

BRIDGES NETWORK

# BRIDGES AFRICA

Trade and Sustainable Development News and Analysis on Africa

VOLUME 6, ISSUE 6 – SEPTEMBER 2017



## Building an Inclusive Continental Free Trade Area

### INTERVIEW

Talking CFTA with AU Commissioner for Trade and Industry

### CONTINENTAL FREE TRADE AREA

What are the key factors for success?

### AFRICA

Ensuring the CFTA responds to the needs of the continent's peoples



International Centre for Trade  
and Sustainable Development

# BRIDGES AFRICA

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Trade and Sustainable Development News  
and Analysis on Africa

PUBLISHED BY

### ICTSD

**International Centre for Trade and  
Sustainable Development**

Geneva, Switzerland

[www.ictsd.org](http://www.ictsd.org)

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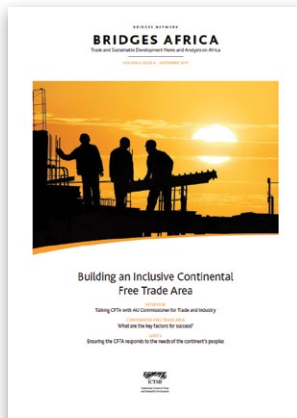
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## Building an Inclusive Continental Free Trade Area



*In January 2012, African leaders adopted the decision to establish a Continental Free Trade Area (CFTA) by the indicative date of 2017, an important step in the African Union's larger integration ambition of creating a Continental Customs Union and, ultimately, a full-fledged African Economic Community. Since the formal launch of negotiations in June 2015, significant progress has been reported, but information about the actual substance of the talks remains scarce. According to statements by various African officials, CFTA members seem to be on track to conclude Phase 1 negotiations – covering trade in goods and services – and adopt an agreement by the end of the year. It is with this goal in mind that negotiators will meet again in early October.*

*On a continent that trades very little with itself, in particular as compared to other regions, hopes are high that the CFTA will significantly boost intra-regional trade. By doing so, and given that intra-African trade is more diversified than Africa's trade with the rest of the world, the CFTA could play an essential role in supporting the continent's industrialisation efforts.*

*But while the CFTA's potential is promising, the task at hand is also immense. In light of the difficulties encountered by most of Africa's regional economic communities in advancing their integration processes at the sub-regional level, one quickly realises that establishing a functional single market between all 55 African Union (AU) member states will be uniquely complex. Moreover, the CFTA will not impact all partner countries in the same way. At a time of growing scepticism towards trade liberalisation, it is thus essential to ensure that the CFTA's distributional impacts are well understood, and that appropriate flanking measures are implemented to minimise adverse effects and ensure a broad distribution of benefits among African citizens from this mega trade agreement. What are the key factors in setting up an operational CFTA? And how can African negotiators and policymakers ensure the agreement responds to the needs of the continent's peoples in an inclusive way?*

*This issue opens with a special interview with Albert Muchanga, the AU's Commissioner for Trade and Industry, in which he provides exclusive insights on the CFTA negotiating process and what lies ahead until the end of the year and beyond.*

*This interview is complemented by four pieces, all looking at the CFTA from a different perspective. While David Luke and Jamie MacLeod identify a number of central elements in building a win-win and successful CFTA, Caroline Dommen presents the main recommendations of a recent human rights impact assessment of the proposed agreement. Mia Mikic, for her part, looks at the experience of the Association of Southeast Asian Nations (ASEAN) and reflects on how it can inform the CFTA process. Finally, Jacob Kotcho analyses the challenges in policy coherence in the CFTA negotiations.*

*As usual, we welcome your substantive feedback and contributions. Write to us at [bridgesafrica@ictsd.ch](mailto:bridgesafrica@ictsd.ch).*

## INTERVIEW

## Talking CFTA with Albert Muchanga, the AU's Commissioner for Trade and Industry



**Albert Muchanga**  
is the African Union's (AU)  
Commissioner for Trade  
and Industry.

*Bridges Africa met with Albert Muchanga, the African Union's Commissioner for Trade and Industry, to discuss the Continental Free Trade Area (CFTA) currently under negotiation.*

***Negotiations towards the establishment of the CFTA kicked off in February 2016. With six meetings of the CFTA Negotiating Forum having now taken place, what progress has been achieved so far?***

[Commissioner Albert Muchanga] The negotiations of the CFTA are at a critical juncture, with significant progress made. At the last meeting of African Ministers of Trade, held in Niamey, Niger, ministers successfully adopted the modalities for the liberalisation of trade in goods as well as trade in services. Ministers have adopted liberalisation targets for trade in goods of 90 percent of tariff lines, with additional provisions made for lists of sensitive and excluded products. An approach has also been agreed for the liberalisation of priority services sectors, as well as regulatory cooperation in those services sectors. In addition, significant technical work has been done on the CFTA Agreement texts, with language agreed to, or mostly agreed to, on the main CFTA agreement text, as well as on key annexes and issues including sanitary and phytosanitary measures (SPS), technical barriers to trade (TBT), customs cooperation, and trade facilitation. In addition, there is a roadmap towards concluding the remaining texts on outstanding issues, as well finalising tariff and trade in services offers by the end of 2017.

***The indicative deadline to conclude the CFTA negotiations was set at end 2017. What exactly do CFTA members expect to achieve by then? And what will be the subsequent steps towards an operational free trade area?***

[AM] As stated in the decisions of the African Union Assembly, the AU member states negotiating the CFTA intend to conclude negotiations on the first phase of the CFTA, covering trade in goods and trade in services, by the end of 2017. Subsequently, it is planned that African leaders will sign the agreement at an appropriate occasion in early 2018, followed by an aggressive drive to get the requisite number of ratifications, which will then bring the agreement into force for those ratifying members. At the same time in 2018, work will continue on any outstanding issues from the first phase of the negotiations as well as on issues covered in the second phase, namely investment, competition policy, and intellectual property. Alongside the technical work, the African Union Commission (AUC) will be making the necessary institutional and administrative arrangements for the administration and implementation of the agreement.

***What will be the main challenges in bringing about a successful and economically meaningful CFTA? How can they be overcome?***

[AM] The key challenges in bringing about a successful CFTA relate to the technical complexity of the negotiations themselves, as well as the breadth and heterogeneity of negotiating members, cutting across developing and least developed countries with different economic contexts. There is therefore a need to strike a subtle balance between the liberalisation ambitions of the CFTA and the need to cater for the economic vulnerabilities and sensitivities of the negotiating countries. There is no shortcut to overcoming these challenges, and addressing them thus requires adequate technical preparations and flexibility to address the concerns of the affected countries, as well as the mobilisation of the necessary political will to get the agreement concluded. The heads of state and/or government have made it clear that the political will to conclude the CFTA

is there. The negotiators and the AUC – as the secretariat for the negotiations – are playing their part in terms of the necessary technical work for ensuring a successful agreement.

***It is expected that the CFTA will build on the achievements of regional economic communities and the Tripartite Free Trade Area. Can you explain this building-block function?***

[AM] The CFTA Guiding Principles explain the building block relationship as the CFTA building upon the trade liberalisation and integration programs of the regional economic communities (RECs). In this context, the CFTA does not seek to roll back liberalisation already attained at the RECs level, but rather it seeks to consolidate these achievements towards the continental project. In practical terms, the CFTA seeks to gradually build on the liberalisation commitments at the RECs level until the continental liberalisation matches and eventually exceeds that of the RECs where possible. In addition, the CFTA text draws on the best practices and approaches that have worked at the regional level in developing the trade legal framework for the continent.

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*There is a need to strike a subtle balance between the liberalisation ambitions of the CFTA and the need to cater for the economic vulnerabilities and sensitivities of the negotiating countries.*

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***With 55 member states, the CFTA is a huge undertaking. Some experts argue that prioritising economic integration in smaller groups such as regional economic communities would be more fruitful, in particular because smaller membership can make it easier to achieve deeper integration. What is your response to this line of argument?***

[AM] Integration in smaller regional groups such as RECs leading towards eventual continental integration has been the approach to integration at the African Union, and it is part of the idea of using the RECs as building blocks for African integration. By establishing the CFTA, we are climbing up the ladder of Africa's economic integration agenda. While there is indeed a role and a place for deeper integration in smaller groups at the regional level, this does not negate the need for continental integration in order to get the full benefits of integration. It is clear that in terms of market size, regional markets such as COMESA, EAC, SADC and ECOWAS are still quite small relative to players like the US, India, China, and the EU. Consequently, African integration is not sufficient if restricted to regional economic groupings. The aim has been and continues to be deeper African and continental integration. Continental integration, while more challenging, offers a larger payoff than integration at the RECs level in terms of market size, which will help attract large-scale investments from both within and outside Africa.

***A human rights impact assessment of the CFTA has recently been published, highlighting the need to ensure the agreement leaves no one behind. How have CFTA members dealt with the issue of inclusivity so far, and what can be further done to make the CFTA a development tool that benefits all Africans?***

[AM] The need for inclusivity and for ensuring that all Africans benefit from the CFTA has been a preoccupation of the CFTA negotiations. The negotiating members have tried to do this by building sufficient flexibilities into the agreement and taking commitments that can ensure that the issue of vulnerability and inclusivity is addressed, including through longer time frames for transitions and the implementation of commitments. Studies are currently underway which will assist us in designing policies that will ensure win-win outcomes in the CFTA integration process.

***Some studies have shown that complementing the CFTA with trade facilitation measures could significantly boost its impact on trade flows. Will trade facilitation be addressed in the CFTA, and if so, how?***

[AM] Trade Facilitation is a key focus of the CFTA Agreement. The CFTA will include annexes on customs cooperation, trade facilitation, transit, and elimination of non-tariff barriers, as well as annexes on SPS and TBT issues. This is a reflection of the importance placed on trade facilitation by the CFTA negotiating parties. The CFTA agreement, through its provisions in these annexes, will be the most significant African commitment on legally-binding trade facilitation measures and administrative cooperation towards trade facilitation since this issue became important in trade policy circles.

***Economic development is a complex and multi-faceted process, which requires more than trade and market integration. The Tripartite initiative for example includes two additional pillars related to infrastructure and industrial development. How will the CFTA take this broader dimension of development into account?***

[AM] The CFTA initiative must be looked at in the context of the other AU initiatives. While the Tripartite FTA was a stand-alone initiative among the participating member states, which explains the specific need to develop initiatives on infrastructure and industrialisation, the CFTA is a flagship program of the AU's Agenda 2063 towards the structural transformation of the continent. Other flagship programmes of Agenda 2063 include the Program for the Infrastructural Development of Africa (PIDA), the Action Plan for the Accelerated Industrial Development Africa (AIDA), as well as the Action Plan for Boosting Intra-African Trade (BIAT). These initiatives are driven by their respective institutional frameworks up to the ministerial level.

The CFTA therefore does not try to duplicate, set aside, or reinvent the existing continental initiatives on industrialisation and infrastructure development – but rather, it seeks to complement these initiatives by addressing the critical market issues hindering the continent's industrial development. In a more specific context, the CFTA is being negotiated within the context of developmental regionalism. Trade is seen as a means to an end; in this case, the hoped-for end is the structural transformation of Africa. The CFTA Agreement therefore includes provisions that can complement and support Africa's industrialisation drive. Furthermore, the undertaking of commitments in infrastructure-related services by CFTA member states within the context of the CFTA also helps in creating an environment for market-driven solutions to Africa's infrastructure challenges.

***The CFTA is not an end in itself, but a milestone towards the larger goal of establishing an African Economic Community. Can you briefly outline the path towards this objective?***

[AM] The establishment of the CFTA is a necessary first step on the way to deeper economic integration, such as through the creation of the African Customs Union, and the African Economic Community. The CFTA can be best described as laying the necessary foundation for the African Economic Community by liberalising trade in goods and services on the continent.

## CONTINENTAL FREE TRADE AREA

# Bringing the CFTA About: Key Factors for Success

David Luke and Jamie MacLeod

*How can African negotiators and policymakers ensure that the CFTA will be successful? With the imminent release of the latest edition in the Assessing Regional Integration in Africa report series, this article draws out key messages and recommendations to inform the design and implementation of a "win-win" CFTA.*

The Continental Free Trade Area (CFTA) is the first flagship project of the African Union's (AU) Agenda 2063 and a key initiative in the industrialisation and economic development of Africa. It is an ambitious endeavour spanning 55 member states across a diverse continent. Matching this ambition with implementation will be a critical challenge, which is why the report Assessing Regional Integration in Africa VIII (ARIA) turns to the question of how to "bring about" the CFTA. For this, the ARIA series is well placed, with a history of driving the agenda on regional integration in Africa. Notably, the recommendations of ARIA V helped trigger the decision to launch the CFTA negotiations alongside the adoption of the AU's Action Plan for Boosting Intra-African Trade (BIAT). In keeping with this history, we hope ARIA VIII will be effective in shaping the implementation of the CFTA.

This article summarises the key messages and policy recommendations of ARIA VIII that aim to inform the design and implementation of a "win-win" CFTA. We commend them to African negotiators and policy makers, to stakeholders at all levels, and to our development partners.

## A win-win approach to the CFTA through the BIAT Action Plan

Sharing the benefits of the CFTA is important, not only for reasons of equity, but also to ensure that the agreement actually works for countries at different levels of development. Trade agreements that are not win-win tend to remain unimplemented or unravel because partner countries have little interest in their implementation.<sup>①</sup>

African countries span a diversity of economic configurations and are accordingly expected to be affected by the CFTA in divergent ways. There is, however, as much variety within as there is between African countries. As such, it will be as important to ensure that the wide array of stakeholders within and between African countries – and especially vulnerable or sensitive groups – all benefit from the CFTA.

Fundamentally, the CFTA is expected to generate significant economic opportunities. Liberalising trade between two or more countries generally has positive welfare effects for those countries and leads to economic growth and poverty reduction.<sup>②</sup> Empirical analyses of the CFTA identify such gains: Mevel and Karingi estimate that intra-African trade will increase by 52.3 percent (US\$34.6 billion), compared to a baseline scenario without a CFTA, by 2022;<sup>③</sup> Chauvin et al. estimate large and positive long-run impacts, with the CFTA boosting Africa's welfare by 2.64 percent by 2027.<sup>④</sup>

Certain countries may require further support in realising these opportunities. The BIAT Action Plan provides the framework that member states can use to prioritise the policy reforms required to derive the full benefits of the CFTA. The BIAT Action Plan was endorsed by the same 2012 AU Assembly decision that decided to establish the CFTA and identifies key flanking policies such as trade facilitation, productive capacity, trade-related infrastructure, and trade finance (Box 1).

The implementation of the BIAT Action Plan is key. This will require an implementing institutional structure, which may combine with that of the CFTA to avoid institutional duplication; a continental framework for monitoring and evaluation, which can also be combined with the CFTA's; and resources for the BIAT initiatives.



**Box 1. Summary of the seven priority clusters of the Boosting Intra-African Trade Action Plan**

	Cluster	Activities
1	Trade policy	Mainstream intra-African trade in national strategies; enhance participation by the private sector, women and the informal sector; boost intra-African trade in food products; undertake commitments to liberalise trade-related services; commit to harmonise rules of origin and trade regimes; promote "Buy in Africa" and "Made in Africa"
2	Trade facilitation	Reduce road blocks; harmonise and simplify customs and transit procedures and documentation; establish one-stop border posts; adopt integrated border management processes
3	Productive capacity	Implement the programme for the Accelerated Industrial Development of Africa, African Productive Capacity Initiative and Accelerated Agribusiness and Agro-industry Initiative (known commonly as 3ADI); establish integrated trade information systems; encourage investment; establish regional centres of excellence
4	Trade-related infrastructure	Implement the Programme for Infrastructure Development in Africa (PIDA); mobilise resources for multi-country projects; pursue high-quality multi-country projects; ensure an enabling environment for private sector participation; develop innovative mechanisms (legal, financial, etc.) for multi-country projects
5	Trade finance	Improve payment systems; set the enabling environment for financial services to provide export credit and guarantees; speed up the establishment and strengthening of regional and continental financial institutions (Afrexim Bank, Eastern and Southern African Trade and Development Bank and African Trade Insurance Agency)
6	Trade information	Create interconnected centres of trade information exchange
7	Factor market integration	Operationalise existing protocols and policies; facilitate movement of businesspeople; harmonise rules on cross-border establishment; conclude agreements on mutual recognition of qualifications

**Tariff revenue and the effects of structural adjustment on vulnerable groups**

The CFTA will reduce tariff revenues collected by African countries on intra-African trade. However, tariff revenue losses due to the CFTA are estimated to be modest and can be more equitably balanced across countries by allowing for flexibilities, such as exclusion lists, though these exclusions must not be so large as to undermine the gains from the CFTA. The CFTA will imply structural adjustment costs in the short run as economies undergo structural change, with factors of production shifting across sectors to align with new trading opportunities and competition. Special measures are required for vulnerable groups that could be hurt by such adjustments. The CFTA and its accompanying measures should ensure that these groups share the gains of the CFTA and are protected where necessary.

Smallholder farmers (around 53 percent of Africa's agricultural producers) can be supported by measures to promote their integration into larger value chains, such as simplified rules of origin requirements and help for them to meet sanitary and phytosanitary export standards. Such farmers may also require capital and reskilling to focus their production on export opportunities.

By reducing tariffs, the CFTA will make it more affordable for informal cross-border traders to operate through formal channels. The CFTA can further support this group with trade facilitation and trade information measures, along the lines of the Simplified Trade Regime implemented in COMESA, which simplifies clearing procedures and the requirements to qualify for preferential duties for a common list of products.

Women can be supported through their explicit involvement in the design and processes of the CFTA, including through national consultations and by including more female negotiators. In Africa, women account for approximately 70 percent of informal cross-border traders and can be supported here with improvements to storage facilities, illuminated border areas, and hygiene facilities. Women can also benefit from initiatives to connect female agricultural workers to export food markets.

For youth, the CFTA will help to drive the structural transformation that is required to generate new job opportunities, absorb new entrants into the labour force, and shift



African economies from capital-intensive commodities towards labour-intensive sectors. Supporting Africa's youth will require improved access to credit and initiatives such as tech incubators and accelerators, as well as revamped policies in education and skills development.

As a second-best option to the abovementioned accompanying measures, exclusion list provisions and safeguards can also be used to protect vulnerable groups where necessary. For example, a sufficiently accessible mechanism for adopting safeguards can help countries react to any trade flows that might threaten such groups. These groups will require close monitoring and evaluation to track the impact of liberalisation measures.

### **A win-win approach to the CFTA: Six critical components**

There are six key components of the CFTA that are especially important to "get right": (1) non-tariff barriers, (2) rules of origin, (3) investment and cross-border movement of persons, (4) services in general, (5) trade remedies, and (6) monitoring and evaluation.

To get non-tariff barriers (NTBs) right, a NTB mechanism should be included in the CFTA. Rather than duplicating the existing NTB mechanisms of the regional economic communities (RECs), the CFTA mechanism should build on their successes by expanding their operations across Africa to include trade between and within all RECs. In particular, the successful Tripartite NTB mechanism could be expanded to cover trade across the continent.

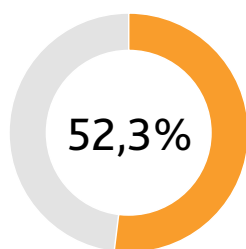
Getting rules of origin right will require balancing the desire of more-advanced countries for product-specific rules with the preference of less-advanced countries for more accessible rules of origin. Product-specific rules should be limited to only the most controversial or sensitive products, with simple rules applied as far as possible. If product-specific rules are to take an excessively long time to negotiate, negotiators can follow the example of the Pan-Arab FTA and lock in the benefits of the CFTA with simple rules of origin over a transitional five-year period, during which more complex rules can be refined. Lastly, preferential rules of origin can be designed to help make it easier for Africa's less-developed countries to satisfy rules of origin requirements – these would entail easier criteria for qualifying countries.

For investment and the cross-border movement of persons – which are often treated within the services section of a trade agreement –, fully-fledged, standalone chapters in the CFTA Agreement are recommended. This would enable the comprehensive coverage of all aspects related to the supply of services through the establishment of commercial presence. Regarding the cross-border movement of persons, negotiators should design an approach that does not take away from African entrepreneurs what they already have in their RECs, while creating new opportunities for inter-REC movement.

Getting services right requires an approach that builds on the existing achievements and challenges of the RECs in services liberalisation and regulatory cooperation. For liberalisation, member states should build on commitments already made in the RECs but be prepared to go further as required by the modalities for services liberalisation that have been agreed. For regulatory cooperation, this involves deploying the most appropriate mechanism – formal or informal – based on sector-specific variables. It may entail harmonisation in certain sectors, mutual recognition agreements in others, treaties, or more informal approaches.

Trade remedies are a crucial fail-safe for countries wary that competition could damage certain domestic industries. Getting them right in the CFTA will require regional investigating authorities, which will help extend remedies to small and less-developed African countries.

Finally, monitoring and evaluation is needed to ensure each country's compliance with the CFTA, to track progress in the implementation of the BIAT Action Plan, and to ensure that the CFTA is contributing to Africa's development goals. A self-assessment monitoring



According to estimates by Simon Mevel and Stephen Karingi, intra-African trade could increase by 52.3 percent (US\$34.6 billion) by 2022 as a result of the CFTA.

and evaluation "scorecard" is recommended, as is the collection of data by gender and vulnerable group.

### Financing for bringing the CFTA about

Financing in Africa has to be increasingly based on domestic public and private resources. This will help to overcome the challenges related to official development assistance (ODA), including risks with perpetuating donor-driven, rather than Africa-led initiatives, and fostering donor "signalling" – whereby actions are taken superficially to satisfy donor obligations rather than drive development. Self-financing will help to improve ownership and responsibility for projects, and in turn drive implementation.

One innovative method of self-finance is the AU's proposed 0.2 percent levy on imported goods into Africa. Currently, only 44 percent of the AU budget is provided by member states.<sup>6</sup> The levy would help raise an estimated US\$1.2 billion a year to fully fund the AU's operational budget, finance 75 percent of its programme budget, 25 percent of its peace and security operation budget, and the peace fund.<sup>6</sup> Care should, however, be taken to ensure that the levy is WTO-compliant. The CFTA can ensure that the levy complies with WTO rules regarding the MFN principle, as they permit derogations from MFN treatment in order to form regional FTAs, but there could remain an issue of sequencing if the levy were imposed before member states have implemented the CFTA. The levy could face further WTO compatibility challenges with regard to WTO tariff-binding schedules, though ad hoc measures could address the violation of the binding schedules. Against all these issues, African countries may also apply for a WTO waiver.

Nevertheless, aid for trade will remain important for bringing the CFTA about, particularly for Africa's poorest countries with little access to private finance and low levels of domestic resources. It may also remain important for Africa's lower-middle-income countries over the short run as they mobilise their own domestic resources. Aid for trade – and especially regional aid for trade – is the vehicle of choice for leveraging ODA towards the CFTA. Aid-for-trade disbursements to Africa have reached US\$14 billion in 2015, more than twice the annual average during the 2002-2005 baseline period, and have particularly targeted economic infrastructure and productive capacity building.

### CFTA Governance

The current restructuring of the AU – as part of the AU reform – provides an opportunity for the AU to be reshaped so that flagship projects like the CFTA can be better institutionalised and implemented. However, designing an institutional framework for the CFTA will be challenging if the main aspects of the AU reform have not been finalised.

Nevertheless, five principles can guide the formation of the CFTA's institutions: use the Abuja Treaty as the backbone to the CFTA institutional form; use and empower existing structures of African integration where available; ensure that CFTA institutions are accessible to the African people; support the joint implementation of the BIAT Action Plan alongside the CFTA; and develop practical institutional forms, rather than idealistic ones.

But first things first: each CFTA partner state should designate a ministerial level agency as responsible for implementing and communicating on CFTA issues. This follows the successful approach used in EAC, in which lead agencies for each country were charged with coordinating implementation and application of EAC commitments at the national level.

Over the longer term, the CFTA should work to streamline and rationalise Africa's overlapping "spaghetti bowl" of REC FTAs. Such a process will enable Africa to economise the resources now required to undertake trade policy activities in each of the RECs. It is expected that the RECs will then contribute to continental trade policy through their roles in the CFTA institutional architecture.

In terms of dispute settlement arrangements, it is recommended that member states first use non-litigious method to resolve disputes. This would include direct diplomatic negotiations followed by mediation and conciliation through CFTA institutions. Where

non-litigious methods fail to produce an outcome within six months, a CFTA Dispute Settlement Committee could be charged with resolving the dispute. Appeals may then be heard by the African Court of Human and Peoples' Rights, which would either convene a commercial chamber or establish specialist ad hoc committees for this purpose.

### Phase 2 negotiations: Competition, intellectual property rights and e-commerce

Competition and intellectual property will be part of the second phase of CFTA negotiations – expected to be launched after the conclusion of negotiations on goods and services – and there is scope for also introducing issues of e-commerce.

To prevent anti-competitive practices, a regional approach is needed for dealing with cross-border cartels, mergers, acquisitions, and abuses of dominant market positions. The CFTA can be used as a vehicle to address such cross-border competition issues and can also help countries with no competition laws to enact some in conformity to an agreed approach as envisaged in a continental competition framework.

In the area of intellectual property, any approach must be considerate of the fact that innovation in Africa is different, occurring mostly in the informal sector and in the absence of strong intellectual property institutions. An agreement regarding intellectual property must address overlapping subregional IP organisations and the proliferation of IP matters in RECs, while ensuring alignment with the continent's overall development goals. This can be done by addressing the particular demands of African innovation with appropriate procedural and substantive principles.

E-commerce and the rise of the digital economy is causing a shift in traditional economic sectors and the emergence of new digital products and services. An African digital industrial strategy is recommended to address the opportunities and disruptive challenges entailed by the digital economy. The CFTA should provide a platform for consolidating a common stance on e-commerce rules and for integrating a market for Africa's own digital businesses.

### Conclusions

The CFTA provides an exceptional opportunity for Africa to harmonize its continental trade environment and boost intra-African trade. However, the CFTA must be designed such that it is 'win-win' for all Africa's diverse range of countries and especially for vulnerable groups. Seizing this opportunity will require careful approaches to a range of substantive topics within the CFTA. It will also require the effective implementation of the Boosting Intra-African Trade (BIAT) Action Plan, which provides the framework for the flanking policies that are key to the CFTA's success. Bringing this about will in turn require innovative approaches to financing and trade governance, before phase 2 issues such as competition, intellectual property and e-commerce can be broached.



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**Jamie MacLeod**

Trade Policy Fellow, African Trade Policy Centre (ATPC) at the UN Economic Commission for Africa

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## AFRICA

# Crafting a Robust CFTA: The Human Rights Contribution

Caroline Dommen

*Can African countries simultaneously foster trade liberalisation, economic growth, and human rights in the context of the Continental Free Trade Area (CFTA)? A recent study argues that they can, and that it would make economic and political sense for them to do so.*

The Continental Free Trade Area (CFTA) offers an opportunity for African countries to boost intra-African trade and strengthen their economies through diversification, structural transformation, and enhanced efficiency. This can help them meet the poverty-related goals and the human rights objectives set out in Africa's Agenda 2063 and the global 2030 Agenda for Sustainable Development. Against this background, the UN Economic Commission for Africa and the Friedrich-Ebert-Stiftung have carried out an assessment of possible human rights impacts (HRIA) of the CFTA, with support from the Office of the United Nations High Commissioner for Human Rights.<sup>①</sup> Factoring human rights in at an early stage helps ensure that new trade policies are robust, inclusive, and sustainable. This is so for a range of reasons.

We know that the impacts of trade and investment liberalisation are unevenly distributed both between and within countries. These distributional effects are insufficiently factored into trade and investment policy. Taking into account the specific situations of different sectors of the continent's population and anticipating the ways in which liberalisation may affect different groups provides the basis for policymakers to devise trade measures in such a way that adverse effects are minimised. Viewing economic development strategies through a human rights lens can provide a framework within which distributional consequences can be better appreciated, with a view to avoiding impacts which discriminate against those who are most vulnerable.<sup>②</sup> Doing so also enables the design of flanking measures to support adversely affected groups. This is important from an economic and political perspective as much as from a human rights perspective: inequality can lead to less stable, less efficient economic systems, stifle economic growth, and create the conditions for social unrest.<sup>③</sup>

Clearly acknowledging the vulnerabilities and needs of those who are likely to lose out from liberalisation gives those who favour the CFTA an opportunity to highlight the economic and social benefits of trade and engage constructively with those who are concerned about unfavourable effects. This is particularly important today, as expressions of populist anti-globalisation sentiment contribute to growing scepticism around the world towards regional integration and trade agreements. These sentiments are often driven by concerns that the benefits of trade and globalisation are unfairly concentrated in the hands of a few, whilst the many suffer adverse effects in terms of employment and livelihoods.

## The human rights framework

All states negotiating the CFTA have committed themselves to respect, protect, and fulfil human rights, whether through ratification of the African Charter of Human and Peoples' Rights (ACHPR) or of global treaties such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as through regional economic communities (RECs) and policy commitments such as Agenda 2063.

As economies and societies change, people have to adjust. Even the most inclusive and beneficial changes may leave some people worse off. Human rights do not preclude change, but require that changes be part of a deliberate strategy towards the fulfilment of human rights, that likely impacts be monitored, and that discrimination be avoided.

Human rights impose obligations of conduct as well as obligations of result. Obligations of conduct require that action be reasonably calculated to realise the enjoyment of a particular right. Obligations of result require states to achieve specific targets to satisfy a detailed substantive standard. The required substantive standards have been developed in detail by human rights bodies both at the African and global level and provide useful references for governmental action relating to economic policy.

Human rights law recognises that it may not be possible for a state to realise economic, social, and cultural rights immediately. But some obligations are immediate. These include taking steps towards the progressive realisation of human rights, ensuring respect for minimum core elements of human rights, preventing discrimination, and monitoring progress towards the realisation of human rights. Moreover, human rights require respect for procedural principles, such as the right to information, to freedom of expression, to participation in decision-making and in public affairs, and the right to effective remedies.

### **Methodology and focus**

The methodology for this human rights impact assessment (HRIA) of the CFTA comprised a combination of desk research, interviews with stakeholders and experts, case studies, and peer review. The analysis focused on women, youth, and rural food producers, as these groups can particularly benefit from new economic opportunities, whilst being especially vulnerable to the adverse effects the CFTA might have.

The potential impacts of the CFTA were considered in case studies which focused on informal cross-border trade and on food production. Informal cross-border trade significantly contributes to regional integration, and is essential to the livelihoods of some of Africa's most vulnerable people, particularly women and youth. Agriculture is the main source of livelihood for the majority of Africans and it will remain of critical importance as the continent's population grows. The case studies drew on field work, as well as surveys of qualitative and quantitative evidence.

The HRIA considered the human rights impacts of liberalisation of trade in goods and services – elements covered in the first phase of CFTA negotiations. Investment, competition, and intellectual property policy have significant human rights implications, but as they are scheduled for the second phase of CFTA negotiations, this assessment did not analyse them.

### **Main findings and policy recommendations**

Based on the analysis carried for the assessment, the HRIA report formulates a number of detailed recommendations. Some of these are addressed to CFTA negotiators and include specific indications as to possible content of CFTA provisions; other recommendations concern measures that can usefully accompany and complement the CFTA to facilitate an inclusive, sustainable, and human rights-consistent outcome. This section summarises some of the main recommendations.

#### *Ensure broad consultation, participation and data gathering*

Lack of public participation and consultation is a recurring criticism of trade agreements, and the CFTA is no exception. Research for this assessment confirmed that consultations around the draft text were limited to a narrow group of already-involved actors, when they took place at all. This is in spite of the fact that the CFTA Draft Strategic Framework emphasises that the process must be inclusive and involve “not only governments and RECs but also other stakeholders such as the private sector, civil society, media, parliamentarians and development partners.”<sup>4</sup>

When a wide range of views are taken into account prior to the conclusion of a trade agreement, a more robust and sustainable outcome results. Inclusive processes help countries set their trade policy with a deep understanding of their national context. African civil society groups can bring expertise and knowledge to the table, thus strengthening governments' capacities to put forward negotiating options that respond to the breadth of needs within their country.

The HRIA recommends that the relevant actors – whether national governments, regional economic communities and those hosting CFTA negotiating fora – increase their efforts to reach out to all stakeholders and ensure that the voices of vulnerable and marginalised groups are taken into account. Some, such as small-scale private sector operators, women, and rural populations, may find it hard to access negotiating fora, so proactive measures must be taken to reach these groups.

Related to this, the report recommends that governments and international agencies improve the availability and quality of data. Data is an essential basis for the elaboration of clearly stated and carefully targeted policies. Some important actors in Africa's economy, such as women or informal cross-border traders, are often insufficiently acknowledged in available data. Better and more disaggregated data collection can help minimise adverse effects on these groups and maximise economic benefits, drawing on their under-recognised potential.

*Integrate and address disaggregated effects of trade and investment measures*

The human rights approach reminds us that placing too much reliance on conventional economic measurements of economy-wide potential gains arising from liberalisation can overshadow distributional impacts. Recent economic modelling confirms that the CFTA will impact different countries and different socio-economic groups in different ways.<sup>5</sup> Trade liberalisation can, for instance, exacerbate prevailing gender inequalities and worsen women's economic and social status.<sup>6</sup> Yet gender equality is shown to lead to faster economic growth and lower rates of poverty.

The CFTA process provides African countries with an opportunity to address existing inequalities as well as those that may result from trade liberalisation. This will require ensuring that impacts of the proposed trade and investment provisions are measured in a disaggregated way and that appropriate flanking measures are put in place. A continental simplified trade regime, for example, would allow small-scale cross-border traders to better take advantage of the CFTA through providing them with simplified customs documents, a common list of goods that qualify for duty-free status, and assistance in completing customs procedures.

*Fully estimate potential revenue gains and losses*

Trade liberalisation will lead to lower tariff revenues. This will particularly affect African countries that are heavily reliant on trade tariffs on intra-African imports as a source of government revenue. Whilst the gains of trade liberalisation are expected to offset lost tariff revenue, experience from other developing countries shows that it is difficult to replace tariffs with revenue from domestic sources. For many of them, it has taken decades to recover revenue following trade liberalisation. Given governments have, by virtue of their human rights obligations, the duty to mobilise resources, the full breadth of implications of tariff reductions must be carefully considered, with utmost attention to social and public expenditure impacts.

*Engage in paced, layered, targeted liberalisation and maintain policy space*

Governments should embark on gradual liberalisation that allows protection, especially for vulnerable groups and in key areas such as food security. Temporary exclusion lists are one way of operationalising this, through allowing member states to select a specified number of tariff lines to be temporarily excluded from tariff liberalisation, enabling them to protect vulnerable groups such as women, food insecure populations, indigenous groups, or cross-border traders. Special safeguards are another tool. These would permit limiting imports in times of crisis or against sudden import surges.

States should, in addition, be cautious not to limit their policy space for the future by avoiding CFTA provisions that could undermine their ability to implement future measures to ensure that all human rights, including the right to development, are protected, respected, and fulfilled. In the agricultural sector for instance, governments would do well to maintain the policy space to enable them to take new measures if necessary, for

instance to undertake new agricultural development measures in favour of small-scale agricultural production or to increase domestic food production capacity.

#### *Ensure compensation and adjustment mechanisms*

Negotiators and policymakers should establish CFTA adjustment mechanisms to ensure that vulnerable groups, as well as people adversely affected by the structural and regulatory changes brought about by the CFTA, are able to benefit from the agreement over time. Negotiators could for instance establish a compensatory fund to provide short-term financial support and medium-term re-skilling and training to support the transition to new activities and sectors of employment. Regional aid for trade could contribute to the financing of such a fund. The text of the agreement should also acknowledge that social protection is an important tool to promote equal opportunity and to support the transition from informal to formal employment.

#### *Monitor and evaluate CFTA impacts*

The overall impact of the CFTA must be monitored over time, not only in terms of economic results, but also in terms of its impact on the enjoyment of human rights in Africa.

The CFTA will include its own mechanisms for monitoring and evaluating its implementation. This should incorporate the monitoring of the distributional and human rights impacts of CFTA. Ongoing monitoring and evaluation will be key to ensuring that the CFTA policies continue to respond to economic, social, and development needs as circumstances change, and adapt when they do not yield human rights-consistent impacts.

#### **Conclusion**

The human rights impact assessment of the CFTA was an “ex-ante” exercise, initiated during the preparatory period of the CFTA negotiation process. Its authors have been able to present their analysis and findings during the negotiations. It has demonstrated the value of a rights-based approach and the opportunity it provides for advancing the objectives of Africa's Agenda 2063 and the global Sustainable Development Goals, whilst strengthening the accountability of economic actors. The recommendations emerging from this assessment can help inform the CFTA negotiations, as well as policy decisions in the subsequent implementation and monitoring phases, contributing to a robust, inclusive, and sustainable outcome from the CFTA. In addition, it is hoped that the assessment will trigger an earnest dialogue on the trade, social, and environmental impacts of the CFTA, and motivate civil society groups to engage actively during the remainder of the negotiation process as well as afterwards.

*The views in this article are those of the author and do not necessarily represent those of others involved in the HRIA of CFTA.*



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- ⑥ Higgins, Kate. “Gender and Free Trade Agreements: Best Practices and Policy Guidance.” Ottawa: The North-South Institute, 2013.



## ASEAN

# ASEAN 50 Years on: Lessons for the CFTA Process

Mia Mikic

*Fifty years after the signing of its founding declaration, how much has the Association of Southeast Asian Nations (ASEAN) achieved in terms of regional integration? What are the main lessons that the CFTA process can draw from its experience?*

Back in 1967, five nations of South-East Asia (Indonesia, Malaysia, Philippines, Singapore, and Thailand) signed the ASEAN Declaration with a vision of "uniting all nations of Southeast Asia under one roof." Fifty years on, the roof covers all countries in the sub-region.<sup>①</sup> The combined GDP of current members of US\$2.55 trillion (2016) and their population of 640 million people make ASEAN the sixth largest economy in the world. It is also the world's fourth largest trading power and attracts 7 percent of global FDI inflows.

Five years ago, heads of African states adopted a decision to establish a Continental Free Trade Area (CFTA). The ambition is to create a single continental market for goods and services, with free movement of business persons and investment, by an indicative date of 2017, paving the way for the establishment of a Continental Customs Union and, later, a full-fledged African Economic Community. Despite significant progress, the establishment of the CFTA has not been completed yet, although some observers indicate that an agreement is within reach by the end of the year.

This short commentary picks only a few achievements and failures from the ASEAN half-a-century integration journey in the hope that some of the lessons from ASEAN's experience can be helpful to those working on the CFTA.

## Integration à la ASEAN

The ASEAN economic integration process started in earnest with the signing of the ASEAN Free Trade Area agreement in 1992 among the then-six members of the bloc, adopting a relatively slow-paced path for reaching free trade. It was followed by the ASEAN Framework Agreement on Services in 1995 and the ASEAN Investment Agreement (AIA) in 1998. On the eve of the Asian financial crisis in 1997, ASEAN (by then a group of 9) adopted the ASEAN vision 2020, looking towards building an integrated economic, political, and cultural community. A decade later, the bloc (then comprised of its 10 current members) adopted a blueprint for establishing the ASEAN Economic Community (AEC) and brought the date of completion of the AEC forward to 2015.

The AEC Blueprint 2015 had four building blocks, known as the AEC pillars, comprising 17 core elements packed with 176 priority actions and 611 individual measures: (1) a single market and production base, (2) a highly competitive economic region, (3) a region of equitable economic development, and (4) a region that is fully integrated into the global economy. From the adoption of the blueprint to the delivery date of 31 December 2015, there were other landmark achievements. In 2008, the ASEAN Charter was adopted. Several mechanisms for trade liberalisation were unified under the ASEAN Trade in Goods Agreement in 2010. The ASEAN Financial Integration Framework was introduced in 2011, followed by the ASEAN Comprehensive Investment Agreement in 2012.

The implementation of the AEC Blueprint 2015 completed one-third of the process towards the ASEAN community (which also includes political and cultural communities). Based on ASEAN's own internal measure of success, it is the liberalisation of trade in goods, with an almost complete elimination of tariffs, that is deemed the most successful part of integration so far. ASEAN is now an important component of "Factory Asia", as producers from the bloc have become well integrated with other producers in East Asia through forward and backward linkages. This is attributed, among other things, to the

substantive reduction of import tariffs on parts and components and other intermediate inputs needed to take part in fragmented production processes. In essence, manufacturing exports cannot be developed without imports, and import tariffs thus penalise exporters, especially in the context of global value chains (GVCs).

### Remaining challenges

While tariff rates of most goods have been reduced to zero, the use of non-tariff barriers such as discriminatory measures, different product standards, import bans, import and export licensing, additional import requirements, technical barriers to trade, and new import procedures has been increasing.<sup>2</sup> A recent study by the Economic Research Institute for ASEAN and East Asia (ERIA) and the United Nations Conference on Trade and Development (UNCTAD) demonstrated clearly that the number of non-tariff measures (NTMs) imposed by ASEAN members increased from 1,634 in 2000 to 5,975 in 2015.<sup>3</sup> The prevalence of NTMs has been identified as one of the major obstacles to the expansion of production networks within the ASEAN community.

Another area of great importance for building competitiveness of both services and goods suppliers, and thus a *conditio sine qua non* for successful integration into global value chains, is linked to the liberalisation of services. The United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) shows that services accounted on average for 29.4 percent of the total value added in the industrial exports of Asia and the Pacific in 2009, which is at par with the world average of 29 percent, but considerably lower than the EU average of close to 55 percent. Liberalising services trade would allow more efficient imports of services inputs, enhance the competitiveness of the Asia-Pacific region's industries, and facilitate their participation in GVCs. Liberalisation should not be restricted to regional South-South flows, as developed economies remain the dominant source of imported service inputs.

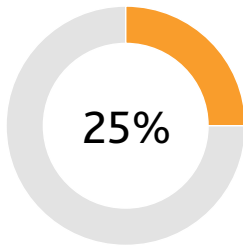
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*While tariff rates of most goods have been reduced to zero, the use of non-tariff barriers (NTBs) by ASEAN members has been increasing, from 1,634 imposed NTBs in 2000 to 5,975 in 2015 according to a recent study.*

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The liberalisation of services appears to be a weak spot of ASEAN integration so far. While the ASEAN Framework Agreement on Services (AFAS) was one of the first agreements on the liberalisation of services outside the General Agreement on Services (GATS), its rather non-binding language did not push ASEAN members very far. The AFAS stayed at par with the GATS approach and provided broad guidelines for ASEAN members on both increasing market access and ensuring equal national treatment for services suppliers in ASEAN. The implementation of the AFAS was driven by subsequent rounds of negotiations on so-called protocols, with packages of commitments at the level of individual members in each agreed economic sector or sub-sector and mode of supply. Soon into this process, it was clear that not only the new members of ASEAN, but also some original ones, wanted to move on at a much slower pace with services liberalisation than an economy such as Singapore. Thus, members were allowed to choose their own pace of liberalisation, but this approach slowed the overall progress. So far, ASEAN has concluded nine packages of commitments under the AFAS, and six additional packages of commitments in both financial services and air transport.

However, realising the importance of the services sector, which represents more than half of ASEAN's economic output and has attracted two-thirds of FDI inflows over the last decade, ASEAN is currently working on a new agreement, the ASEAN Trade in Services Agreement (ATISA). The ATISA is expected to build upon and enhance the existing agreements, including the AFAS but also those signed with ASEAN's partners. The



While the value of ASEAN's intra-regional trade has increased significantly over the years, its share in the bloc's total trade has recorded a timid growth, from around 23 percent in 2000 to about 25 percent today.

proposed agreement would seek to maximise the potential contribution of the services sector to economic growth and allow for deeper economic integration in ASEAN.

Perhaps the most disappointing result of ASEAN integration in services so far comes from the movement of natural persons (mode 4 of services supply). While people mobility for tourism and education purposes does not suffer from many restrictions, movements of natural persons across borders to provide services have not progressed. Seven mutual recognition agreements were signed to enable professional service providers' movements across the border of ASEAN countries, but implementation seriously lags behind.

### Looking ahead

ASEAN has been engaged for 50 years in the building of its community, but from early on the members understood that they would not succeed if they tried to build an inward-looking fortress. They opted for a broader outlook, putting ASEAN at the centre, but forging strong relations with many other countries. As such, they became a hub for preferential trade agreements (PTAs) in the region. Out of 170 such agreements signed by Asia-Pacific countries, 43 involve the ASEAN bloc or an ASEAN member. Most of the ASEAN's merchandise trade today is conducted with partners in those agreements. The share of such trade in ASEAN members' total trade increased significantly with the signing of trade agreements with China (in force since 2005), Japan (2008), the Republic of Korea (2010), and India (2010). The agreement with the EU will, of course, increase the importance of trade with PTA trading partners even further.

While the value of ASEAN's intra-regional trade has increased significantly over the years, its share in the bloc's total trade has recorded a timid growth, from around 23 percent in 2000 to about 25 percent today. As estimated by ERIA, not much of that trade was conducted under the preferential terms: it appears that it is difficult to convert the ASEAN's trade liberalisation scheme into trade flows utilising these preferences.<sup>4</sup> Reasons are many, including the lack of information and know-how at the level of small companies and difficulties in complying with some of the rules of origin. It was established that micro, small, and medium-sized firms find it more difficult to utilise ASEAN free trade arrangements than the large companies. Therefore, ASEAN must work on helping such firms to make better use of the trade agreements both by building their capacity and by providing information.

ASEAN must also review its approach to the negotiation of new trade agreements. This is especially important with the ongoing negotiations of the Regional Comprehensive Economic Partnership (RCEP) with six development partners. While ensure transparency and inclusiveness in the process of negotiation of RCEP and other PTAs is essential, it is also time to negotiate deeper and more binding PTAs than the existing ("ASEAN+1") agreements. Reducing the current level of "legal inflation" that characterises ASEAN+ deals when negotiating RCEP and other ASEAN-led agreements would make these agreements more useful for business and investors and might also bring in rules to help improve inclusivity and environmental responsibility.

This should be achievable through the implementation of the AEC Blueprint 2025 adopted in 2015, which seeks to create a resilient and integrated economy through inclusive growth, innovation, and good governance, among others. The Blueprint 2025 is the first such document to align with the Sustainable Development Goals (SDGs). It maintains the original values of the ASEAN approach to integration, and by aligning them with the 2030 Agenda, it strengthens the blueprint's plan to deliver a rules-based, people-centred, and people-oriented ASEAN. Other features of the Blueprint 2025 are: (1) a forward-looking approach, cognizant of the dynamic global environment and in line with the objective of ensuring a sustainable regional integration agenda, and (2) a holistic approach to regional integration that seeks to promote inter-pillar and cross-sectoral coordination.

In summary, ASEAN has come a long way since 1967. However, its growth potential has not been exhausted, and deepening and strengthening integration among its members as well as with the bloc's largest trading partners has been adopted as the way forward.

The alignment of the integration strategy with the sustainable development goals in the Blueprint 2025 also shows a recognition of the importance of reducing inequalities within the countries and among them. The Gini coefficient for several of the ASEAN members is well above the desired level, while the GNI per capita of the richest member remains 52 times that of its poorest member. Inequality, coupled with global economic uncertainty and nationalist populism, creates new challenges for regional integration. Brexit by the UK and TPP-exit by the USA are both outcomes of these challenges. ASEAN's response must be a more transparent, inclusive, and people-led integration for all.

### What lessons for the CFTA?

In light of ASEAN's experience, including its achievements, but also its shortcomings, the three following lessons should be highlighted to inform the CFTA process. First, there is a value in gradualism, but a slow pace does not always produce the best results. By slowing down services liberalisation (in most sectors, as well as in mode 3 and 4), while also proving unable to effectively address the non-tariff measures, ASEAN countries might have undermined their efforts to develop higher-value-added sectors and to escape the middle-income trap. Second, it is essential to refrain from building an inward-looking bloc. No matter how large your bloc is, the global economy is larger and being able to do trade and investment with partners in the global economy under similar terms as within your own bloc is important. Third, special and differential treatment is not only possible, but also desirable, even necessary. ASEAN has given a special status to "latecomers" in the bloc, so-called CLMV countries (which also happened to be the least developed among all in the group), both in terms of pace of liberalisation and by providing them with development assistance. This paid off, as they fully caught up in terms of trade liberalisation efforts.

- ❶ Timor-Leste gained its independence from Indonesia only in 2002 and is now in the process of acceding to ASEAN as well as to the WTO.
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## REGIONAL INTEGRATION

# The CFTA Negotiations and the Issue of Coherence

Jacob Kotcho

*What are the challenges facing the Continental Free Trade Area (CFTA) negotiations in terms of public policy coherence?*

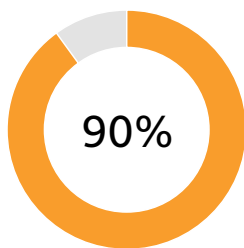
The analysis of the coherence of public policies now covers a growing range of dimensions.<sup>❶</sup> This issue is particularly significant when it comes to trade policy, due to the stakes and interests it involves. In this article, we will consider three levels of coherence in relation to efficiency: (i) coherence of trade policy in relation to the objectives that were set; (ii) coherence between this public policy and other public policies, which requires a convergence of approaches; and (iii) coherence of negotiation strategies in relation to trade policy objectives.

It is important to point out that, when it comes to objectives, there are two main areas on which trade policies focus in order to contribute to economic and social development: promoting exports and limiting imports.<sup>❷</sup> In a regional integration context, a community's trade policy must be consistent with all the national policies of the member states, as well as with all the other sector-specific community policies.<sup>❸</sup> The key question here is therefore about the nature of the challenges – in terms of coherence – for the Continental Free Trade Area (CFTA) negotiations that started in June 2015. The article will draw attention to the coherence requirements set by the guiding principles, the scope, the extent, and the focus of the CFTA negotiations by exploring this issue from a political, economic, institutional, and legal point of view.<sup>❹</sup>

## At the policy and strategic Level

According to the First Ten-year Implementation Plan of Agenda 2063, the scope and disciplines of the agreement establishing the CFTA should contribute to doubling intra-Africa trade by 2022. To achieve this, other complementary policies must be implemented, more specifically ambitious, dynamic, and realistic industrial policies and infrastructure development policies. The main challenge here lies in managing to reconcile all the constraints due to the number of countries taking part in the negotiating process. The 55 member states of the African Union (AU) have different characteristics in terms of level of development, specificities related to various factors of fragility (isolation, political instability and lack of security, vulnerability to disasters), as well as regarding their integration into the international trading system – e.g. Ethiopia has never signed a free trade agreement, several African countries are not WTO members, etc. As such, the negotiations need to provide for appropriate flexibilities in terms of special and differential treatment to take into account the specific development concerns of all members (guiding principle 5), as well as the necessary support measures, raising the delicate issue of financing.

A second challenge relates to coherence with the large number of cooperation processes – individual and collective – through which the continent engages with third-party partners in the world and which include trade aspects (Economic partnership agreements, potential EU-Africa investment treaty to come, AGOA, China-Africa, etc.). How can we make sure that the CFTA is a framework through which AU member states can offer each other trade concessions that are not less favourable than those that are already being offered elsewhere? It is essential to find the right approach to consistently implement the guiding principles of substantial trade liberalisation (principle 7), most favoured nation treatment (principle 8), national treatment (principle 9) and reciprocity (principle 10). With regard to the level of liberalisation, the scope of the CFTA and the modalities associated with it – which provide for the liberalisation of 90 percent of tariff lines for trade in goods – show a level of ambition that is consistent with this “substantial” liberalisation principle.



Last June, CFTA members agreed to liberalise 90 percent of tariff lines. On the remaining 10 percent of product lines, countries will have the possibility to designate sensitive products, on which they only have to undertake tariff reductions and on a longer time frame, as well as excluded products that will keep the same tariff level.

The CFTA covers all areas of trade, including goods, services, competition, intellectual property, and investment.

In the same spirit, how can we build on the *acquis* of the various regional economic communities (RECs), which can themselves be very different in terms of their strategic direction for certain aspects of trade policy? For example, the rules of origin applied in the free trade areas of the various RECs are not identical: some apply general rules of origin (ECCAS and ECOWAS), while others apply specific rules (EAC, COMESA and SADC), and the origin criteria are not standardised, including cumulation criteria. The CFTA negotiations should adopt rules of origin that encourage the industrialisation of the continent by reconciling the varying options currently applied within the RECs.

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*The CFTA negotiations need to provide for appropriate flexibilities in terms of special and differential treatment to take into account the specific development concerns of all members (guiding principle 5), as well as the necessary support measures.*

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On the other hand, as regards trade in services, although liberalisation could potentially cover all areas, the staging principle set out in the Abuja Treaty (Article 4.2) and the capacity of member states to liberalise beneficially require choosing certain key areas with which to start. How can they be identified? Existing instruments should be relied on to achieve this (guiding principle 3 – preservation of *acquis*), in particular the Abuja Treaty itself, the treaties establishing the RECs and the decision adopting the Action Plan for Boosting Intra-Africa Trade (identifying service sectors that the States have already agreed to liberalize). To this should be added the commitments made at the WTO, including the conditions regarding the compliance of the CFTA with the GATS (substantial coverage in terms of sectors, modes of supply, and volume of trade), as well as emerging service sectors. Another challenge lies in choosing the service liberalisation approach that is best suited to Africa's very specific context, which is characterised by the lack of reliable statistics on trade in services (list of specific commitments, regulatory cooperation, or a combination of both).

#### **At the legal level**

From a legal point of view, there are at least three levels at which coherence issues can be identified. Firstly, the status of the agreement creating the CFTA compared to the Abuja Treaty creating the African Economic Community is highly significant. Logically, to maintain coherence, this agreement should be a protocol annexed to the Abuja Treaty; however, the opinions of member states are divided on this topic. The arguments put forward by those who are against are the following: (i) the Abuja Treaty does not explicitly provide for the negotiation of the CFTA (although it does provide for the implementation of a customs union, which is theoretically a free trade area with a common trade policy among its members);<sup>9</sup> and (ii) the wording of the MFN treatment, a basic principle of the international trade system, as stated in the Abuja Treaty (Article 37), is outdated and could create impediments to implementing the CFTA. Those who are in favour, however, believe that the direction of the AU's current institutional reform is to create coherence across all the parallel processes – current and future – related to African integration using the Abuja Treaty and the structures set out in it as a frame of reference.

Secondly, the type of dispute settlement mechanism that should be applied as part of the CFTA is also in question. One option is to create a separate dispute settlement mechanism using the WTO approach. The other option is to create a link to the current mechanism – the African Court of Justice and Human Rights – with the risks that this carries regarding the specificities of international trade disputes.

Finally, there is also the question of how the agreement will enter into force. Would it need to be ratified by the member states or would a decision of adoption by the Conference of Heads of State and Government suffice? For these legal aspects, as for the others, it would be appropriate to adopt best practices (guiding principle 12) while taking into account the *acquis* of the RECs.

#### **At the institutional level**

The challenges relating to institutional coherence are already present in the negotiation approach selected, namely through the following guiding principles: (1) CFTA negotiations are conducted by AU Member States, RECs and customs territories with the support of the AU Commission (AUC) and its structures; (2) the RECs' free trade areas will form the basis for implementing the CFTA; (3) preservation of the *acquis*; (4) variable geometry; and (5) flexibility and special and differential treatment.

In practice, the CFTA negotiations take place between the AU member states, with the RECs taking on a subsidiary role. This creates a coherence issue for countries that are members of customs unions and are thus supposed to implement a common trade policy, while also opening the door to questioning the *acquis* achieved by consensus within the RECs. Although it is true that the opinions of the RECs are collected by the Continental Task Force on the CFTA, the real challenge here is nevertheless the evolving role of the RECs. They need to move from consulted actors to decision-makers in the harmonisation process of continental trade policies, in co with the current AU reform.

The relevance of the negotiation structures is also an important issue.<sup>6</sup> Experience shows that the architecture chosen is heavy, expensive, and constricting for the progress of negotiations. For example, between the CFTA Negotiating Forum (where consensus is built on a technical level) and the Meeting of Senior Trade Officials (where files are prepared for the Meeting of Ministers, although it is not a negotiating arena), there is often an overlap of competences, as the Meeting of Senior Officials turns into the Negotiating Forum. This is caused by the fact that the same people belong to both these institutions.

Another element relating to institutional coherence pertains to the CFTA's administration mechanism. Will the monitoring of implementation rely on the AU Commission's structures? Should other structures be created, and if so, what form should they take? Likewise, what role should the RECs play in the CFTA's administration mechanism? Finally, what mechanism should be put in place to monitor the implementation of specific annexes, while remaining coherent, avoiding overlapping and duplication, and avoiding multiplying structures that create over-costs?

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*The CFTA's contribution to the continent's economic development is contingent on a real strategy to industrialise economies by fostering regional value chains, developing infrastructure, and facilitating trade.*

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The question of mobilising material, logistical, human, and financial resources to carry out the negotiating process is also important. This brings up the issue of the capacity of African States to independently finance their ambitions. It can be seen, for example, in the question of financing the participation of delegates to negotiating meetings so as to cover all the technical sectoral specificities of the areas covered by the negotiations. For the most part, member states are only represented by one delegate, whose attendance is paid for by the AUC using the funds provided by the EU, the GIZ, and the World Bank.

#### **At the economic level**

The key issue is knowing how to turn the CFTA into a tool for promoting the development of African countries and the well-being of their people. Studies conducted by the ECA



showed that the CFTA's contribution to the continent's economic development is contingent on a real strategy to industrialise economies by developing regional value chains, developing infrastructure, and facilitating trade.<sup>7</sup>

At first sight, the implementation strategy of Agenda 2063 and the priority programmes of the First Ten-year Implementation Plan seem consistent with ambitions to promote intra-Africa trade, in the sense that they not only contain actions that are directly linked to trade policy, but also measures regarding other related policies (industrial policy, infrastructure, etc.). However, planning is not enough; this must now be implemented. Observing the domestication process of Agenda 2063 into national development plans reveals the existence of many challenges in terms of coherence.

### Conclusion

Ultimately, without claiming to be exhaustive, the analysis of the policy coherence challenges facing the CFTA negotiations reveals that a few key factors must be taken into account in order to help African countries achieve their development goals. These include the issue of flexibility, alignment with national and regional development goals and strategies, taking into account the various characteristics of AU member states, compatibility with previous legal commitments (RECs, AU, WTO, EPAs, etc.) and – in some cases – making more ambitious ones, leadership, and resource mobilisation capacities. Nevertheless, their practical application still has a few obstacles to overcome, which largely have to do with political will.

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- ❶ Pierre Muller, *Les politiques publiques*, Paris: Presses Universitaires de France, 2013.
  - ❷ Murray Gibbs, *Trade Policy*, New York: UNDESA, 2007.
  - ❸ Jean-Pierre Rolland & Arlène Alpha, *Analyse de la cohérence des politiques commerciales en Afrique de l'Ouest*, Paris: GRET, 2011.
  - ❹ See the guiding principles for negotiating the CFTA adopted by the AU Conference (Decision Assembly/ AU/11 (XXV)).
  - ❺ See Article 6 of the Abuja Treaty on the modalities for establishing the African Economic Community and Chapter V, Articles 29 to 33.
  - ❻ Continental negotiating task force, technical work groups, negotiating arena, AU Meeting of Senior Trade Officials, AU Meeting of Trade Ministers.
  - ❼ United Nations Economic Commission for Africa (ECA), *Economic Report on Africa 2015: Industrialising through Trade*, ECA: Addis-Abeba, 2015.



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# Publications and Resources



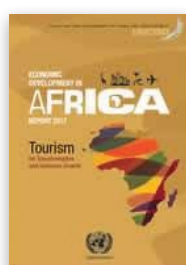
## **Leveraging the Services Sector for Inclusive Value Chains in Developing Countries – ICTSD – September 2017**

This paper analyses how increased competitiveness in services can drive sustainable development opportunities in value chains in developing countries. By arranging the services components of value chains in the most socially and economically optimal manner, new opportunities for the private sector can emerge, domestic supply-side capacity can be enhanced, and steps towards the achievement of sustainable development objectives can be made. <http://bit.ly/2xOrn9u>



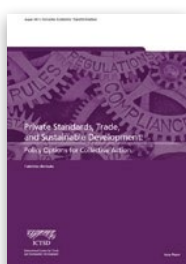
## **Shared Stocks and Fisheries Subsidies Disciplines: Definitions, Catches, and Revenues – ICTSD – September 2017**

The issue of fisheries subsidies has drawn a lot of attention in the context of recent discussions at the WTO ahead of the organisation's Eleventh Ministerial Conference in Buenos Aires. This information note sets out how the distinction between shared and non-shared fish stocks has been drawn in the academic literature and what the potential implications are of such distinctions within the context of subsidy disciplines and multilateral fisheries subsidies negotiations at the WTO. <http://bit.ly/2fx0pZA>



## **Economic Development in Africa Report 2017: Tourism for Transformative and Inclusive Growth – UNCTAD – September 2017**

Tourism is an important sector in many African economies, and its growth is increasingly driven by tourists originating from the continent itself. However, most African countries still face significant challenges and constraints in exploiting its potential. This report identifies the main barriers to unlocking the potential of tourism in Africa to help structurally transform the continent's economy and provides policy recommendations on how to overcome them. <http://bit.ly/2tPV7Rg>



## **Private Standards, Trade, and Sustainable Development: Policy Options for Collective Action – ICTSD – August 2017**

This paper analyses private standard schemes as management tools used to shift risks, costs, and responsibilities along global value chains. It argues that policymakers can facilitate the trade-creating potential of private standard schemes by acting in concert – at the international level – on their design and operation. The author further reviews relevant multilateral and bilateral work in this area and puts forward six policy options to support concerted governmental action on private standards. <http://bit.ly/2wWCuKt>



## **Trade in Second-Hand Clothes: The Bigger Picture – TRALAC – August 2017**

In the past few months, trade in second-hand clothes has led to much debate on the African continent. The purpose of this brief is to examine the patterns of trade in second-hand clothes using International Trade Centre (ITC) Trademap, at the highly disaggregated level of HS8. It goes on further to examine trade in this commodity at continental level, reviewing a few country-specific examples, and then concludes by considering some implications of bans on the trade in second-hand clothes. <http://bit.ly/2xdKyXc>



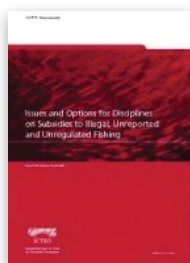
### **Fueling Digital Trade: The Global Landscape and Implications For Africa – ICTSD – July 2017**

The purpose of this paper is to propose specific ways in which developing countries can best fuel trade in the digital era. It pays special attention to eastern and southern Africa, regions where e-commerce is still quite nascent and can play a transformative role. The paper argues that gains from digitisation to trade and growth are not automatic in developing economies. Rather, these gains depend on an adequate infrastructure and on supportive policies. <http://bit.ly/2jF1btC>



### **Tourism for Sustainable Development in Least Developed Countries – ITC – July 2017**

Tourism is a key trade development sector for many least developed countries (LDCs), as highlighted in 45 of 48 Diagnostic Trade Integration Studies analysed for this joint UNWTO-ITC-EIF report. The report provides guidance on how to design trade-related technical assistance for the tourism sector. It focuses on trade policies that promote prosperity for people and the planet, and contribute to the 2030 Agenda for Sustainable Development. <http://bit.ly/2u53N5H>



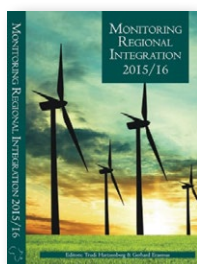
### **Issues and Options for Disciplines on Subsidies to Illegal, Unreported and Unregulated Fishing – ICTSD – July 2017**

This paper identifies issues that have arisen in the WTO negotiations on disciplines to subsidies related to IUU fishing and provides information for reference, as well as options, that might be helpful to negotiators as they design new rules. It focuses on the question of how IUU activity might be identified for the purpose of subsidy disciplines, and on the implications of using national legislation to identify IUU activity. It also addresses several specific questions relating to the application of the new disciplines. <http://bit.ly/2vRGiLC>



### **Evaluating the Implementation Obligations of the Trade Facilitation Agreement – ICTSD – July 2017**

This paper examines the obligations contained in the TFA and compares them with existing obligations covered by the GATT, as well as relevant provisions of the WTO's TBT and SPS agreements. It further evaluates the potential interaction between trade facilitation obligations and other substantive WTO obligations, especially as they might arise in dispute settlement. The effects of the TFA on existing policy space are also explored. <http://bit.ly/2yb0AAu>



### **Monitoring Regional Integration in Southern Africa Yearbook 2015/2016 – TRALAC – July 2017**

The collection of chapters in this yearbook covers diverse aspects of the Southern African regional integration agenda, including trade matters, non-tariff barriers, the role of cities in regional development and many more. These themes also reflect the broader shifts in the global development agenda. Specific markers of development such as youth, gender, migration, climate change and the environment are increasingly featuring as important policy priorities. <http://bit.ly/2ffocQE>



### **Options for WTO Negotiations on Agriculture Domestic Support – ICTSD – May 2017**

This information note analyses various options for negotiating agricultural domestic support – one of the three pillars of WTO negotiations in the area of agriculture –, drawing on ideas that have been put forward at the WTO. It examines the implications of various approaches for countries' actual support levels as well as for their maximum permitted ceilings under WTO rules, and looks in particular at those products that are especially important to low-income countries. <http://bit.ly/2se0fxo>

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ISSN 2519-8866

