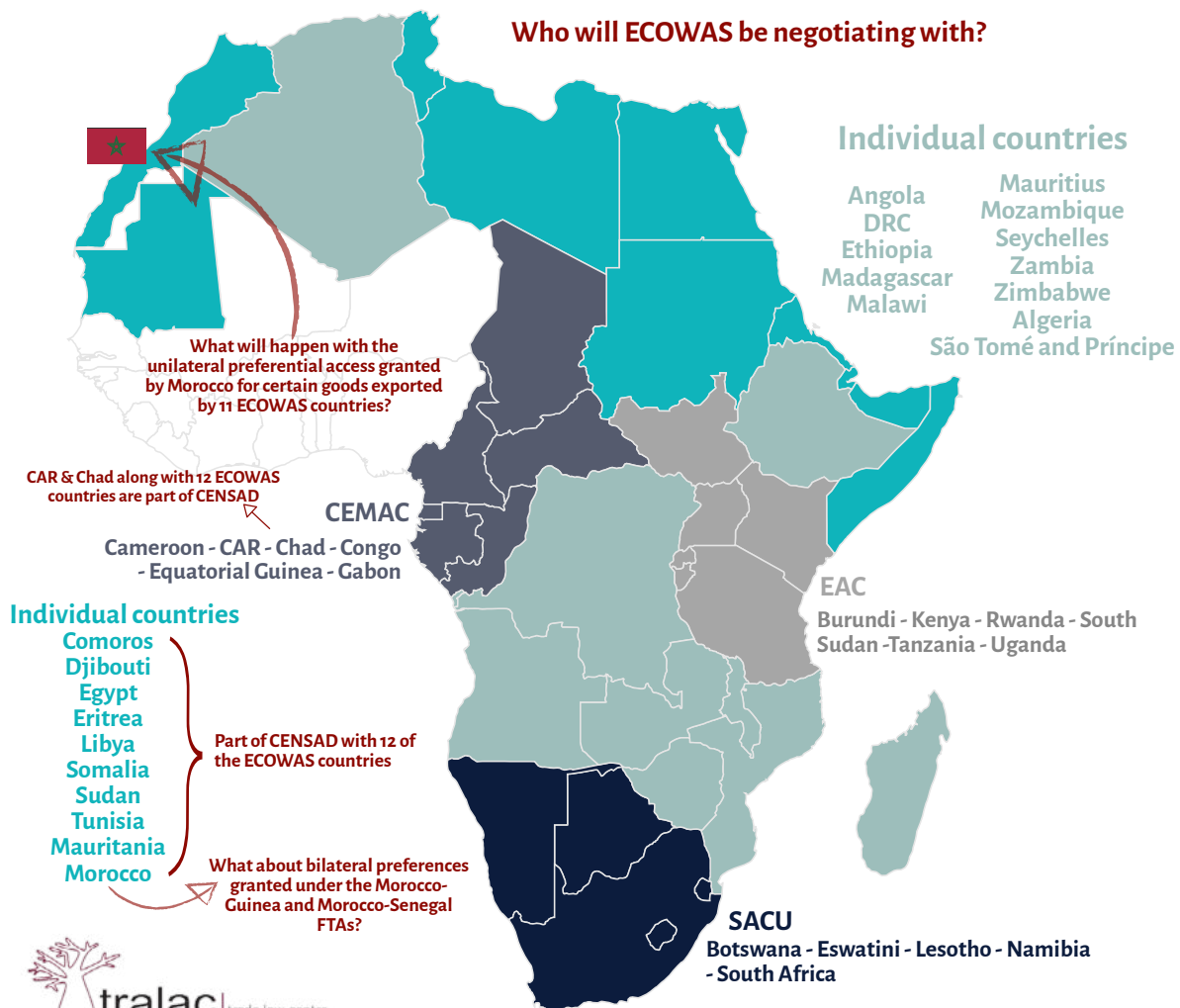
Of the 15 ECOWAS FTA members, all but Cape Verde, Guinea and Liberia are also members of CENSAD, but there is no trade agreement in place among the CENSAD countries. Morocco has FTAs in place with Guinea and Senegal while 11 of the ECOWAS member states are LDCs granted unilateral preferential access for certain goods to the Moroccan market.

3 ECOWAS & the AfCFTA

Since ECOWAS has a CET its member states will be negotiating together. However, Benin, Cape Verde, Guinea-Bissau, Liberia and Nigeria have not yet ratified the AfCFTA. What will happen with the unilateral market access Morocco grants to the majority of the ECOWAS countries? There are also the Guinea-Morocco and Senegal-Morocco bilateral trade agreements.

Benin, Burkina Faso, Gambia, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Senegal, Sierra Leone & Togo

Who will ECOWAS be negotiating with?

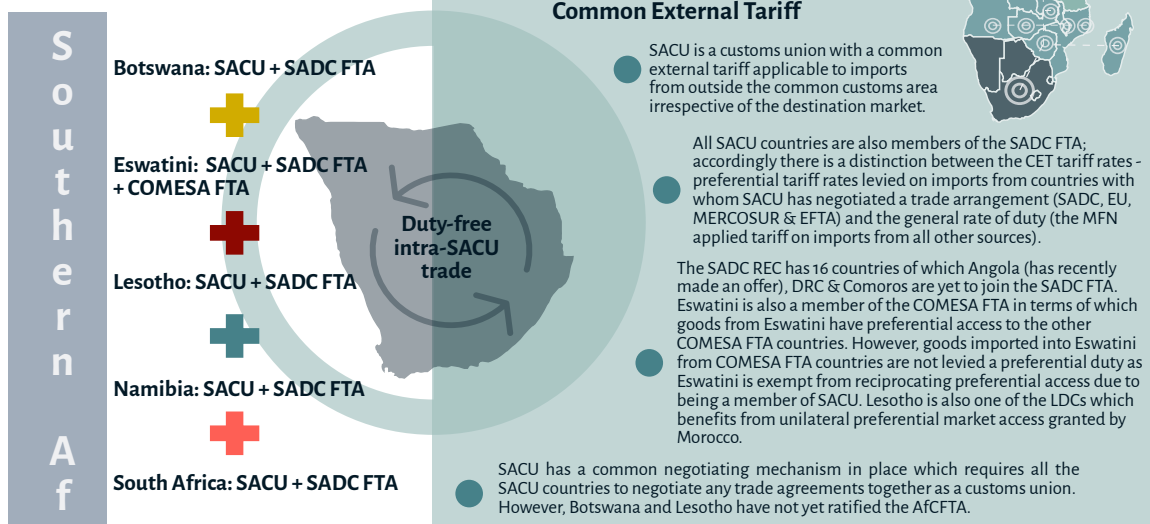




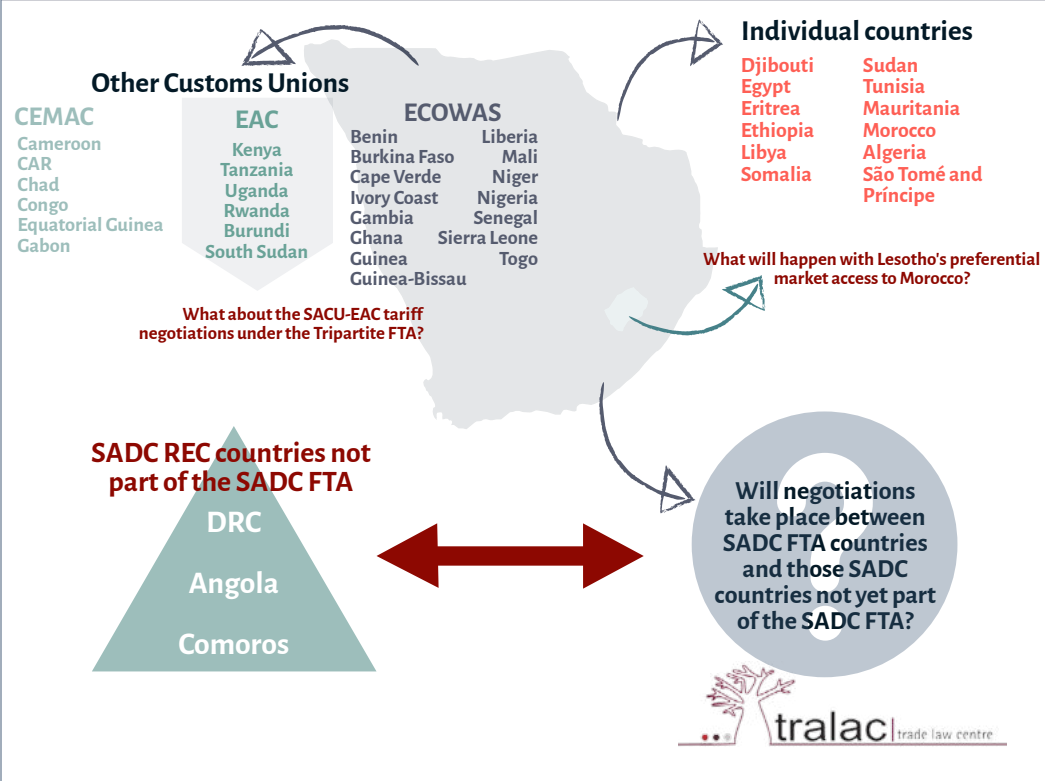
SOUTHERN AFRICAN CUSTOMS UNION (SACU) & THE EAST AFRICAN COMMUNITY (EAC)

African continental free trade area negotiations WHO is negotiating with WHOM?

Southern African Customs Union (SACU) & the East African Community (EAC)



Who will SACU be negotiating with?



THE EAST AFRICAN COMMUNITY (EAC)

East African Community

South Sudan
A member of IGAD and a beneficiary of Morocco's unilateral preferential market access. No publicly available tariff data

Burundi, Rwanda & Uganda
All three are also members of the COMESA FTA. Uganda is also a member of IGAD and Burundi & Rwanda are members of ECCAS

Tanzania
Also a member of the SADC FTA

Kenya
Also a member of the COMESA FTA and IGAD

The EAC is also a customs union with a common external tariff; however, the rate of duty of the EAC CET levied on goods imported from outside the common customs area does differ depending on the exporting country and the destination market.

The EAC countries can apply to the EAC Council of Ministers for an exception to the CET for a period of one year (1 July-30 June). These products are normally sensitive goods, like sugar, second-hand clothing, vehicles and steel products. These exceptions are to the MFN (general tariff) applied tariff - the different EAC members can apply different rates of duties which are higher or lower than the CET.

Four of the EAC members (Kenya, Uganda, Burundi & Rwanda) are also members of the COMESA FTA. Tanzania is a member of the SADC FTA. South Sudan is neither part of COMESA nor SADC. There are different preferential tariff rates applicable to imports into the different EAC countries depending on the source (COMESA FTA, COMESA non-FTA or SADC FTA) country and the destination market.

As a Customs Union with a CET the EAC countries will be negotiating together, but there are some practical challenges. Burundi, Tanzania and South Sudan have not yet ratified the AfCFTA; South Sudan & Uganda benefit from unilateral preferential market access granted by Morocco and how will negotiations take place given the extent of the overlapping memberships with other African FTAs?

Tariffs applied to intra-Africa imports:

- Imports from outside EAC & COMESA FTA: EAC CET (MFN) with exceptions for products including gum base, sugar & second-hand clothes
- Duty-free imports from other EAC countries
- Preferential tariff applicable to imports from other COMESA FTA countries
- Imports from non-COMESA FTA countries: preferential tariff of 20% of the general tariff for imports from Eritrea and 90% of the general tariff for imports from Ethiopia

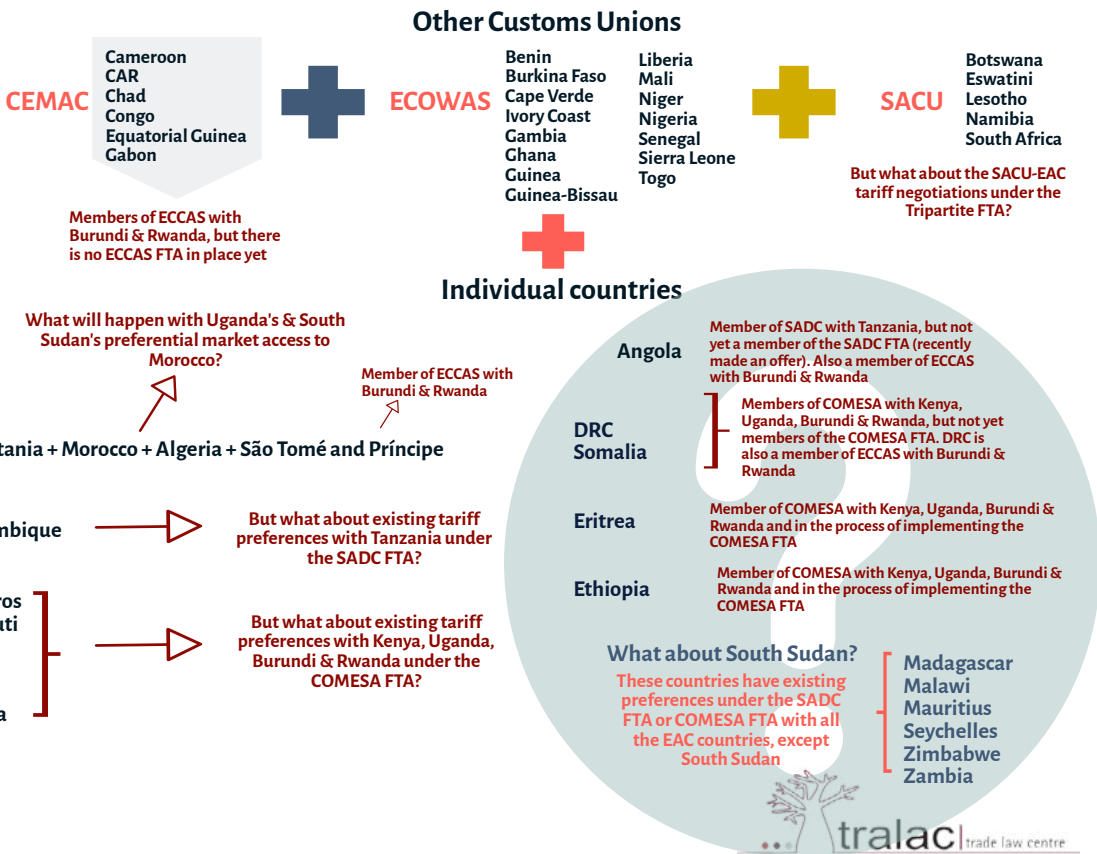
Tariffs applied to intra-Africa imports:

- Imports from outside EAC & SADC FTA: EAC CET (MFN) with exceptions for products including crude sunflower and palm oil, second-hand clothes, safety matches & beef products
- Duty-free imports from other EAC countries
- Preferential tariff applicable to imports from SADC FTA members (Tanzania is a member of SADC and the SADC FTA)

Tariffs applied to intra-Africa imports:

- Imports from outside EAC and COMESA FTA: EAC CET (MFN) with exceptions including vehicles, flat-rolled steel products, second-hand clothing & laminated wood products
- Duty-free imports from other EAC countries
- Preferential tariff applicable to imports from other COMESA FTA countries
- Imports from non-COMESA FTA countries: preferential tariff of 10% of the general tariff

Who will the EAC be negotiating with?





It should also be kept in mind that the overlapping parallelism has implications on trade with countries outside of Africa.

“Is there now an opportunity to speak with a collective voice when engaging the European Union (EU), the United States (US), the United Kingdom (UK) and other partners such as China, India, and Japan? They are all prominent players in Africa and have plans for increasing and consolidating their presence on the continent. It will not, however, be easy

to develop joint strategies on how to do so. Kenya’s decisions to start negotiations with the US on a bilateral trade deal and to conclude its own post-Brexit agreement with the UK have met with considerable opposition. There is an application pending in the East African Community (EAC) Court of Justice to review the Kenyan decision on a bilateral trade deal with the US. The argument is that intra African integration and the rules of the EAC (which purports to be a Customs Union) will be undermined” (Erasmus, 2020A).



TRADE UNION RESPONSE 6: UNDERSTANDING THE OVERLAP BETWEEN AfCFTA AND THE RECS - Do not be afraid to ask questions

The overlapping parallelism between AfCFTA and the RECs is complex, especially when it comes to understanding who is negotiating with whom. The main issue is that there are trade agreements as well as customs unions among the **15** RECs present on the continent. Always remember, in an FTA, each member can negotiate tariffs individually with countries outside of the agreement and establish different rates.

Country A, for example, can negotiate a **20%** tariff on maize with China while Country B negotiates **5%**. Within a customs union, negotiations must be done as a single entity representing all members. Should AfCFTA establish a continental customs union, it will mean that where Country A and Country B could negotiate their own rates with China previously, they are then bound to the rate negotiated under the customs union.

Given the fact that RECs will remain in place, they should be utilised as another entry point into AfCFTA to influence decision making.

Unions should never feel that they cannot ask questions. If the complexities of AfCFTA are not clearly understood, unions will have difficulty developing their own strategies and responses. Unions are encouraged to continue forming part of global networks such as ITUC and to further build knowledge networks on a national level. Labour research organisations, civil society organisations, NGOs and academic institutions are but a few examples of stakeholders that could be approached to form solid AfCFTA knowledge networks across the continent.

UNPACKING THE AfCFTA PROTOCOLS AND THE QUESTIONS TRADE UNIONS SHOULD ASK

The goal of AfCFTA (2021) is the “*elimination of tariffs and non-tariff barriers to trade in goods*” towards the liberalization of trade and services. Given that this is the main objective, trade unions should not accept any form of zero tariffs without adequate social justifications. Tariffs represent a way to protect local industries, consumers and workers and therefore serve an important role. It thus, at times, becomes a difficult balance to maintain. Nonetheless, the elimination of tariffs should not be accepted without the necessary justifications and measures in place to protect the vulnerable. This guide advocates for the inclusion of labour provisions throughout AfCFTA. The following sub-sections provide an initial overview of the seven Protocols to develop an understanding of what they entail and where there is a reason for caution. It is the objective of this section to form a foundation for further research and trade union guidance.

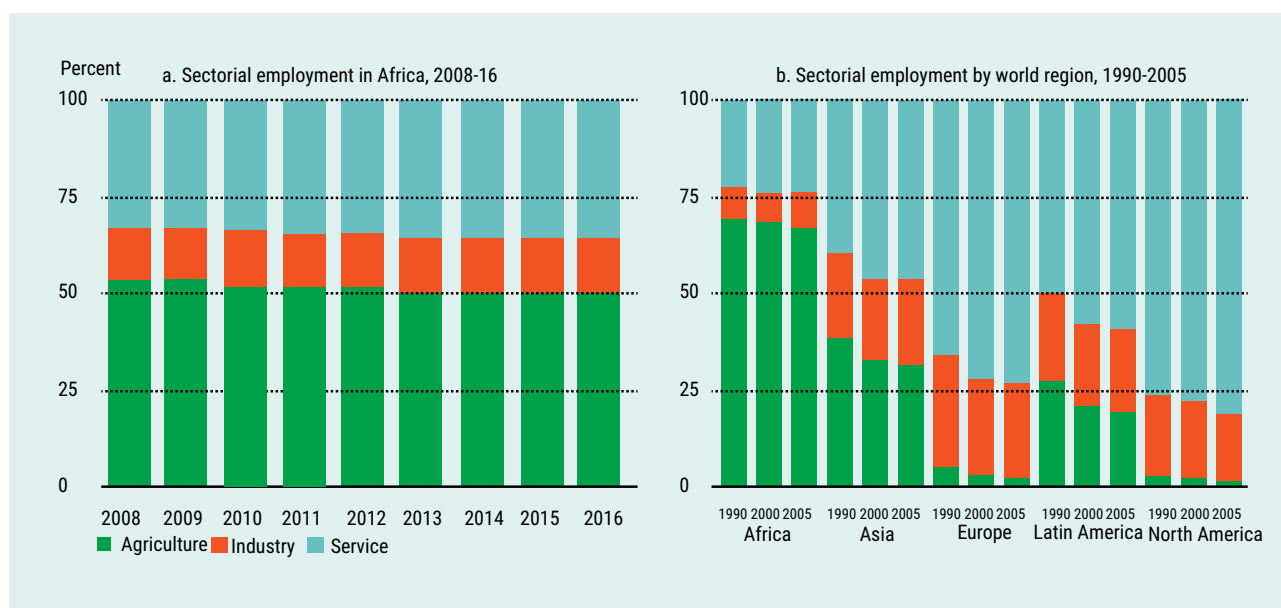


1. PROTOCOL ON TRADE IN GOODS: Be on the look-out for job outsourcing and job losses

One of the key labour-related pitfalls with regards to tariff reductions in the trade of goods is that it could lead to outsourcing and loss of jobs. A country that has a lower cost of labour can offer its products for a lower price. For a country with a higher cost of labour, it then becomes difficult to compete. The latter could, as a result, decide to either reduce the number of jobs or to outsource their jobs to a country with a lower cost of labour.

The agriculture sector provides a good example of a sector that could seriously be hampered by AfCFTA. Agriculture still plays a dominant role in the economic composition of the continent. The figure below shows how compared to more developed regions, the service industry has not become the dominant sector.

Figure 6: Sectoral employment shares in Africa and other world regions



The agriculture sector provides a good example of a sector that could seriously be hampered by AfCFTA.

In addition to the high employment composition within the agriculture sector on the continent, nearly **50%** of the associated workforce are estimated to be women (Gathii et al., 2017). It is the highest average global participation rate of women. This creates a unique and very vulnerable workforce. Small scale producers and agro-manufacturers in the sector will need sector-orientated protection. Unless protective measures are put in place, small scale agricultural role players will not be able to compete with subsidised agribusinesses from more developed countries.

Concerns are also very relevant regarding the possible dominance of foreign countries through AfCFTA. The Trades Union Congress (TUC) Ghana, Nigeria Labour Congress (NLC), Congress of South Africa Trade Unions (COSATU) and Central Organisation of Trade Unions of Kenya (COTU-K) have already made demands for stricter rules to safeguard African markets for local products (allAfrica, 2019). Trade within AfCFTA will hold immense opportunities for foreign countries given the lower associated costs. Their dominance will, however, lead to a loss of revenue and will not contribute to the desired development of the continent.

The removal of trade barriers in Africa further represents a complex task given the disparities between the different countries on the continent. Three of the African countries, Nigeria, Egypt and South Africa, are set to hold as much as **50%** of the continental GDP. The level of specialisation and competitiveness in the countries will determine to what extent they will benefit from the reduction of tariffs (ITUC, 2008). If tariffs are already quite low in a country, the impact of AfCFTA will be less. The World Bank Group (2020) reports that countries such as Cameroon, Nigeria, Ethiopia, Madagascar, the Democratic Republic of Congo, and the Arab Republic of Egypt stand to be impacted the most given their existing high levels of trade barriers. Different countries will similarly experience the impact on their fiscal budget more than others.

AfCFTA makes certain provisions to accommodate these disparities that are important for trade unions to understand if they are to engage the negotiation processes successfully. This section subsequently unpacks some of the key areas of importance within the Protocol on the Trade in Goods.

→ **NON-TARIFF BARRIERS: Finding a balance between obstructive and protective barriers**

While tariff barriers represent financial barriers or the cost of bringing a product or service into a country or taking it out, non-tariff barriers are non-monetary in nature. The latter includes barriers such as regulations, standards, quotas, subsidies or certification procedures. It is the objective of AfCFTA to remove both tariff barriers and non-tariff barriers. It is said that within the African context, it is, in fact, non-tariff barriers that represent the highest cost of doing business (Capon, 2021). Inadequate infrastructure and high administrative costs such as licenses have historically contributed to the cost of doing business on the continent. The UNDP (2020: 79) gives the example of Kenya "where there are over 20 government agencies responsible for customs, standards, port health and agriculture involved in clearance for any cargo arriving at the port of Mombasa, the Kenyan borders and airports".

Capon (2021) indicates that the annexure on non-tariff barriers has been concluded but that it is their

implementation that will face various challenges. Continuous monitoring, border visits and government collaborations will be required. ITUC (2008) also cautions against the removal of all non-tariff barriers:

"Many NTBs are legitimate measures to ensure the security and safety of products, such as regulations regarding packaging and information on dangerous substances like chemicals. Rather than relaxing such regulations, assistance should be given to producers in developing countries to meet such regulations" (ITUC, 2008: 20).

Given the fact that non-tariff barriers can be both obstructive and protective, each tariff should be considered on an individual basis to ensure that while trade is being promoted, businesses are also protected. There should be clear demands for assistance to producers to meet non-tariff barriers.



TRADE UNION RESPONSE 7: NON-TARIFF BARRIERS – Caution against the removal of non-tariff barriers that ensure safety and security

Non-tariff barriers include laws, regulations, policies, restrictions, labelling requirements, private sector business practices, or prohibitions. All of these could be used to protect local businesses from competition. At the same time, complicated border crossings, for example, have led to the high cost of doing business on the continent. In the same breath, non-tariff barriers play an important role in securing safety and security in products. Trade unions should demand that non-tariff barriers are considered on an individual basis, always posing questions such as the following:

1. What non-tariff barriers are proposed to be reduced?
 - a. Is it, for example, a barrier necessary to ensure the health and safety of workers? OR
 - b. Is it an unnecessary bureaucratic procedure?
2. Which non-tariff barriers should be maintained to protect local industries and jobs?
3. What assistance can be given to producers to better meet non-tariff barriers?
4. How will the implementation of the removal be monitored? Is it feasible, and is the necessary capacity available?

→ **LEAST DEVELOPED COUNTRIES, SENSITIVE GOODS AND TARIFF LINES:** Consider each tariff item

Allowing for Least Developed Countries (LDCs) in trade agreements is a way to acknowledge disparities between countries. The revenues derived from tariffs can

represent an important source of income, more in some countries than in others. Within this context, provisions have been made that allow for lesser reductions and longer implementation periods for certain countries. Within AfCFTA, 34 member states are classified as LDCs given their levels of income and human development index levels (Ojakol, 2020). The figure below illustrates the schedule of liberalization envisaged under AfCFTA.

Table 2: AfCFTA liberalization schedule allowing for LCDs

COUNTRY CLASSIFICATION	LDCs		Non-LDCs		G6 countries (Ethiopia, Madagascar, Malawi, Sudan, Zambia, Zimbabwe)
Full liberalization	90% of tariff lines	90% of tariff lines	90% of tariff lines	90% of tariff lines	90% of tariff lines
	10-year phase down	5-year phase down	5-year phase down	15-year phase down	
Sensitive products	7% of tariff lines	7% of tariff lines	7% of tariff lines	7% of tariff lines	Not yet determined
	13-year phase down (current tariffs can be maintained during first 5 years – phase down starting in year 6)	10-year phase down (current tariffs can be maintained during first 5 years – phase down starting in year 6)	10-year phase down (current tariffs can be maintained during first 5 years – phase down starting in year 6)	10-year phase down (current tariffs can be maintained during first 5 years – phase down starting in year 6)	
Excluded products	3% of tariff lines	3% of tariff lines	3% of tariff lines	3% of tariff lines	Not yet determined

Within this schedule, Non-Least Developed Countries will have a five-year period to implement trade liberalization, whereas LDCs will have ten years. Six countries, Ethiopia, Madagascar, Malawi, Sudan, Zambia and Zimbabwe, were able to secure themselves a 15-year phase-down period. Their main motivation was that they face specific development issues (Hartzenberg, 2020).

In addition to the LDC distinction made within AfCFTA, it is important to note that certain decisions have already been made on what percentage of goods will be liberalized (Hartzenberg, 2020):

- Member states have already agreed that 90% of the different tariff lines will be liberalized
- The remaining **10%** are divided into two categories:
 - o **7%** will be sensitive products
 - o **3%** will be excluded completely, BUT, the excluded products may not account for more than 10% of their total trade.

It can thus be said that the ultimate agreed goal becomes **97%** tariff-free trade over **15** years. It is worth noting that the lists of sensitive goods have not yet

been concluded. Each country will have a tariff book or schedule. These schedules will consist of thousands of tariff lines for different goods and services. Within these different tariff items, certain articles will be classified as sensitive goods. These are goods that need more protection from competition from imports, and that will receive a longer phase-in period. In South Africa, for example, the following sensitive goods have already been excluded from liberalization (Viljoen, 2021):

- Carcasses and half carcasses of beef and pork, chicken, ham, and pork-belly
- Honey and flavoured yoghurt
- Cut flowers and most vegetables
- Pasta, couscous, peanut butter, olives, and gherkins
- Preserved pineapples
- Beauty products
- Wooden statuettes and wickerwork
- Walking sticks
- Wooden and metal furniture.



TRADE UNION RESPONSE 8: LEAST DEVELOPED COUNTRIES, SENSITIVE GOODS AND TARIFF LINES - Consider each tariff item

Tariff reduction negotiations have not yet been concluded. Trade unions must be cautious of across-the-board tariff reductions as is proposed in AfCFTA. Although AfCFTA allows for longer periods for LDC, trade unions must consider the following questions and build their responses accordingly:

1. What tariffs are proposed to be reduced? Is it, for example, on a product produced locally through which many jobs stand to be lost?
2. Which tariffs should be maintained to protect local industries and jobs?
3. Should some products receive lower tariff cuts or longer implementation periods?

4. What products are being considered for the **7%** of sensitive goods and **3%** of exemption, and do we agree with these?
5. Is the implementation period allowed for my country adequate to protect workers and the economy?
6. Will the proposed tariff cuts in any way prohibit my county from developing and implementing policies aimed at decent work, food security, access to quality public services, poverty reduction and equal distribution of incomes?

Once again, trade unions should not feel intimidated by a lack of relevant knowledge but should rather build and make use of knowledge and solidarity networks to inform their advocacy campaigns.



→ **RULES OF ORIGIN: A critical tool under negotiation**

In short, Rules of Origin (RoO) represents the criteria needed to determine the nationality of a product. It becomes the passport that determines a product's eligibility for preferential treatment under AfCFTA. The main potential advantage of RoO that trade unions should be aware of is that it can prevent abuse by foreign companies as well as product dumping. Without adequate RoO, MNCs can take advantage of the zero tariffs implemented through AfCFTA. RoO is therefore of great importance as it will prohibit a company from, for example, producing a product in China and then selling it as African because the packaging was done locally. Other forms of malpractice could include subsidiary companies in Africa through which products can then be exported throughout the continent tariff-free (TRALAC, 2020). RoO in this manner becomes critical from a labour perspective. In its absence, price undercutting could lead to local industries not being able to compete and having to compromise on labour costs and standards.

The UN and others believe that the success of AfCFTA will depend on the RoO, which is currently still under negotiation (allAfrica, 2019). It is surmised that as long as the RoO is simple, transparent, business-friendly and predictable, AfCFTA will prove to be a great success. If this is not the case, RoO can become a barrier to trade. Should it be unpredictable, it could discourage businesses from trading within an area (Albert, 2019). It is also said that should the RoO be too complex and costly, countries could decide to rather import products from outside of AfCFTA (ibid.).

Although there is a caution against a complicated RoO, simplifying it to the negligence of certain sectors and workers should also be approached with caution. RoO within an African context will have to, for example, allow for the disparities between countries and the relevant LDCs. Based on a study in Asia, Myant (2017) found that despite companies quoting RoO as an obstacle to trade, it is rather their lack of knowledge that prohibits them from trading in certain areas. In this regard, this guide supports initiatives to improve the transparency and accessibility of RoO rather than only the simplification thereof.



TRADE UNION RESPONSE 9: RULES OF ORIGIN – The need for transparency rather than oversimplified requirements

Trade unions must demand their inclusion in RoO negotiations. Although complex in nature, the outcomes of these negotiations will have a direct impact on the extent to which foreign companies can undercut local industries, which will have a direct bearing on a country's ability to meet the Decent Work Agenda.

Despite repeated claims that RoO should be simplified to not discourage businesses, trade unions should ensure local industries and jobs will be protected through it. It is necessary to emphasise that it is easily accessible and transparent through initiatives such as the following (UNCTAD, 2019):

- Develop an online intra-African trade platform serving as a repository for RoO in multiple local languages.

- Improve the capacities of customs authorities in enforcing RoO and build cross-border cooperation among customs authorities to reduce the associated costs.
- Establish regular platforms for public-private dialogues to identify implementation challenges etc.

Lastly, trade unions should be continuously active in the monitoring and evaluation of RoO. Limited implementation capacity will easily create incentives for traders and companies to disguise products as local and benefit unfairly from zero tariffs. A RoO Committee is foreseen to meet on an annual basis to review implementation. Trade unions must thus demand a seat at these annual gatherings to monitor implementation and ensure their concerns and those of workers on the ground are heard.

2. PROTOCOL ON SERVICES: Protect equal and affordable access to services for all

Services can range across various fields from transport, banking, insurance, education, consultancy, accounting, health to tourist facilities. Signé & van der Ven (2019) explain that globally trade in services has contributed more than the trade in goods. In 2010 it stood at **71%** of global GDP, and it is believed that nearly **55%** of GDP in Africa is generated by trade in services. While this may be true, the African services exports contribution stands at a mere **2%** globally (ibid.). African countries are not streamlined for the export of services. The liberalization of trade in services has taken place at a low level within the existing RECs, and it is foreseen that the Protocol within AfCFTA will have a greater impact (Erasmus, 2020B).

The negotiation approach within this Protocol is that each state will make an offer to all other member states. Importantly, all negotiations should be reciprocal. That means that if one country should agree to the liberalization of a service, so should those it is offered to. The negotiation approach was initially based on the General Agreement on Trade in Services (GATS), which does not include a reciprocal

approach. Negotiators then realised that this 25-year-old approach does not allow for the disparities between LDCs and developing countries, and the principle of reciprocity was subsequently included (Chaytor, 2020). Negotiations can therefore be done bilaterally, but the outcomes must be transmitted to the Secretariat for dissemination among the members (TRALAC, 2019).

Each State Party will then submit schedules of commitment for the liberalization of trade in services in five priority sectors. Given that the liberalization in trade in services has been decided to be implemented progressively, the transport, communications, tourism, financial, and business services sectors have been prioritized to be liberalized first (TRALAC, 2019). Capon (2021) explains that South Africa views the exclusion of distribution services as a major oversight. They argue that the development of regional value chains depends directly on distribution services.

The schedule of commitments will work as follows:

“According to the Guidelines and Modalities, the services scheduling will take a positive listing, GATS plus approach. Thus, each State Party lists each sector that they are committing under the AfCFTA. For each sector or sub-sector, State Parties list any derogations from market access for foreign service providers (Art. 19 of the Protocol) and national treatment (Art. 20 of the Protocol) – for each individual mode of supply. For example, the Financial Services sector may be listed, and under that, the sub-sector of banking and other financial services. This sub-sector is further divided into various sub subsectors.

Against each mode – cross-border supply, consumption abroad, commercial presence and the presence of natural persons, the scheduling country will make a separate commitment for market access, national treatment and additional commitments. Limitations on market access that may be listed include limitations on the number of suppliers, value of transactions or assets, number of people employed, number of operations or output as well as any requirement for a specific type of legal entity, or a limit on the participation of foreign capital.

Listing a sector also requires making a commitment on national treatment – this means that foreign services and foreign services providers should be functionally treated, and subject to the same conditions of competition, as local services and services providers. State Parties will also schedule horizontal commitments – limitations on market access and national treatment that apply across all services sectors committed in the schedule. In other trade agreements, members often have horizontal commitments on the movement of natural persons” (TRALAC, 2019: 5).



The liberalization of trade in services is very complex and will be quite regulatory in nature. It involves licences, merging with local companies, the requirement of certain qualifications etc. As a starting point, trade unions should be cautious and develop their main demands around the fact that services should remain accessible to all. The objective with services liberalization will be to relax regulatory requirements for there not to be discrimination between, for example, a local IT company in Nigeria and one entering the country from Ghana. While such ease of regulation may be good for business, it could lead to regulations ensuring equal and affordable services to communities also being relaxed (ITUC, 2008).

It is very important to note that unless specifically exempted, schedules of commitments within FTAs do not exempt public services (ITUC, 2008). It is thus critical for trade unions to ensure public services and essential services are exempted from AfCFTA. Mayant (2017) crucially brings our attention to the fact that when outside companies are given the right to

compete with or take over services, it places limitations on the ability of the state to determine its own welfare policies.

Granting rights to outside companies will also place them in a position where they can hold governments accountable and challenge their legislation. Rules on, for example, urban planning could be overturned if a company feels they conflict with the business rights they were awarded (Mayant, 2017). The relaxation of regulations similarly can lead to local companies not being able to compete with new entrants and subsequently a loss of jobs or the protection of workers (ITUC, 2008).

Although it is not within the five priority sectors identified for liberalization through AfCFTA, “the movement of natural persons” is also considered a services sector. Trade unions must take note of such provisions to ensure that AfCFTA will provide measures to prevent abuses or unequal treatment of migrant workers (ITUC, 2008). The movement of natural persons and its possible impact on labour is suggested as a further area of research.



TRADE UNION RESPONSE 10: PROTOCOL ON SERVICES - Protect equal and affordable access to services for all

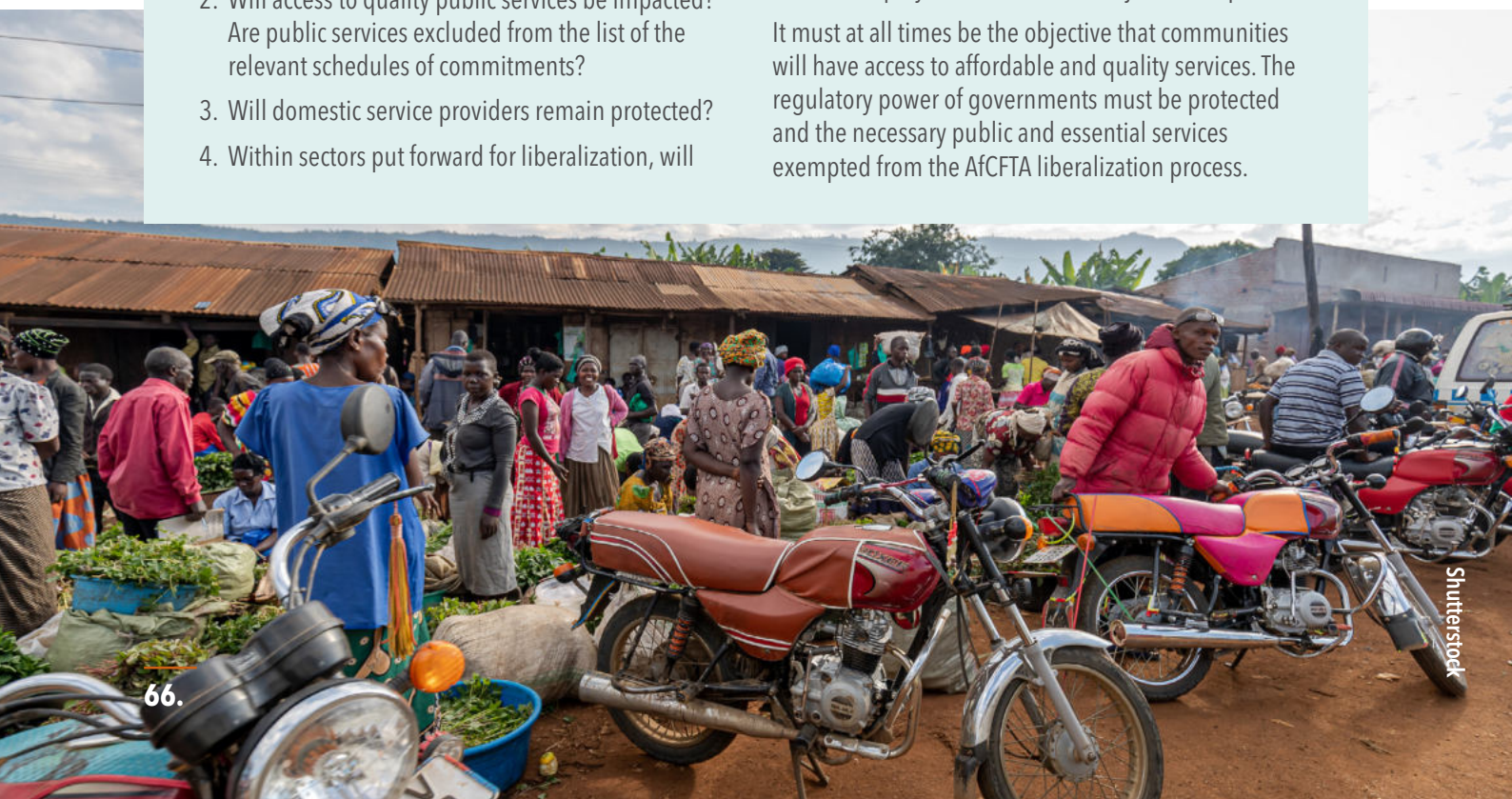
The negotiations on the liberalization of services are complex and will still take some time to complete. Unions must utilise this opportunity to ask the following questions and advocate for the following:

1. Which sub-sectors will be opened for outside companies and to which extent?
2. Will access to quality public services be impacted? Are public services excluded from the list of the relevant schedules of commitments?
3. Will domestic service providers remain protected?
4. Within sectors put forward for liberalization, will

governments still be able to play a leading role in, for example, the telecoms, energy, postal or distribution services?

5. How will migrants and vulnerable workers be protected within the opening up of “movement of natural persons” as a services sector and how will local employment standards and jobs be impacted?

It must at all times be the objective that communities will have access to affordable and quality services. The regulatory power of governments must be protected and the necessary public and essential services exempted from the AfCFTA liberalization process.



3. PROTOCOL ON DISPUTE SETTLEMENT: A need to integrate labour and the unique African socio-economic context

The Protocol on Dispute Settlement has been developed to provide the rules and procedures for the settlement of disputes within AfCFTA. Only State Parties will have access to the dispute settlement mechanism. Private stakeholders will not have any access unless a State Party, able to show that the private party's rights have been violated, bring a claim (TRALAC, 2019). The first step will be to find an amicable solution through confidential mediation or conciliation. The relevant parties could further resort to arbitration. Compensation and the suspension of concessions are temporary measures available should the ruling in favour of the aggrieved party not be implemented within a reasonable

time (ibid.). In its current form, there is no reference to disputes regarding labour or any related matter in AfCFTA.

The mechanism implemented in this instance has been modelled on the Dispute Settlement Understanding of the WTO (Erasmus & Hartzenberg, 2020A). Akinkugbe (2020) warns that previously the transplantation of dispute settlement mechanisms onto either European or WTO models have failed. In the RECs, there have been instances where an extremely legal and formal approach has resulted in discontent and apathy. It is felt that such an approach does not take into consideration the unique socio-economic context of the various countries (ibid.).



TRADE UNION RESPONSE 11: PROTOCOL ON DISPUTE SETTLEMENT - A need to integrate labour and the unique African socio-economic context

The Protocol on Dispute Settlement within AfCFTA has already been concluded. Given the overall exclusion of labour provisions in the agreement, the Protocol is no different. In trade unions' demands for the integration of labour provisions, the following are thoughts they should keep in mind:

1. Could labour disputes be handled under the same procedures and the existing dispute settlement mechanisms? Could this contribute to labour not being seen as a separate issue?
2. Could fines be awarded high enough to improve the social standards and working conditions in the sectors and areas giving rise to the problems concerned? Shouldn't high fines be implemented that serve as disincentives?
3. Should the direct transplantation of a WTO Dispute Settlement Model in AfCFTA be reconsidered to take into consideration the unique socio-economic context of the various countries?





4. PROTOCOL ON COMPETITION: The protection of large MNCs or local development towards economic growth?

PROTOCOL ON COMPETITION: The protection of large MNCs or local development towards economic growth?

Protocols on Competition are put in place to address issues relating to excessive market power, abuse thereof and restrictive business practices. The objective of AfCFTA

is continental integration. As such integration becomes a reality, so will the effects of anti-competitive practices. ITUC (2008), however, provides a clear warning against how competition policies are often developed:

“The risk of competition policy in trade agreements is that it is drafted in the interest of multinational companies, and is developed to facilitate cross-border mergers and acquisitions, whereas developing countries would want provisions that set rules for mergers and acquisitions which take into account development concerns and other domestic priorities, including workers’ interests. The inclusion of competition policy in bilateral agreements is also capable of undermining public enterprises or monopolies... Competition provisions could further reduce the freedom of governments to set regulatory policies that for example protect the environment, restrict foreign ownership in certain sectors, or promote local content” (ITUC, 2008: 10).

It is thus critical for trade unions to demand a seat at the Protocol on Competition negotiation table. Erasmus & Hartzenberg (2021) argue that while national policies in this regard are necessary, they will not be sufficient. Regional and continental policies, legal instruments and effective enforcement will be necessary. It is further worth

noting that it is not yet known if the AfCFTA Protocol on Competition Policy will cover consumer protection policy. These instruments and their possible impact on the implementation of the Decent Work Agenda will require further research and consideration.



TRADE UNION RESPONSE 12: PROTOCOL ON COMPETITION - Protection of local industries and development

While competition policies are meant to address issues of excessive market power, it has historically rather promoted the interest of large MNCs, which trade unions should guard against. The following questions need to be asked and further considered at union level:

1. What is going to be accepted as anti-competitive behaviour in AfCFTA? Shouldn't it be the restriction of large, powerful and dominant MNCs rather than that of local and emerging businesses?
2. Do the proposed competition provisions set rules for mergers and acquisitions which take into account development concerns and other domestic priorities, including workers' interests?
3. Do the proposed competition provisions promote the emergence of local businesses that could contribute positively to economic development?
4. Could the proposed competition policy undermine public enterprises or monopolies?
5. Do the proposed competition provisions reduce the freedom of governments to set regulatory policies that, for example, protect the environment, restrict foreign ownership in certain sectors, or promote local content?
6. Will AfCFTA include a consumer protection policy, and what is the position on this?
7. Could the proposed competition policy include the principle of non-discrimination? Could this prevent countries from protecting domestic companies from the actions of large MNCs and clash with attempts by governments to protect certain activities from market competition?

5. PROTOCOL ON INTELLECTUAL PROPERTY RIGHTS: Protection of the vulnerable and not the powerful

The Protocol on Intellectual Property Rights in AfCFTA is still to be negotiated and is aimed at protecting Trade-Related Aspects of Intellectual Property Rights (TRIPS). These could vary from trademarks and copyrights to patents. In simple terms, the Protocol will result in rules which have to be implemented and enforced by local governments.

One of the main examples and concerns regarding intellectual property rights in trade agreements relates to medicine. If medical companies manage to secure longer lifetimes for the patents on their medicine, generic cheaper options are blocked. ITUC (2008) explains this in greater detail:

Provisions in bilaterals generally include longer patent periods that lengthen the periods before the production of generic products can start. The effect of such reinforced provisions has been reduced access to medicines as a result of price increases due to the replacement of cheaper generic drugs by expensive patented drugs. Bilaterals may also include provisions on data exclusivity and on testing data, which means that such data cannot be used to test the security of generics and therefore that costly tests will have to be undertaken by the generics producers, which further increases the price of the medication. For example, the US-Peru agreement includes a provision on data exclusivity, which is estimated to more than double the cost of the medicines concerned (ITUC, 2008: 8).

Given the high prevalence of HIV AIDS on the continent, this possible increase should be approached with particular caution. It is estimated that the annual cost for medication could increase from 132 USD to as much as 15 000 USD for patent-protected drugs (ibid.).

In addition, vulnerable sectors and jobs should also be

considered. Any country signing an intellectual property clause should be one hundred percent clear on what they are signing. Countries should steer away from providing investment protection at the cost of local industries (Myant, 2017). The rights of local players such as farmers and rural workers could be severely restricted in the process (ITUC, 2008).



TRADE UNION RESPONSE 13: PROTOCOL ON INTELLECTUAL PROPERTY RIGHTS- Protection of the vulnerable and not the powerful

The negotiations on the Protocol on Intellectual Property Rights are still to take place. In preparation trade unions should engage the following issues:

1. Through allowing intellectual property rights protection, who will be protected and who could be negatively impacted?
2. Could my country become subject to pressure from rights holders?
3. What will the direct implications be for the implementation of the Decent Work Agenda?

Also, advocating for adequate intellectual property rights provides trade unions with an opportunity to advocate for the broader communities in which they are located. Should pharmaceutical companies, for example, be granted long patent protection for medicine, millions of patients, including those suffering from HIV AIDS and tuberculosis, will suffer in the absence of affordable generic medication. Bringing forward such broader concerns for not only workers but the vulnerable, will give more support to trade union campaigns and illustrate the desire for a true just transition within AfCFTA.



6. PROTOCOL ON INVESTMENT: Demand decent jobs through investment and ensure MNCs are not given too much power

The Protocol on Investment in AfCFTA will assist in regulating the investment between partner countries. This is a very important area for trade unions to be engaged in as this Protocol will influence to what extent governments can state what types of jobs they would like to see created when companies invest in their country. While this may be true, it is also the provision that could lead to governments losing their ability to promote social and environmental protection in their countries.

Examples of investment provisions include the following (ITUC, 2008):

- Market opening
- Non-discrimination of foreign investors as compared to local firms
- Protection of investors
- The right to establishment
- Investor-State Dispute Settlement (ISDS) procedures
- Pre-establishment provisions; and
- Expropriation rules.

Within investment provisions, it is a balancing act for governments. The question becomes to what extent are they willing to attract foreign investment? What trade unions must advocate for is that their governments, at all times, guard against inhibiting their policy development power as described below:

“One negative effect of such investment provisions concerns their preventive effect on policymaking, in that governments refrain from laws and regulations to promote local enterprises or that provide for financial stability or social and environmental protection, because there might be a dispute as a result” (ITUC, 2008: 9).

Within the ISDS procedures, the reluctance of governments to enforce the necessary rules and regulations can become particularly evident. In its essence, ISDS procedures can be described as follows:

“The exact terms of ISDS procedures differ between treaties, but the essential features are similar. Private foreign investors, but not domestic firms, can claim compensation from a state if its decisions are judged to have been commercially harmful to them” (Myant, 2017: 32).

ISDS procedures were initially intended to protect investors against arbitrary expropriation or nationalization. It has unfortunately given MNCs much more power than originally intended:

“The language used in treaties plus the absence of an appeals mechanism gives them a flexibility that has led to unanticipated and inconsistent interpretations by arbitral tribunals (UNCTAD 2015: 126). A key feature is a vague and imprecise notion of ‘fair and equitable treatment’, present in almost all treaties, which means that companies can claim damages if they believe they have not been treated the same way as another company. Thus, for example, an oil company can complain of tax changes that are applied to their sector only and not to all companies. The vagueness of the notion encourages companies to start cases and also encourages governments to be cautious when facing MNCs” (Myant, 2017: 33).

Companies have thus been able to successfully claim under the ISDS provision in trade agreements. The first case was awarded in 1990, and these have increased to as many as 767 in 2017 (Myant, 2017). Through this provision, MNCs can demand substantial compensation based on estimations of the future income they might be losing (ibid.). Today the ISDS mechanism is included in more than 4000 agreements across the globe (Vangeel, 2016).

What is even more concerning is that even if cases against states are not won, it can lead to a “regulatory chill” in which governments “refrain from new regulatory measures when confronted by threats from multinational companies – after investment treaties are signed” (Myant, 2017: 35). It is therefore encouraging to know that countries such as Australia, South Africa, Ecuador, Bolivia, Venezuela and Indonesia have refused to sign agreements with ISDS clauses or cancelled existing agreements when they can (ibid.). South Africa, Namibia and Tanzania have adopted national investment and related laws omitting or limiting ISDS provisions (Chidede, 2018). Leon, Rachwal, Müller (2020) reveals that within AfCFTA, some member states have already raised concerns regarding the inclusion of traditional ISDS mechanisms. Their main concerns are “the independence of arbitrators, the consistency of decision-making and the duration and costs of cases” (ibid).

It is further worth noting that the existing RECs have their own ISDS approaches:

“For example, the SADC Finance and Investment Protocol and ECOWAS Supplementary Investment Act do not grant ISDS procedures but rather make provision for investors to use local remedies. The COMESA Common Investment Agreement incorporates ISDS arbitration through the COMESA Court of Justice, African arbitration tribunals, as well as ICSID and UNCITRAL arbitral tribunals” (Chidede, 2018).

Different countries will thus already be subscribing to different ISDS approaches. The appropriateness of these approaches and the role they will play within AfCFTA is suggested as a further area of research.



TRADE UNION RESPONSE 14: PROTOCOL ON INVESTMENT - Demand decent jobs through investment and ensure MNCs are not given too much power

Trade unions should approach the Protocol on Investment with great care and seriousness as it could have a direct detrimental impact on sustaining the Decent Work Agenda. Of great importance within the Protocol on Investment is the following:

- Foreign companies should not get more favourable treatment than local companies.
- Foreign companies should not be exempt from certain labour, fiscal or other legislation.
- The investment provisions should not restrict government regulation.
- The investment provisions should not prevent governments from prioritising local firms or requiring the use of local input.
- The investment provisions should not impose any obligation of “right of establishment” that requires countries to accept any foreign investment, regardless of its consequences.

Governments have a very determining role to play in the Protocol on Investment. They need to have clear and transparent policies on the following:

- What type of investments they want to attract.
- How decent jobs will be created, social protection

provided, and social dialogue promoted (restrictions can be placed on the hiring of foreign personnel etc.).

- How benefits derived from investments will be distributed.

Unions should particularly guard against the establishment of ISDS procedures that provides MNCs with too much power. If not, an ISDS approach could lead to governments refraining from developing social and environmental protection policies out of fear of prosecution. Because the negative consequences of ISDS procedures are indirect, it can easily be missed. The following needs to be noted:

- Countries can refuse to have any ISDS provisions proposed to be included in AfCFTA.
- AfCFTA member states have already raised concerns regarding the inclusion of traditional ISDS mechanisms – these must be furthered and emphasized.
- If foreign investors or investors from outside a particular country are to be granted the right to use dispute settlement proceedings against a government when they find their interests threatened, workers and their representatives should have access to the same mechanisms.



7. PROTOCOL ON E-COMMERCE: Demands for a just technological transition

The Protocol on E-Commerce was not initially included in AfCFTA. It does, however, represent a critical component for the continent and the future of work. Trade unions are well aware that the Fourth Industrial Revolution is already altering the world of work as we know it. While this may be the case, the African continent does not have the legal framework or a conducive environment for digital activities and trade in place. Connectivity in rural and remote areas is a particular challenge. The existing RECs themselves do not include any protocols regarding this (Chidede, 2021). The inclusion of the Protocol on E-commerce in AfCFTA can then be said to be ground-breaking and provides an opportunity for a just technological transition.

Across all sectors of any economy, technological innovation is changing the way we work. Artificial intelligence, robotics and automation are but a few examples of technology types that can replace humans and function more productively. Technology replacing jobs will become progressively more present across all sectors. Unions themselves have experienced job losses across various sectors. While technology can be an immense threat, it also creates an opportunity within the world of work.

Industry 4.0 thus creates an opportunity to “create quality work with reduced working time and improved occupational health and safety”.



TRADE UNION RESPONSE 15: PROTOCOL ON E-COMMERCE: Demands for a just technological transition

Within the Protocol on E-Commerce and debates related to Industry 4.0, trade unions should at all times make demands for a just technological transition:

- Social dialogue should form part of every step, and no worker or community will be left behind.
- Workers must have decent protected jobs with access to training and re-skilling opportunities.
- Social protection will be available to all citizens while communities will operate in diversified and viable economies.



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AfCFTA AND GENDER: SPECIFIC REFERENCE MADE IN THE AGREEMENT BUT GENDER IS NOT MAINSTREAMED

Within the concept of inclusive trade, AfCFTA makes specific reference to women and youth. It is incorporated into both the preamble and general objectives of the agreement. The Protocol on Trade in Services, for example, explicitly points to increasing the export capacity of women and youth. While this reference to women is an improvement compared to the reference to labour in AfCFTA, the objectives are still a long way from being achieved. For the AfCFTA objectives to become a reality, each member state must take deliberate action to design and implement gender-sensitive policies and target complementary measures. What is of even

more importance on national levels and within AfCFTA on a continental level is that gender must become mainstreamed within all developmental policies and approaches. Gender mainstreaming can be described as the integration of women and men's concerns and experiences into design, implementation, monitoring and evaluation of all policy documents and across all sectors. Gender does not become a stand-alone issue but is taken into consideration in each part of an agreement such as AfCFTA to achieve equity, equality, non-discrimination and empowerment.



TRADE UNION RESPONSE 16: GENDER MAINSTREAMING THROUGHOUT AfCFTA AND RELATED POLICIES OR PROCEDURES

While AfCFTA in its current form refers to gender, there is still much to be done to achieve equity, equality, non-discrimination and the empowerment of women. For trade unions to advocate for the needs of women, they need to consider demands such as the following:

- Gender should not be a stand-alone issue in AfCFTA or any national or continental policy or development procedure. Gender objectives can only be met when gender is mainstreamed through all processes and procedures.
- Demand national initiatives such as gender-sensitive education, women-training programmes, financial support for women entrepreneurship and the implementation of tax reductions for women-owned companies.
- Acknowledge the majority role of women in the informal sector on the continent as well as their associated vulnerability.
- Conduct gender analysis of the impacts of AfCFTA and include specific proposals that address the possible negative effects on women within advocacy campaigns.
- The promised increase in female employment through AfCFTA should at all times be represented by decent jobs with adequate protection and health and safety measures in place.



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WITHOUT THE NECESSARY INTERVENTIONS AND WILLINGNESS ON NATIONAL LEVELS AfCFTA WILL NOT SUCCEED

Although AfCFTA is a continental agreement, it can only be realised if the necessary procedures and willingness on national levels are in place. Great power and responsibility are, as a result located at the national level with regards to the implementation of AfCFTA. As previously stated, this provides unions with an opportunity to directly influence AfCFTA from within their countries.

Firstly, it was revealed how AfCFTA is designed to be a member-driven arrangement. Decision-making power will ultimately be located in the hands of the various member states on a consensus basis (Erasmus, 2020B). This provides unions with direct influence into decision-making procedures should they secure the necessary buy-in within their own governments.

Secondly, AfCFTA cannot succeed if the commitment of African countries does not exist to implement the agreement:

“Trade Agreements such as the AfCFTA are implemented through the domestic measures implemented in the State Parties. They must change their national tariff books, provide for domestic procedures regarding the issue of certificates of origin and for compliance with technical and health standards. The aim will be to harmonise these procedures, but they will need national legal foundations to ensure officials will give effect to the relevant provisions in the AfCFTA Agreement” (Erasmus & Hartzenberg, 2020A).

Let’s take, as an example, the removal of a non-trade barrier, such as the complicated bureaucratic border controls that cause lengthy waiting times. It is an easier task to say these should be removed than to ensure they are removed. Governments will have to monitor their different borders and at the same time be willing to sacrifice the income that was previously derived from these procedures. Governments will

be required to develop national implementation strategies to operationalize the AfCFTA Agreement (UNDP, 2020). These implementation plans provide an important opportunity for trade unions to demand the inclusion of labour as well as vulnerable groups such as women. Labour, gender, and environmental concerns should be mainstreamed within implementation documents and planning.

Thirdly, should the necessary complementary provisions not be in place, AfCFTA will not be realised. These include *“prioritising strategic sectors in national investment plans, establishing simplified trading regimes, investing in trade-related infrastructure, and investing in education and training to enhance workers’ skills”* (Albert, 2019: 21). To enable the requirements of AfCFTA governments, will be required to develop or improve trade-related infrastructure. Given that the resources to conduct such improvements were often not available before AfCFTA, it is difficult to foresee the resources becoming available after its implementation. What is even more concerning is that job transitioning and retraining programmes to accommodate the possible loss of jobs under AfCFTA will be the responsibility of local governments. Such interventions will require not only resources but also adequate planning capacity.

Lastly, national policy and regulation development will not only hold more power but can influence the implementation of AfCFTA within a country. Erasmus & Hartzenberg (2020B) describe how *“in most instances, national investment policies and competition rules are likely to prevail because market access for new service providers will be scheduled according to national interests”*. It is thus crucial that governments develop balanced domestic legal and policy frameworks before making them part of the obligations under AfCFTA (ITUC, 2008). In this regard, labour is a good example. Should a country not have a strong labour policy and legislative framework in place on a national level, they will not be able to insist that they should be made part of the obligations under AfCFTA. AfCFTA at a national level will also have to be supported by strong industrial policies in which labour and gender are made an integrated part.



TRADE UNION RESPONSE 17: RECOGNISE THE IMPORTANCE OF NATIONAL LEVEL INTERVENTIONS AND SUPPORT IN THE REALISATION OF AfCFTA

The implementation of AfCFTA will largely depend on interventions and buy-in at a national level. Trade unions are presented with a direct opportunity to influence AfCFTA processes as well as the way it is implemented in their countries. The following are important issues to be considered and questions to be asked:

1. Do we, as a trade union movement, have the necessary networks and influence in place to engage our government on issues relating to AfCFTA? If not, what are the immediate actions we can take to remedy this, and with whom can we build strong advocacy networks?
2. Does our national government have the necessary knowledge, expertise and resources to implement an agreement such as AfCFTA?
3. Who will be responsible for the development of the AfCFTA Implementation Plan in our country and how can we make sure labour, gender and environmental concerns become mainstreamed in the plan?
4. Where will resources required for, for example, infrastructure development and maintenance in support of AfCFTA be coming from?
5. What job transitioning and retraining programmes is our government considering following possible job losses due to AfCFTA? How will such resource-intensive programmes be supported to ensure no worker is left behind in the transitioning process?
6. Does my country have balanced legal and policy frameworks, including on labour, in place that can form part of the obligations under AfCFTA?
7. Does my country have a sound industrial policy in place with labour and gender mainstreamed throughout?

ADDITIONAL AfCFTA FUTURES AND PROGRAMMES TO BE ON THE LOOKOUT FOR

In addition to the seven Protocols discussed above, AfCFTA will include additional futures. A person can expect these to be increased and adjusted as negotiations proceed. It is the objective of the broader project in which this guide is located to provide trade unions with real-time updates on such developments. As and when needed, further research should also be considered. Per illustration, some of the additional futures or programmes which should always be critically assessed include the following:

- **Programme for Infrastructure Development in Africa (PIDA):** "State Parties have included in the agreement a Programme for Infrastructure Development in Africa (PIDA). A full and effective implementation of this programme would have important positive impacts for trade in Africa as it will help develop infrastructure" (Albert, 2019: 16).
- **The African Trade Observatory (ATO):** "The African Trade Observatory (ATO) will, once up and running, be responsible for information on trade data, market conditions, regulations, and about registered exporters and importers. This could improve trade governance and policymaking considerably, but the collection of trade data is a national responsibility. In many instances, this function needs to be improved and coordinated. Improving capacity at national level to collect, verify, clean and publish trade data regularly and expeditiously is not only important for domestic policy processes, but also important to monitor and review the impact of trade agreements, including the AfCFTA" (Erasmus, 2021B).



ADDITIONAL TRADE UNION RESPONSES AND DEMANDS

In addition to the trade union advocacy guidelines discussed in this guide, we would like to suggest the following trade union responses and demands relating to AfCFTA in general:



TRADE UNION RESPONSE 18: ADDITIONAL TRADE UNION RESPONSES AND DEMANDS

1. **Public procurement** is currently a way through which governments can support local companies and economic development. It enables governments to set conditions concerning labour standards within the providers they support (Myant, 2017). Open access to public procurement would subsequently be to the advantage of outside MNCs. Trade unions need to demand that the right of governments to use public procurement to support economic development, improve working conditions and pursue social and environmental objectives is protected.
2. ITUC (2008) advocates for mechanisms through which the benefits of FTAs can be transferred to those who stand to lose in the process. Trade unions should demand the establishment of an **AfCFTA Compensation Fund** through which the benefits derived from the Agreement are shared with those who will be negatively impacted in the process. With regards to jobs, short-term financial support and medium-term re-skilling and training must be provided to support transitions to new activities and sectors of employment.
3. Demands should be made for **social dialogue** to form a central part of AfCFTA. Youth employment, gender, decent jobs and sustainability are a few of the topics that need to be discussed through adequate social dialogue platforms. Democratic participation in AfCFTA should always be demanded.
4. Formulate demands for the inclusion of a **rapid-response labour enforcement mechanism**. Through such an approach facility-specific inspections and appropriate actions against those that violate labour standards commitments could be implemented.
5. It would be to the benefit of trade unions to **sustain their position through research** such as being supported within this project. If unions could, for example, prove how the opening up of all services will negatively impact workers, they will have a much stronger case to put forward. Employment impact assessments should not only focus on the number of jobs that stand to be impacted but also the quality of jobs.
6. The collection of **employment-related data** should at all times be demanded. Unions themselves should play an active role in this regard. Without baseline data, it will be difficult to prove the negative or positive consequences of AfCFTA. Adequate data collection thus becomes critical, as well as the sharing of data and information between countries.
7. Trade unions need to expand their mandate to advocate for the large percentage of the workforce active in the **informal sector**. Workers operating in this sector are very vulnerable and are often women. Simplified trade regimes, for example, can be considered where informal traders are assisted with simplified customs documents, a common list of goods that qualify for duty-free status, and assistance in completing customs procedures (Gathii et al., 2017). African governments should also implement specific national plans enabling them to widen the range of companies that can benefit from AfCFTA (Albert, 2019).

CONCLUSION

The African Continental Free Trade Area (AfCFTA) came into effect on 1 January 2021. It has been signed by 54 of the 55 African Union members. Despite the complexities associated with AfCFTA and the risks for workers and communities within such large-scale trade liberalization, the inclusion of trade unions in the process has been limited. Trade unions, on the other hand, have not yet developed an agreed, well-formulated policy position on the AfCFTA. This guide acknowledges that developing such a policy position is not a simple task especially given that trade unions face their own resource and capacity shortages varying across national and regional boundaries. This guide thus represents the first step in assisting trade unions to develop their own policy positions and to engage AfCFTA with confidence across continental, regional and national levels. Trade unions are ideally placed to advocate not only for their constituencies and workers but also for the broader communities in which they are located.

Trade unions need to demand a seat at the negotiation table and stipulate the inclusion and integration of labour provisions throughout AfCFTA. In this regard, the fact that AfCFTA is one of the rare agreements that came into force before negotiations were completed becomes an advantage. The outstanding negotiation issues are very complex in nature and could take another one to four years to be completed. This creates a much-needed opportunity for the labour movement together with civil society to step in.

There is the pressing need to demand the inclusion of labour provisions in AfCFTA. Labour provisions must include a commitment to adopt and maintain the ILO core labour rights, Decent Work Agenda and domestic labour laws, including laws on minimum wages. For such labour provisions to meet their ultimate goal, it is necessary to demand that they are not only included as a separate chapter or section within the agreement. Labour provisions need to be incorporated into every aspect of AfCFTA. All processes should be developed, taking into consideration the Decent Work Agenda.

Trade unions should take on the responsibility of monitoring agents together with the broader civil society movement. The inclusion of any form of labour provisions in AfCFTA will not automatically translate to any positive impact on decent work creation in a country. They will need to be taken as a tool through which trade unions can demand accountability and monitor progress. Gender mainstreaming should happen in unison with labour mainstreaming in AfCFTA. It must be realised by those involved within AfCFTA that without the inclusion of labour provisions, the gender objectives set out in the agreement will not be achieved.

For trade unions to be able to apply pressure within their own countries and across the continent, it is necessary to build networks of influence. This guide has illustrated how AfCFTA can either be approached from the top through building relationships within the Secretariat or from the bottom through ensuring their place in National AfCFTA Committees. In both instances, building networks of influence is critical. On a national level, this can be done in unison with civil society organisations and other relevant stakeholders. Transnational networks such as those supported through the International Trade Union Confederation (ITUC) will further be crucial in approaching and confronting the AfCFTA institutions on a continental level. Trade unions have the opportunity to share their experience and build a continental voice that cannot be ignored.

With regards to the integration of labour provisions throughout AfCFTA, this guide provides the first step towards unpacking the seven Protocols through a labour lens. Some of the key areas of concern are identified along with possible demands unions can formulate and important questions they need to ask. Some key examples include the following:

- Unions should not accept any form of zero tariffs without adequate social justifications. Tariffs represent a way to protect local industries, consumers and workers and therefore serve an important role.
- Unions need to critically assess which non-tariff barriers are proposed to be reduced. For example, barriers necessary to ensure the health and safety of workers and products should not be removed. Assistance should rather be given to producers to better meet non-tariff barriers.



- Rules of Origin (RoO) need to be approached with great care. In its absence, price undercutting could lead to local industries not being able to compete and having to compromise on labour costs and standards. RoO will, for example, prohibit a company from producing a product in China and then selling it as African because the packaging was done locally. There is a need for transparency within RoOs rather than oversimplified requirements.
- Within the liberalization of services, trade unions need to demand that the regulatory power of governments must be protected and the necessary public and essential services be exempt from the liberalization.
- Competition provisions could reduce the freedom of governments to set regulatory policies that, for example protect the environment, restrict foreign ownership in certain sectors, or promote local content. Competition provisions should address issues of excessive market power and not promote the interests of large multinational corporations (MNCs).
- Advocating for adequate intellectual property rights provides trade unions with an opportunity to advocate for the broader communities in which they are located. Should pharmaceutical companies, for example, be granted long patent protection for medicine, millions of patients including those suffering from HIV AIDS and tuberculosis, will suffer in the absence of affordable generic medication. Foregrounding such concerns not only for workers but also the vulnerable will garner more support for trade union campaigns and illustrate the desire for a just transition within AfCFTA.
- The Protocol on Investment should not lead to foreign companies getting more favourable treatment than local companies; being exempt from certain labour, fiscal or other legislation; or being able to restrict government regulations. Governments must have a clear position on what type of investments they want to attract and how decent jobs will be created, social protection provided, and social dialogue promoted.
- Unions should particularly guard against the establishment of ISDS provisions that provide MNCs with excessive power. If not, this could lead to governments refraining from developing social and environmental protection policies out of fear of prosecution.
- The inclusion of the Protocol on E-commerce in AfCFTA needs to be utilised to create a just technological transition where no worker or community is left behind.
- Trade unions should at all times realise the importance of the AfCFTA from a national perspective. Although AfCFTA is a continental agreement, it can only become a reality if the necessary national procedures are in place.

From a concluding perspective, we want to remind unions that they should never feel that they cannot ask questions. If the complexities of AfCFTA are not clearly understood, unions will have difficulty developing their own strategies and responses. Unions are encouraged to continue forming part of global networks such as International Trade Union Confederation and to further build knowledge networks on a national level. Labour research organisations, civil society organisations, NGOs and academic institutions are but a few examples of stakeholders that could be approached to form solid AfCFTA knowledge networks across the continent.

BIBLIOGRAPHY

1. Abrego, L., de Zamaróczy, M., Gursoy, T., Issoufou, S., Nicholls, G. P., Perez-Saiz, H., and Rosas, J-N. 2020. I M F STAFF DISCUSSION NOTE: The African Continental Free Trade Area: Potential Economic Impact and Challenges <https://www.imf.org/en/Publications/Staff-Discussion-Notes/Issues/2020/05/13/The-African-Continental-Free-Trade-Area-Potential-Economic-Impact-and-Challenges-46235> Date of Access: 4 January 2021.
2. Akinkugbe, O. D. 2020. Dispute Settlement under the African Continental Free Trade Area Agreement: A Preliminary Assessment. *African Journal of International and Comparative Law. Supplement*: 138-158 DOI: 10.3366/ajicl.2020.0335 © Edinburgh University Press www.eupublishing.com/ajicl
3. Albert, T. 2019. African Continental Free Trade Agreement: Opportunities and Challenges. Geneva: CUTS International, Geneva. <https://www.tralac.org/documents/resources/cfta/3181-afcfta-opportunities-and-challenges-cuts-international-study-2019/file.html> Date of Access: 4 February 2021.
1. allAfrica. 2019. Ghana: AfCFTA Needs Robust Rules to Safeguard African Markets <https://allafrica.com/stories/201908070675.html> Date of Access: 10 February 2021.
2. Amadeo, K. 2020. Free Trade Agreements with Their Pros and Cons <https://www.thebalance.com/free-trade-agreement-pros-and-cons-3305845> Date of Access: 5 March 2021.
3. bdc, undated. Most favoured nation <https://www.bdc.ca/en/articles-tools/entrepreneur-toolkit/templates-business-guides/glossary/most-favoured-nation> Date of Access: 5 March 2021.
4. Capon, C. 2021. Understanding the AfCFTA: observations and opportunities by Chad Capon <https://imanidevelopment.com/understanding-the-afcfta-challenges-and-opportunities-by-chad-capon/> Date of Access: 10 February 2021.
5. Chaytor, B. 2020. Unlocking and Scaling Innovation, Enterprise and Growth through the AfCFTA Protocol on Trade in Services. IN: The Futures Report MAKING THE AfCFTA WORK FOR WOMEN AND YOUTH <https://www.africa.undp.org/content/rba/en/home/library/the-futures-report-making-the-afcfta-work-for-women-and-youth.html> Date of Access: 6 January 2021.
6. Chidede, T. 2018. Investor-state dispute settlement in Africa and the AfCFTA Investment Protocol <https://www.tralac.org/blog/article/13787-investor-state-dispute-settlement-in-africa-and-the-afcfta-investment-protocol.html> Date of Access: 10 February 2021.
7. Chidede, T. 2021. AfCFTA Phase II and III Negotiations – Update <https://www.tralac.org/blog/article/15090-afcfta-phase-ii-and-iii-negotiations-update.html> Date of Access: 10 February 2021.
8. Engen, L. 2017. Labour Provisions in Asia-Pacific Free Trade Agreements, BACKGROUND PAPER NO.1/2017: UNITED NATIONS PUBLICATION <https://www.unescap.org/sites/default/files/Background%20Material%20-%20Labour%20provisions%20in%20Asia-Pacific%20PTAs.pdf> Date of Access: 10 February 2021.
9. Erasmus, G. & Hartzenberg, T. 2021. Speculating about Phase II of the AfCFTA Negotiations <https://www.tralac.org/blog/article/15089-speculating-about-phase-ii-of-the-afcfta-negotiations.html> Date of Access: 10 February 2021.
10. Erasmus, G. 2020A. The AfCFTA in a global Context <https://www.tralac.org/blog/article/15037-the-afcfta-in-a-global-context.html> Date of Access: 15 February 2021.
11. Erasmus, G. 2020B. The AfCFTA will grow gradually and via measures taken in different Forums <https://www.tralac.org/blog/article/15038-the-afcfta-will-grow-gradually-and-via-measures-taken-in-different-forums.html> Date of Access: 15 February 2021.
12. Erasmus, G. 2021A. Will 2021 see African Governments negotiating with External Partners? <https://www.tralac.org/blog/article/15088-will-2021-see-african-governments-negotiating-with-external-partners.html> Date of Access: 15 February 2021.
13. Erasmus, G. 2021B. The AfCFTA Secretariat: Is the Action now in Accra? <https://www.tralac.org/blog/article/15086-the-afcfta-secretariat-is-the-action-now-in-accra.html> Date of Access: 15 February 2021.
14. Erasmus, G. & Hartzenberg, T. 2020A. The ABC of the AfCFTA – as it stands <https://www.tralac.org/blog/article/15040-the-abc-of-the-afcfta-as-it-stands.html> Date of Access: 15 February 2021.
15. Erasmus, G. & Hartzenberg, T. 2020B. What to expect when all the AfCFTA pieces have come together? <https://>



- www.tralac.org/blog/article/15041-what-to-expect-when-all-the-afcfta-pieces-have-come-together.html Date of Access: 15 February 2021.
16. Fagbayibo, B. 2019 The African Continental Free Trade Area (AfCFTA) and the imperative of democratic legitimacy: An analysis https://www.researchgate.net/publication/343189365_The_African_Continental_Free_Trade_Area_AfCFTA_and_the_imperative_of_democratic_legitimacy_An_analysis_Forthcoming_in_the_Nigerian_Yearbook_of_International_Law Date of Access: 6 January 2021
 17. Gathii, J. T., Burnett, K., Changwe Nshimbi, C. and Dommen, C. 2017. The Continental Free Trade Area (CFTA) in Africa – A Human Rights Perspective: United Nations Economic Commissions for Africa (ECA) and Friedrich Ebert Stiftung (FES): Geneva Office https://www.ohchr.org/Documents/Issues/Globalization/TheCFTA_A_HR_ImpactAssessment.pdf Date of Access: 4 February 2021.
 18. Hartzenberg, T. 2020. The African Continental Free Trade Area Agreement – what is expected of LDCs in terms of trade liberalisation? By Trudi Hartzenberg, Executive Director, Trade Law Centre (tralac) and member of the Committee for Development Policy (CDP) <https://www.un.org/ldcportal/afcfta-what-is-expected-of-ldcs-in-terms-of-trade-liberalisation-by-trudi-hartzenberg/> Date of Access: 22 February 2020.
 19. ILO. 2017. Handbook on assessment of labour provisions in trade and investment arrangements International Labour Office – Geneva https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_564702.pdf Date of Access: 22 February 2020.
 20. ITUC International Trade Union Confederation, 2008. A TRADE UNION GUIDE Trade Unions and Bilaterals: Do's and Don'ts <https://www.ituc-csi.org/trade-unions-and-bilaterals-do-s,4437> Date of Access: 15 February 2021.
 21. Leon, P., Rachwal, N. & Müller, E. 2020. It is worth exploring whether the AfCFTA will indeed afford greater protection to investors across Africa and here in SA? <https://www.herbertsmithfreehills.com/latest-thinking/can-afcfta-deliver-on-what-it-promises> Date of Access: 10 February 2021.
 22. Luke, D. 2020. Implementing the African Continental Free Trade Area during the 2020s. IN: The Futures Report MAKING THE AfCFTA WORK FOR WOMEN AND YOUTH <https://www.africa.undp.org/content/rba/en/home/library/the-futures-report-making-the-afcfta-work-for-women-and-youth.html> Date of Access: 6 January 2021.
 23. Myant, M. 2017. The impact of trade and investment agreements on decent work and sustainable development, European Trade Union Institute (ETUI) <https://www.etui.org/sites/default/files/117%20Myant%20Trade%20and%20investment%20agreements%20decent%20work%20Web%20version.pdf> Date of Access: 5 March 2021
 24. Ndonga, D., Laryea, E. & Chaponda, M. 2020. Assessing the Potential Impact of the African Continental Free Trade Area on Least Developed Countries: A Case Study of Malawi. *Journal of Southern African Studies*, 2020, Vol. 46, No. 4, 773 – 792, <https://doi.org/10.1080/03057070.2020.1767888> Date of Access: 6 January 2021.
 25. Ojakol, S. 2020 Unlocking and Scaling Innovation, Enterprise and Growth through the AfCFTA Protocol on Trade in Goods. IN: The Futures Report MAKING THE AfCFTA WORK FOR WOMEN AND YOUTH <https://www.africa.undp.org/content/rba/en/home/library/the-futures-report-making-the-afcfta-work-for-women-and-youth.html> Date of Access: 6 January 2021.
 26. Posthum, A. Undated. A. Labour Provisions in Free Trade Agreements: “Rebalancing Globalization”? International Institute for Labour Studies, ILO Geneva http://www.rialdnet.org/sites/default/files/P2_Posthuma_ING.pdf Date of Access: 10 February 2021.
 27. Schweissheim, E. 2015. Trade Union Pluralism Through Free Trade? Vietnam's Trade Agreements with the EU and the US <https://library.fes.de/pdf-files/iez/12094.pdf> Date of Access: 15 February 2021.
 28. Scott, G. 2020. Free Trade Agreement (FTA) <https://www.investopedia.com/terms/f/free-trade.asp> Date of Access: 5 March 2021.
 29. Signé, L. & van der Ven, C. 2019. Keys to success for the AfCFTA negotiations https://www.brookings.edu/wp-content/uploads/2019/05/Keys_to_success_for_AfCFTA.pdf Date of Access: 10 February 2021.
 30. SOS Children's Village. Undated. Poverty in Africa - The Indicators <https://www.sos-usa.org/about-us/where-we-work/africa/poverty-in-africa#:~:text=Africa%20is%20considered%20the%20poorest,lives%20below%20the%20poverty%20line> Date of Access: 6 January 2021.
 31. Stoll, P-T., Gött, H. & Abel, P. 2017. Model Labour Chapter for EU Trade Agreements https://asia.fes.de/fileadmin/user_upload/documents/2017-06-Model_Labour_Chapter_DRAFT.pdf Date of Access: 5 March 2021.

32. The World Bank Group. 2020. The African Free Trade Area: Economic and Distributional Effects. <https://www.worldbank.org/en/topic/trade/publication/the-african-continental-free-trade-area> Date of Access: 10 February 2021.
33. TRALAC. 2019. Frequently Asked Questions about the African Continental Free Trade Area (AfCFTA) <https://www.tralac.org/documents/resources/faqs/3079-african-continental-free-trade-area-faqs-december-2019-update/file.html> Date of Access: 10 February 2021.
34. TRALAC. 2020B. The African Continental Free Trade Area: A tralac guide. 7TH Edition August 2020. <https://www.tralac.org/publications/article/13997-african-continental-free-trade-area-a-tralac-guide.html> Date of Access: 22 February 2021.
35. TRALAC. 2021A. African Continental Free Trade Area negotiations: WHO is negotiating with WHOM? CEMAC and ECOWAS <https://www.tralac.org/resources/infographics/14696-african-continental-free-trade-area-negotiations-who-is-negotiating-with-whom-cemac-and-ecowas.html> Date of Access: 15 February 2021.
36. TRALAC. 2021B. African Continental Free Trade Area negotiations: WHO is negotiating with WHOM? SACU and the EAC <https://www.tralac.org/resources/infographics/14695-african-continental-free-trade-area-negotiations-who-is-negotiating-with-whom-sacu-and-the-eac.htm> Date of Access: 15 February 2021.
37. TRALAC. 2021C. African Continental Free Trade Area (AfCFTA) Legal Texts and Policy Documents <https://www.tralac.org/resources/by-region/cfta.html> Date of Access: 22 February 2020.
38. UNCTAD. 2019. Rules of Origin Key to Success of African Continental Free Trade Area <https://unctad.org/news/rules-origin-key-success-african-continental-free-trade-area> Date of Access: 10 February 2021.
39. UNDP. 2020. The Futures Report MAKING THE AfCFTA WORK FOR WOMEN AND YOUTH <https://www.africa.undp.org/content/rba/en/home/library/the-futures-report--making-the-afcfta-work-for-women-and-youth.html> Date of Access: 6 January 2021.
40. Vangeel, L. 2016. FREE TRADE AGREEMENTS AND DECENT WORK: From window dressing to real improvements in decent and healthy working conditions <https://www.be-causehealth.be/wp-content/uploads/2016/05/Decent-work-EN.pdf> Date of Access: 5 March 2021.
41. Viljoen, W. 2021. South Africa's implementation of the African Continental Free Trade Agreement: customs arrangements and technicalities <https://www.tralac.org/blog/article/15083-south-africa-s-implementation-of-the-african-continental-free-trade-agreement-customs-arrangements-and-technicalities.html> Date of Access: 15 February 2021.
42. vivideconomic. 2019. What Africa stands to gain from the AfCFTA: country-level impacts <https://www.vivideconomics.com/wp-content/uploads/2019/08/AfCFTA-Impacts-Working-Paper-1.pdf> Date of Access: 6 January 2021.
43. Woolfrey, S., Apiko, P. & Pharatlhathle, K. 2019. Nigeria and South Africa: Shaping prospects for the African Continental Free Trade Area. Discussion Paper 242. Maastricht: European Centre for Development Policy Management. <https://ecdpm.org/publications/nigeria-and-south-africa-shaping-prospects-for-the-african-continental-free-trade-area/> Date of Access: 10 February 2021.
44. Yoichi, S. 2018. TAs and Customs Unions: For understanding Brexit https://www.rieti.go.jp/en/columns/a01_0501.html#:~:text=MFN%2C%20FTAs%2C%20and%20customs%20unions&text=The%20difference%20between%20the%20two,an%20FTA%2C%20they%20do%20not Date of Access: 5 March 2021.

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