

IMPLICATIONS OF AFRICAN CONTINENTAL FREE TRADE AREA ON TRADE UNIONISM IN AFRICA

Talking Points

1.0 What is the AfCFTA?

The African Continental Free Trade Area (AfCFTA) is a single continental market for goods and services in member nations of the African Union, with free movement of business persons and investments using a single currency.

The AfCFTA aims at bringing together African countries with a combined population of more than one billion people and a combined gross domestic product of more than US \$3.4 trillion.

The decision to create the AfCFTA was taken at the January 2012 18th Ordinary Session of the Assembly of Heads of State and Government of the African Union (AU), held in Addis Ababa, Ethiopia.

The AU also endorsed the Action Plan on Boosting Intra-Africa Trade (BIAT) which identifies seven clusters: trade policy, trade facilitation, productive capacity, trade related infrastructure, trade finance, trade information, and factor market integration. Consultations and negotiations for establishing the treaty commenced in 2013 and solidified in June 2015 during the 26th Ordinary Session of the AU Assembly Heads of State and Government in Johannesburg, South Africa.

The AfCFTA was signed by 44 of 55 AU member states in Kigali, Rwanda on March 21, 2018. Negotiations led to the ratification of legal instruments (the AfCFTA agreement itself and protocols on trade in service and goods and settlement of disputes) that came into force on **30 May 2019**, permitting the launch of trading.

Trading under the AfCFTA agreement began on 1 January 2021, after six months delay owing to COVID-19. As at 27th August 2021, 38 of 54 signatories (70%) have deposited their instruments of ratification with the Chair of the African Union Commission, in line with TRALAC requirements. The only African country yet to sign the agreement was Eritrea, which has a largely closed economy.

Suffice it to say that the AfCFTA is the trade policy thrust of the AU Agenda 2063. It is also a stepping stone to an African Economic Community and Customs Union as envisioned about twenty years ago under the 1991 Abuja Treaty. The first implementation plan of the AU Agenda 2063 is expected to be consummated in 2023 with the completion of the first phase of AfCFTA protocols.

2.0 Objectives of the AfCFTA:

1. Create a single continental market for goods and services, with free movement of business persons and investments, and thus pave the way for accelerating the establishment of the Continental Customs Union and the African Customs Union.
2. Expand intra African trade through better harmonization and coordination of trade liberalization and facilitation regimes and instruments across RECs and across Africa in general.
3. Resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes.
4. Enhance competitiveness at the industry and enterprise level through exploiting opportunities for scale production, continental market access and better reallocation of resources.

3.0 The Impact of the AfCFTA:

- The AfCFTA was designed to be unrolled gradually in a multi-stage process. This means that the agreement will develop over time as more and more African ratify the trade pact and agree on key trade goals and commonalities.
- The first phase covering goods and services trade took effect this 2021. The only outstanding issues in this phase is the finalization of tariff schedules and the Rules of Origin (RoO).
- Phase Two of the African Continental Free Trade Area includes the development of protocols on investment, competition policy, and intellectual property rights.
- The third phase will involve the negotiation of an e-commerce protocol.

4.0 Expected Impact of the AfCFTA

- i. Income gains of up to 5% translating to about US\$ 60 billion could be added to export values within Africa;
- ii. Increase in the volume of trade within the African continent by up to 8%-12% and translating to about US\$ 5.7 – US\$ 8.7 billion per annum;
- iii.
- iv. Ability to lift 30 million people in Africa from extreme poverty and 68 million Africans from moderate poverty;

- v. Increase in the purchasing power of consumers in Africa as businesses lower prices of goods and services owing to the removal of monetary and non-monetary tariffs; and
- vi. General improvement of the ease of doing business on the African continent with the possibility of a seamless customs services and trade tariff leading to the collateral benefit of attraction of Foreign Direct Investments

5.0 General Trade Union Concerns on the AfCFTA

- i. A major concern to trade unions and workers in Africa is poor consultation with Organized Labour and workers during the development of AfCFTA. In Nigeria, it took a strong protest from Organized Labour for the Nigerian government to consult with workers prior to the ratification of AfCFTA.
- ii. The poor mainstreaming of labour standards in the AfCFTA. It appears that there is a fatal assumption that the expansion of trade within the continent would automatically accommodate and promote decent work.
- iii. The dearth of labour migration social protection safeguards in the AfCFTA.
- iv. The poor capturing of mitigation plans in the event of job losses as a result of trade domination by one or a cluster of countries using the AfCFTA.
- v. The general unease over the possibility of manipulation of the Preferential Rule of Origin by countries outside the AU to infiltrate the market with cheap goods and services whose source are climes that are not at par competitively with manufacturing concerns and services firms within the region.

6.0 Overcoming General Trade Union Concerns

- i. Mainstreaming Social Dialogue in the AfCFTA protocol.
- ii. Establishing a Labour Standards Code in the AfCFTA.
- iii. Working with the sub-regional blocs to harmonize labour migration social protection policy to ensure that the rights of migrant workers to social cover are protected.
- iv. Institutionalizing a Job Loss Support Fund for countries that would suffer from trade domination by a cluster of countries to ensure creation of new jobs, job migration and job loss benefits for workers so affected.

- v. Strict implementation of the Preferential Rule of Origin through seamless harmonization of customs standards and protocols within the continent. The setting up of a Central African Customs Organization would go a long way in ensuring strict implementation of the Rule of Origin.

7.0 Specific Trade Union Concerns

Examining the different AfCFTA protocols, a number of specific concerns should interest trade unions in the continent.

a. Negotiation on the Protocol on Trade in Good

The AfCFTA proposes the removal of fiscal and non-fiscal tariff in member states in order to facilitate the smooth movement of goods and services within the African region. The challenge would be the risk of a race to the bottom as countries scramble to lower their regulations including labour costs in order to attract investors and produce more for the liberalized regional market.

In the Economic Community of West Africa States (ECOWAS), a revised treaty, particularly Articles 35, 36 and 37 demands that member states should jointly establish a Customs Unit and should take steps from 1990 to year 2000 to remove tariffs on certain category of goods including industrial goods, unprocessed goods and handicrafts and to allow the free passage of these goods within the sub-region.

Unfortunately, the lofty provisions of the ECOWAS treaty have been observed largely in the breach by most ECOWAS member countries. Tariff on the categorized goods in the treaty remains in place. In some cases, the borders are shut in order to prevent the free flow of goods.

Specific Concerns for Trade Unions:

- i. 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?
- ii. Which non-tariff barriers should be maintained to protect local industries and jobs?
- iii. What assistance can be given to producers to better meet non-tariff barriers?
- iv. How will the implementation of the removal be monitored? Is it feasible and is the necessary capacity available?

- v. What tariffs are proposed to be reduced? Is it, for example, on a product produced locally through which many jobs stand to be lost?
- vi. Which tariffs should be maintained to protect local industries and jobs?
- vii. Should some products receive lower tariff cuts or longer implementation periods?
- viii. What products are being considered for the 7% of sensitive goods and 3% of exemption and do we agree with these?
- ix. Is the implementation period allowed for my country adequate to protect workers and the economy?
- x. Will the proposed tariff cuts in any way prohibited 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?

Negotiation of the Protocol on Trade Services

Services offered and rendered in the African region and subject to tariff include transport, banking, insurance, education, consultancy, accounting, health to tourist facilities. 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. Negotiations can therefore be done bilaterally but the outcomes must be transmitted to the Secretariat for dissemination among the members.

Specific Concerns for Trade Unions:

- i. Which sub-sectors will be opened for outside companies and to which extent?
- ii. Will access to quality public services be impacted? Are public services excluded from the list of the relevant schedules of commitments?
- iii. Will domestic service providers remain protected?
- iv. 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?
- v. Will the regulatory powers of government be reduced or hijacked?
- vi. How will migrants and vulnerable workers be protected within the opening up of “movement of natural persons” as a service sector and how will local employment standards and jobs be impacted?

Protocol on Dispute Settlement

The Protocol on Dispute Settlement has been designed to provide the rules and procedures for disputes resolution within AfCFTA. Only state parties 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, would bring a claim. The first step will be to find an amicable solution through confidential mediation on 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 reasonable time. In its current form, there is no reference to disputes regarding labour or any related matter in AfCFTA. The Protocol on Dispute Settlement within AfCFTA has already been concluded.

Specific Concerns for Trade Unions:

- i. 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?
- ii. 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 fines be implemented that is that high that it serves as disincentives?
- iii. 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?

Protocol on Competition

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. The International Trade Union Confederation, however, provides a clear warning against how competition policies are often developed in the interest of MNCs, leads to the undermining of public enterprises and could reduce the right of governments to develop regulatory policies. It is thus critical for trade unions to demand a seat at the Protocol on Competition negotiation table.

Specific Concerns for Trade Unions:

- i. 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?
- ii. Do the proposed competition provisions set rules for mergers and acquisitions which take into account development concerns and other domestic priorities, including workers' interests?
- iii. Do the proposed competition provisions promote the emergence of local businesses that could contribute positively to economic development?
- iv. Could the proposed competition policy undermine public enterprises or monopolies?
- v. 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?
- vi. Will AfCFTA include a consumer protection policy and what is our position on this?
- vii. Could the proposed competition policy include the principle of non-discrimination? Could this prevent countries from protecting domestic companies from the actions of large multinationals and clash with attempts by governments to protect certain activities from market competition?

Protocol on Intellectual Property

The Protocol on Intellectual Property in AfCFTA is still to be negotiated and is aimed at protecting Trade-Related Intellectual Property (TRIPS). These could vary from trademarks, copyrights to patents. In simple terms, it 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. 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. Also, the rights of local players such as farmers and rural workers could be severely restricted in the process.

Specific Concerns for Trade Unions:

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

Protocol on Investment

The Protocol on Investment in AfCFTA will help regulate 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 the country. It is also the provision that could lead to governments losing their ability to promote social and environmental protection in their countries.

Within investment provisions, it is a balancing act for governments. The question becomes to which extend or costs 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. Within the Investor State Dispute Settlement Procedures (ISDS) procedures, the reluctance of governments to enforce the necessary rules and regulations can become particularly evident.

Specific Concerns for Trade Unions:

- i. *Foreign companies should not get more favourable treatment than local companies.*
 - ii. *Foreign companies should not be exempted from certain labour, fiscal or other legislation.*
 - iii. *The investment provisions should not restrict government regulation.*
 - iv. *The investment provisions should not prevent governments from prioritizing local firms or requiring the use of local input.*
 - v. *The investment provisions should not impose any obligation of “right of establishment” that requires countries to accept any foreign investment, regardless of its consequences.*
- Unions should particularly guard against the establishment of ISDS that provides MNCs with too much power. If not, ISDS could lead to governments refraining from developing social and environmental protection policies out of fear of prosecution. Because the negative consequences of ISDS are indirect, it can easily be missed.

Protocol on E-commerce

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. There is need for trade unions to double up as the Fourth Industrial Revolution alters the world of work as we know it. It is no more plausible that African does not have the legal framework and 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 on e-commerce. 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.

Specific Concerns for Trade Unions:

- i. Unions should make demands for a Just Technological Transition
- ii. Social dialogue should form part of every step and no worker or community will be left behind.
- iii. Workers must have decent protected jobs with access to training and reskilling opportunities.
- iv. Social protection will be available to all citizens while communities will operate in diversified and viable economies.

Mainstreaming Gender in the AfCFTA

AfCFTA makes specific reference to women and the 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 actions in designing and implementing gender-sensitive policies and target complementary measures.

Specific Concerns for Trade Unions:

- i. Trade unions should demand national initiatives such as gender-sensitive education, women-training programmes, financial support for women entrepreneurship and the implementation of tax reduction for women-owned companies.

- ii. Acknowledge the majority role of women in the informal sector on the continent as well as their associated vulnerability.
- iii. Conduct gender analysis of the impacts of AfCFTA and include specific proposals that address the possible negative effects on women within advocacy campaigns.
- iv. 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.

Implementation of the AfCFTA

The AfCFTA will not implement itself without the demonstration of continuous political will and commitment by the governments of African states. It is also critical that trade unions continue to increase advocacy pressure in order to mainstream the concerns of workers during the negotiations for the AfCFTA protocols.

Specific Concerns for Trade Unions:

- i. 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 who can we build strong advocacy networks?
- ii. Does our national government have the necessary knowledge, expertise and resources to implement an agreement such as AfCFTA?
- iii. 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?
- iv. Where will resources required for, for example, infrastructure development and maintenance in support of AfCFTA be coming from?
- v. What job transitioning and retraining programmes is our government considering for possible job losses through AfCFTA? How will such resource-intensive programmes be supported to ensure no worker is left behind in the transitioning process?
- vi. Does my country have balanced legal and policy frameworks, including on labour, in place that can form part of the obligations under AfCFTA?
- vii. Does my country have a sound industrial policy in place with labour and gender mainstreamed throughout?

8.0 Broad Recommendations for Trade Unions

1. ITUC advocates for mechanisms through which the benefits of FTAs can be transferred to those that might be left behind. Trade unions should demand for a 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.
2. Social Dialogue should be mainstreamed as a central part of AfCFTA. youth employment, gender, decent jobs and sustainability are but to name a few topics that need to be discussed through adequate social dialogue platforms. Democratic participation in AfCFTA should always be demanded.
3. Demand for the inclusion of a rapid-response labour enforcement mechanism to facilitate facility-specific inspections and appropriate actions against those that violate labour standards under the AfCFTA.
4. It would be to trade unions benefit to sustain their position through research. 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.
5. Collection of employment-related data should be always demanded. Unions 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.
6. Trade unions need to expand their mandate to advocate for the large percentage of the workforce active in the informal sector. Workers operating in the 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. African governments should also implement specific national plans enabling them to widen the range of companies that can benefit from AfCFTA.