




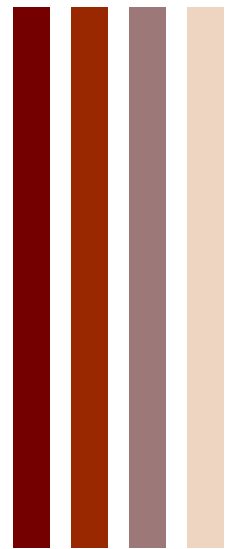
Environmental Considerations in the Implementation of the AfCFTA and Climate Change

Author

 Aellex International Trade Practice Group.

AELEX
LEGAL PRACTITIONERS & ARBITRATORS

 aellex.com     [@aellexpartners](https://www.linkedin.com/company/aellexpartners)



1.0. INTRODUCTION

The African Continental Free Trade Area (“AfCFTA”) Agreement establishes the world's largest free trade market, with the potential to revolutionise markets and economies across the continent. Projections indicate that AfCFTA could significantly boost intra-African trade by 52.3% through the elimination of import duties and tariffs, and this increase could double with the reduction of non-tariff barriers. Additionally, the AfCFTA is expected to expand Africa's economy to \$29 trillion by 2050.¹

Trading has commenced under the Guided Trade Initiative (“GTI”), and we have seen shipments laden with goods originating from African countries berth at different ports of participating countries which signposts the expected exponential increase in economic activity on the continent. The increase in economic activities from trade liberalisation will concomitantly exacerbate the environmental and sustainability issues confronting most countries globally.

While Africa has maintained a modest profile with respect to contributions to global warming and deleterious climate change, any upsurge in industrial and economic activity to accommodate the goals and ambitions of the AfCFTA could significantly increase the carbon footprint of the continent. The infrastructure and logistical support underpinning trade under the AfCFTA could significantly increase the negative contributions of the transportation sector to climate change issues, particularly when the carbon-dense energy sources that power the manufacturing and industrial sectors that support trade are considered.

There is no gainsaying that Africa's status as the lowest contributor to global greenhouse gas (“GHG”) emissions may rapidly decline in the wake of the implementation of the AfCFTA. Therefore, it is crucial for Africa to adopt sustainable trade practices that not only promote trade but also protect the environment. It is against this background that we shall examine the relevant provisions in the legal framework underpinning the AfCFTA to identify useful provisions to address these environmental concerns.

Recognising the pressing need to integrate environmental considerations into the implementation of the AfCFTA, this paper provides a comprehensive overview of the AfCFTA, and environmental concerns associated with its implementation and advocates for a balance between trade facilitation and environmental protection. The aim is to offer strategic recommendations, drawing lessons from the World Trade Organization, for ensuring the success of the AfCFTA in fostering both economic growth and environmental sustainability.

2.0. INCREASED TRADING AND ENVIRONMENTAL CONSEQUENCES

From a trade standpoint, the implementation of the AfCFTA prospects accelerated economic growth for Africa, borne out of increased trade activities, escalated industrialisation, increased resource consumption, greater competitive manufacturing, and greater foreign direct investments and innovations across the African continent. With the AfCFTA in place connecting about 17% of the world's population² for trade in a single market,³ an avenue is created for all 55 countries in Africa to effectively use trade as a catalyst for economic growth and development across the continent.⁴

Africa's geographical location on the global map means that African countries are particularly susceptible to the effects of deleterious climate change, but many African countries believe the responsibility for climate change mitigation should rest on the responsible actors in the global north. Especially since many African countries lack the necessary financial and industrial capacity to energise much-needed industrial and developmental activities and rely on energy sources that are neither green nor sustainable.

This situation is not ideal when the scale of the climate risk and environmental challenges on the continent are considered.

¹B. Takefman (2023), 'Breaking Down the AfCFTA: What You Need to Know About Africa's Latest Trade Initiative' ResearchFDI. Available online at <https://researchfdi.com/resources/articles/breaking-down-the-afcfta-what-you-need-to-know-about-africas-latest-trade-initiative/#:~:text=According%20to%20the%20World%20Bank,increase%20shared%20prosperity%20in%20Africa>. Accessed 20 August, 2024.

²Worldometer, Population of Africa (2024) - Worldometer (worldometers.info), Accessed 25 July 2024

³Trading under the Agreement creating the AfCFTA commenced on 1 January 2021.

⁴According to the United Nations Economic Commission for Africa (UNECA), with the AfCFTA agreement, intra-African trade is projected to be 35% higher in 2045. UNECA, Implementing the AfCFTA Agreement will boost intra-African trade and industrialization, 18 January 2023, accessed 26 July 2024.

Africa has recorded almost an 84% increment in GHG emissions resulting from human activities between 1970 and 2020.⁵ Transportation and manufacturing already account for about 25% of GHG emissions, with over 90% reliance on fossil fuels on the continent.

To contextualise the issue, it is worth noting that the projected increase by 35% in intra-African trade from the implementation of the AfCFTA will require significant investment in and expansion of the transportation infrastructure, including expenditures on over 2 million vehicles, 100,000 rail cars, 150 boats, and 250 aircraft. This implies increased fuel combustion and attendant emissions. Implementing the AfCFTA Agreement will therefore lead to a marginal increase of about 3% in carbon emissions, a 19% increase in non-carbon GHG emissions, and a 21.5% decline in air pollutants, with considerable homogeneity across countries.⁶

In addition to logistics and manufacturing, other sectors like agriculture can also be expected to impact the environment negatively when activities are ramped up further to the implementation of the AfCFTA. Currently, the agricultural industry is the largest economic sector in Africa, representing 15% of the continent's total GDP and makes up the largest proportion of goods currently being traded under the GTI.⁷ The impact of increased production and post-harvest processes, such as processing, transportation, and storage under the AfCFTA will increase the continent's contribution to global GHG emissions. When these indices are considered, it can be expected that the projected increase in trading and ancillary activities under the AfCFTA will worsen the climate and environmental issues on the continent.⁸

The reality therefore is that while Africa contributes less than 4% of the world's GHG emissions,⁹ available studies predict that the continent will experience the worst impact from climate change.¹⁰ About 7 African countries are among the top 10 most vulnerable countries to climate disasters.¹¹ It is important to note that African countries are not oblivious of the climate risks and environmental challenges faced by the continent.

It is widely recognised that climate change poses an undeniable risk to the attainment of sustainable development goals on the continent. Many AfCFTA State Parties have accepted obligations in multilateral and African Union (AU) legal instruments dealing with sustainable development and climate change. Individual countries have also attempted to address the issue in domestic legislation¹² at different levels but it is uncertain that these efforts will sufficiently address the issue.

Despite the ongoing transition to renewable energy in Africa, the continent still heavily depends on fossil fuel-based industrial activities, largely due to technological limitations and economic factors. Reliance on fossil fuels is unlikely to change significantly with many countries depending on the revenue from exploiting the resource to maintain their economies. Therefore, it will be prudent to anticipate the challenges and legislate continent-wide environmental protection measures, taking advantage of the structures afforded by the AfCFTA and other regional configurations.

⁵Robinson SA (2020), Climate change adaptation in SIDS: a systematic review of the literature pre and post the IPCC Fifth Assessment Report. Wiley Interdiscip Rev: Clim Change 11(4):e653. <https://doi.org/10.1002/wcc.653>

⁶Marta Bengoa, Somya Mathur, Badri Narayanan, Hanna Norberg. Environmental Effects of the African Continental Free Trade Agreement: A Computable General Equilibrium Model Approach | Atlantis Press (atlantis-press.com), (2021) Journal of African Trade, Vol 8, Iss. 2, pp 36-48. DOI: 10.2991/jat.k.210719.001, retrieved 26 July 2024.

⁷UNIDO, LCCR-Impact-Report.pdf (unido.org), 2018, retrieved 25 July 2024.

⁸ The negative implications of climate change on the environment include desertification, rise in sea levels, and intense forest fires.

⁹This report was released by the Intergovernmental Panel on Climate Change ("IPCC") in 2022.

¹⁰A. Mold (2022), 'AfCFTA: The Environmental Case for the Continental Free Trade Area', Africa Renewal. Available online at <https://www.un.org/africarenewal/magazine/october-2022/afcfta-environmental-case-continental-free-trade-area#:~:text=One%20of%20the%20first%20studies,will%20also%20improve%20air%20quality>. Accessed 8 August 2024.

¹¹Somalia, the Democratic Republic of Congo, Chad, South Sudan, Nigeria, Central Republic, and Ethiopia. See International Rescue Committee (IRC), 10 countries at risk of climate disaster | International Rescue Committee (IRC), 20 March 2023, accessed 25 July 2024.

¹²UNIDO, LCCR-Impact-Report.pdf (unido.org), 2018, retrieved 25 July 2024.

¹³For example, the treaty establishing the Association of Southeast Asian Nations ("ASEAN") does not directly cover environmental issues, but specific frameworks are established further to the Agreement to address environmental

3.0. ENVIRONMENTAL PROTECTION UNDER THE AfCFTA

Having examined the impact of the implementation of the AfCFTA on the environment, the niggling query that emerges is whether the Agreement anticipates these challenges and makes adequate provisions to address the issue. It is worth noting from the outset that the AfCFTA Agreement does not contain specific environment protection or climate change related provisions, and this is not unusual. Environmental issues are typically addressed internationally in environment treaties or agreements and not in trade agreements.¹³

However, the preamble to the Agreement does reaffirm the right of State Parties to adopt a flexible approach to regulate within their territories and to achieve legitimate policy objectives in areas such as public health, safety, and the environment.

Additionally, there are sanitary and phytosanitary (“SPS”) measures under Annex 7 of the AfCFTA Agreement which provide some measure of protection for human and animal health and safety which is partially an environmental issue. Annex 7 addresses risks associated with pests, diseases, contaminants, toxins, and disease-causing organisms¹⁴ but does not cover atmospheric and water pollution.

Other references to the environment include the preamble to the Protocol on Trade in Services which recognises the right of State Parties to pursue legitimate national policy objectives for the development of regulations for trading in services without compromising sustainable development and environmental protection. Also, the Protocol on Investment has extensive provisions on how investment can be leveraged to achieve the sustainable development goals. The protocol provides that each State Party has the right to “regulate, including to take measures to ensure that investment in its territory is consistent with the goals and principles of sustainable development, and with other national environmental, health, climate action, social and economic policy objectives and essential security interests”.¹⁵

In formulating investment policies, State Parties are enjoined by Article 26 of the Protocol on Investment to,

“promote and facilitate investment of relevance for a fair and just transition in sectors such as renewable energy, low-carbon technologies, promote, facilitate and encourage new investment regimes, such as low or zero carbon Special Economic Zones; encourage investments that mitigate climate change impacts on exhaustible natural resources such as fresh water and biological diversity; and cooperate with the other State Parties on investment-related aspects of climate change policies and measures.”

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The implication of the treatment of climate risks in this manner is that no specific obligation is placed on any State Party to entrench environmental protection and climate change mechanisms in their domestic strategy towards the implementation of the AfCFTA. There will therefore be no consequences for any State Party that chooses to ignore the issue. Furthermore, the opportunity to ensure environmental rights can be enforced through the Dispute Settlement mechanism entrenched in the AfCFTA seems to have been missed.

There is precedent for such an innovation as the ECOWAS¹⁶ Community Court of Justice is imbued with the jurisdiction to interpret and apply the provisions of the African Charter on Human and Peoples’ Rights, which contains environment protection objectives. While we have not seen many cases where environmental rights have been successfully enforced at the ECOWAS Court, such provisions have the knock-on effect of encouraging State Parties to take environmental responsibilities seriously since there is the possibility of litigation, however remote.

¹⁴See Paragraph 1, Annex A of the World Trade Organization’s (“WTO”) Agreement on the Application of Sanitary and Phytosanitary Measures. Article 1 of Annex 7 incorporates the definitions of terms under the WTO’s Agreement on the Application of Sanitary and Phytosanitary Measures. State Parties are also to be guided that the provision of that international law instrument in the preparation, adoption, and application of SPS measures.

¹⁵See Article 24 of the AfCFTA Protocol on Investment

¹⁶ECOWAS means the Economic Community of West African States.

4.0. ENVIRONMENTAL PROTECTION LESSONS FROM THE WORLD TRADE ORGANIZATION (“WTO”)

Interestingly, environmental protection and climate change are also not specifically addressed in the treaty establishing the WTO. The preamble to the Marrakesh Agreement recognises the right of State Parties to expand the production of and trade in goods and services while giving allowance for the optimal use of the ecosystem's resources in line with the objective of sustainable development, with the aim of protecting and preserving the environment and enhancing the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.

Therefore, it is evident that the WTO recognises the need for climate change intervention measures for trade and has therefore emphasised the protection and preservation of the environment as one of its objectives to ensure sustainable development.

The WTO has also put measures to avoid protectionism which can hinder trade. Taking a leaf, the AfCFTA Secretariat can take proactive measures to ensure sustainable trade practices by incorporating specific environment protection obligations in the protocols being negotiated to give effect to the AfCFTA. Adopting these measures will ensure the maintenance of a sound eco-system is not sacrificed on the altar of successful trade and economic activities.

5.0. CONCLUSION

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The full implementation of trade under the AfCFTA will exacerbate already significant environment and climate change challenges particularly because of increased activity in the agricultural, manufacturing and transportation industries. The AfCFTA Treaty itself does not specifically address environmental issues but has some enabling provisions which can serve as a basis for ensuring adequate measures are introduced in the various protocols put in place to implement the Agreement. The AfCFTA therefore represents a veritable opportunity to address climate change issues but a lot of is still required.

AELEX

LEGAL PRACTITIONERS & ARBITRATORS

LAGOS, NIGERIA

4th Floor, Marble House
1, Kingsway Road, Falomo
Ikoyi, Lagos

Telephone: +234(0)201 279336-9

Facsimile: (+ 234 1) 2692072; 4617092

E-mail: lagos@aelex.com

ABUJA, NIGERIA

4th Floor, Adamawa Plaza
1st Avenue, off Shehu Shagari Way,
Central Business Area,
FCT Abuja, Nigeria.

Telephone: (+234 9) 8704187, 6723568,
07098808416

Facsimile: (+234 9) 5230276

E-mail: abuja@aelex.com

PORT HARCOURT, NIGERIA

2nd Floor, Right Wing UPDC Building 26,
Aba Road P.O. Box 12636, Port Harcourt
Rivers State, Nigeria.

Telephone: (+234 84) 464514, 464515,
574628, 574636

Facsimile: (+234 84) 464516, 574628

E-mail: portharcourt@aelex.com

ACCRA, GHANA

Suite C, Casa Maria, 28 Angola Road, Kuku
Hill, Osu GP Address 080-3525 Accra,
Ghana

Telephone: (+233-302) 224828, 224845

Facsimile: (+233-302) 224824

E-mail: accra@aelex.com