

The AfCFTA Protocol on Women and Youth as part of a new trade and integration discourse

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When the negotiations to conclude the Agreement establishing the African Continental Free Trade Area (AfCFTA) started in 2015, the initial focus was on boosting intra-African trade and deepening economic integration on the continent. The Agreement establishing the AfCFTA says in its Preamble that the African Union (AU) Member States are “desirous to implement the Decision of the Assembly of Heads of State and Government... for Fast Tracking the establishment of the African Continental Free Trade Area and the Action Plan for Boosting Intra-African Trade”. They were also “cognisant of the launch of negotiations for the establishment of the Continental Free Trade Area aimed at integrating Africa’s markets in line with the objectives and principles enunciated in the Abuja Treaty”.

It soon emerged that there was an intention to adjust the AfCFTA design, going beyond the traditional approach of only liberalising trade in goods and following a linear integration *modus operandi*. The latter starts with the formation of Free Trade Areas (FTAs) in the Regional Economic Communities (RECs), then deepening their integration to the level of customs unions, common markets, and eventually forming the African Economic Community (AEC). This was the formula of the Abuja Treaty. It has not been achieved. With the benefit of hindsight, it can be said that the level of ambition and the strict timeline in the Abuja Treaty (of 1991) were unrealistic. There were other reasons too; the World Trade Organisation (WTO) was established in 1995 and ushered in a multilateral rules-based regime for trade in goods, trade in services, and the trade related aspects of intellectual property rights. Trade governance evolved into a broader agenda.

The REC debates on trade liberalisation and economic integration followed suit. While initially focusing only on trade in goods, several had added a trade in services agenda, and the East African Community has also started working towards monetary integration. The AfCFTA covers trade in goods, trade in services, investment, intellectual property

rights and competition policy.¹ Existing trade arrangements and their outcomes are recognised and will continue. The AfCFTA shall, amongst other things, be governed by the *preservation of the acquis and best practices in the RECs, in the State Parties and International Conventions binding the African Union*.² The RECs that have formed Free Trade Areas (FTAs) are the building blocks of the AfCFTA.³ The REC FTAs will continue to exist.⁴

Acquis is a French term meaning “that which has been agreed”. It is not defined in the AfCFTA legal instruments and therefore has to be given its “ordinary meaning in the context used”. The *acquis* thus includes what REC FTAs have achieved in pursuing broader economic integration agendas. Rules on trade in services, investment, competition policy, and trade and gender⁵ count as part of the *acquis*. In the case of the AfCFTA, it is provided that more instruments could be added to the AfCFTA compact: “Any additional instruments, within the scope of this Agreement, deemed necessary, shall be concluded in furtherance of the objectives of the AfCFTA and shall, upon adoption, form an integral part of this Agreement.”⁶

The efforts to make the AfCFTA responsive to gender issues are part of a bigger debate and of a global agenda. One of the General Objectives of the AfCFTA is to “promote and attain sustainable and inclusive socio-economic development, gender equality and structural transformation of the State Parties.”⁷

We also have to note the WTO initiatives to promote gender equality in trade. They include a better understanding of the obstacles preventing women from entering the global marketplace, strengthening women entrepreneurs’ capacity to export goods and services, promoting inclusive trade, dealing with discrimination, establishing a database of gender-responsive trade policies implemented by WTO members, and developing the required trade policy tools.

¹ Art 6 AfCFTA founding Agreement.

² Art 5 AfCFTA founding Agreement.

³ Ibid.

⁴ Art 19(2) of the AfCFTA Agreement says: *State Parties that are members of other regional economic communities, regional trading arrangements and custom unions, which have attained among themselves higher levels of regional integration than under this Agreement, shall maintain such higher levels among themselves. Art 8(2) of the Protocol on Trade in Goods states: State Parties that are members of other RECs, which have attained among themselves higher levels of elimination of customs duties and trade barriers than those provided for in this Protocol, shall maintain, and where possible improve upon, those higher levels of trade liberalisation among themselves.*

⁵ See, for example, Art 121 Treaty for the establishment of the East African Community and Art 154 COMESA Treaty.

⁶ Art 8(3) AfCFTA founding Agreement.

⁷ Art 3(e) AfCFTA founding Agreement.

At the 12th Ministerial Conference (MC12) in June 2022, [ministers recognised](#) the links between women's economic empowerment and economic growth. MC13, which takes place in February 2024, will be an opportunity to assess what subsequent improvements and actions can be reported.

As soon as the Protocol on Women and Youth in Trade is adopted by the AfCFTA Council of Ministers (December 2023) and by the African Union Assembly (February 2024), we will examine the provisions to assess how this instrument will address the systemic challenges that women traders face in cross-border trade on the continent.

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