



# **Implementing the AfCFTA Agreement: Implications for Biodiversity, Agriculture and Trade Negotiations**

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# Executive summary

This policy insights examines the potential impact of the African Continental Free Trade Area, and its underlying agreement, on biodiversity, agriculture and food security in Africa. It highlights the significant benefits that the implementation of the agreement promises to bring, particularly in the agricultural sector, and the potentially negative effects on Africa's biodiversity, smallholder farmers and the environment. To mitigate these potentially negative effects, this policy insight recommends various policies aimed at supporting biodiversity-based agriculture, establishing a common approach to intellectual property rights protection, regularly assessing compliance with multilateral environmental agreements, promoting access to biodiverse and nutritious produce, and investing in capacity development, research and partnerships.

## Introduction

The African Continental Free Trade Area (AfCFTA) is underpinned by a landmark trade agreement that aims to create a single market for goods and services across Africa. The AfCFTA agreement came into effect on 1 January 2021 and has the potential to transform the African economy by expanding trade opportunities and driving economic growth.<sup>1</sup> It also provides an opportunity to strengthen the agricultural sector on the continent and promote biodiversity conservation, while ensuring that trade negotiations do not harm the environment.

As the implementation of the agreement progresses, various issues and challenges have arisen, including those related to biodiversity, agriculture and trade negotiations. These three areas are intricately linked, with each having a significant impact on the others. Biodiversity is an essential aspect of Africa's natural capital and a critical resource for the continent's agricultural sector.<sup>2</sup> Agriculture and the production of food and fibre depend on biodiversity for productivity and resilience; thus, the loss of biodiversity can lead to a decline in agricultural productivity. Biodiversity provides many services to the ecosystem. For example, it plays a crucial role in soil formation through processes like decomposition, nutrient cycling and the creation of organic matter, and ensuring that agricultural lands are productive. In addition, biodiversity – especially pollinators like bees, butterflies and birds – facilitates the reproduction of flowering plants, thereby ensuring the production of fruits, seeds and nuts. Moreover, biodiversity contributes to the resilience and stability of ecosystems, making them more resistant to disturbances such as climate change, invasive species and disease outbreaks.

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1 The World Bank, 'The African Continental Free Trade Area,' July 27, 2020, <https://www.worldbank.org/en/topic/trade/publication/the-african-continental-free-trade-area>.

2 The World Bank, 'This Is What It's All About: Protecting Biodiversity in Africa,' February 14, 2019, <https://www.worldbank.org/en/news/feature/2019/02/14/biodiversity>.

## The AfCFTA can contribute to the conservation of biodiversity by promoting sustainable agricultural practices and facilitating the trade of sustainably produced agricultural products

The AfCFTA can contribute to the conservation of biodiversity by promoting sustainable agricultural practices and facilitating the trade of sustainably produced agricultural products.<sup>3</sup> However, there are concerns that the AfCFTA could harm biodiversity because it will increase the demand for and exports of natural resources, which can lead to the latter's depletion.<sup>4</sup> Agricultural and industrial exploitation of these resources can harm the environment, human well-being and long-term economic growth prospects. Liberalising trade in agriculture, in turn, may encourage monoculture and displace traditional farming practices. To avoid these risks, priority should be given to sustainable agriculture, including support for the development of local value chains and bio-trade. Bio-trade refers to the trade in goods and services derived from biodiversity, using environmentally sustainable methods that promote conservation and fair-trade principles. The development of local value chains and bio-trade is essential for enforcing existing environmental laws and regulations aimed at reducing the risk of natural resource exploitation.

## Agriculture is a critical sector in Africa, employing a significant proportion of the population and contributing to the continent's food security

Agriculture is a critical sector in Africa, employing a significant proportion of the population and contributing to the continent's food security.<sup>5</sup> The AfCFTA provides an opportunity to boost agricultural productivity by facilitating the trade in agricultural products and promoting agricultural innovation. This then helps to minimise protectionism and other distortionary policies, such as export bans on selected products.

However, concerns have been raised about the potential negative effects of the AfCFTA on agriculture. These concerns range from the issue of market access to trade facilitation

3 UN Conference on Trade and Development (UNCTAD), 'Implications of the African Continental Free Trade Area for Trade and Biodiversity: Policy and Regulatory Recommendations,' (UNCTAD/DITC/TED/INF/2021/3), 2021, [https://unctad.org/system/files/official-document/ditctedinf2021d3\\_en.pdf](https://unctad.org/system/files/official-document/ditctedinf2021d3_en.pdf).

4 UNCTAD, 'Implications of the African Continental Free Trade Area.'

5 The World Bank, Sustainable Development Department, *Unlocking Africa's Agricultural Potential: An Action Agenda for Transformation*, (Washington, DC, 2013), <https://openknowledge.worldbank.org/bitstream/handle/10986/16624/769900WPOS0A00Box374393B00PUBLIC0.pdf>.

and regulations. For instance, trade liberalisation in agricultural products could displace small-scale farmers while benefiting multinational agribusinesses. Hence, it is crucial for the AfCFTA agreement to support small-scale agriculture, local value chains and sustainable agricultural practices, so as to benefit the agricultural sector as a whole. It is also important to support the adoption of innovative, climate-smart technologies that promote agricultural productivity, reduce greenhouse gas emissions, and enhance adaptation and resilience.

## Concerns have been raised about the potential negative effects of the AfCFTA on agriculture

Trade negotiations are a critical component of the AfCFTA implementation process, and it is essential that these negotiations do not harm the environment or the livelihoods of local communities.<sup>6</sup> Negotiating trade agreements involves balancing the interests of various stakeholders, including producers, traders and consumers, while also considering environmental and social concerns. Thus, negotiations should prioritise the protection of natural resources and the promotion of sustainable trade practices. To this end, environmental impact assessments must be prioritised and trade agreements must be aligned to existing environmental laws and regulations.

The AfCFTA's success is premised on the building of greater productive capacity across the continent, including the development of regional value chains, regional connectivity and an incrementally harmonised regulatory framework that facilitates both production and trade.<sup>7</sup> The AfCFTA provides an important framework for the development of these critical areas, with the goal of unlocking the full economic potential of the continent and promoting sustainable economic growth and development for the benefit of all.

## Analysing the problem

### AfCFTA implementation and biodiversity

Africa is rich in biodiversity. In fact, it is host to around a quarter of the world's biodiversity,<sup>8</sup> which includes many endemic and endangered mammals and plants. Africa is also

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6 Peter Lunenborg, 'Phase 1B of the African Continental Free Trade Area (AfCFTA) negotiations' (Policy Brief No. 63, South Centre, Geneva, June 2019), [https://www.southcentre.int/wp-content/uploads/2019/06/PB63\\_Phase-1B-of-the-AfCFTA-negotiations\\_EN-1.pdf](https://www.southcentre.int/wp-content/uploads/2019/06/PB63_Phase-1B-of-the-AfCFTA-negotiations_EN-1.pdf).

7 The World Bank, 'The African Continental Free Trade Area.'

8 Clara Bonnor, *Biodiversity loss in Africa: A critical risk and opportunity for impact*, Control Risks, March 1, 2022, [https://www.controlrisks.com/our-thinking/insights/biodiversity-loss-in-africa-a-critical-risk-and-opportunity-for-impact?utm\\_referrer=https://www.google.com](https://www.controlrisks.com/our-thinking/insights/biodiversity-loss-in-africa-a-critical-risk-and-opportunity-for-impact?utm_referrer=https://www.google.com).



remarkably rich in biomes, including tropical forests, savannahs, montane grasslands, mangroves, deserts and wetlands.<sup>9</sup> However, the rich biodiversity on the continent is under threat, with persistent losses of species, habitats and ecosystems, and all the benefits that they provide.<sup>10</sup>

The International Union for the Conservation of Nature estimates that over 6,400 animals and 3,100 plants in Africa are at risk of extinction, while the Living Planet report shows that the populations of vertebrate species in Africa are estimated to have declined by 39% since 1970.<sup>11</sup> The growing pressure on Africa's biodiversity is the result of various factors, including population growth, infrastructural development, unsustainable agricultural and other exploitative practices, illicit plant trafficking, and unregulated urban development. This negative impact could accelerate as Africa invests in the implementation of the AfCFTA.

While AfCFTA implementation is expected to yield greater outputs as a result of increased productivity, foreign direct investment and global value chain participation,<sup>12</sup> the agreement makes only limited provision for biodiversity.<sup>13</sup> Although enshrined in the Protocol on Trade in Goods, the Protocol on Trade in Services and the Protocol on Dispute Settlement, the details of such provisions have not yet been specified.

The limited provisions for biodiversity in the AfCFTA agreement show that member states have the power to decide, when implementing the agreement, on the best policy measures and objectives, including those relating to the environment. Although the provisions discourage member states from compromising on environmental protection and sustainable development, they do not amount to explicit clauses or a strong commitment to biodiversity conservation; nor do they put member states under a legal obligation to protect the environment.<sup>14</sup> Moreover, the absence of explicit clauses for the protection and sustainable use of biodiversity resources in the AfCFTA agreement suggests that a country's trade policy might promote economic incentives for the exploitation of natural resources and exacerbate the negative effects on biodiversity.

## AfCFTA implementation and agriculture

Agriculture remains a significant sector in the economies of all African countries. The sector provides employment for more than two-thirds of Africa's working population and contributes an average of 30 to 60% of gross domestic product. It also accounts for about

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9 Al-Hamndou Dorsouma, *Why should biodiversity be Africa's top priority?*, African Development Bank Blog, June 5, 2020, <https://blogs.afdb.org/climate-change-africa/why-should-biodiversity-be-africa%E2%80%99s-top-priority-279>.

10 Africa Center for Strategic Studies, 'African Biodiversity Loss Raises Risk to Human Security,' December 7, 2022, <https://africacenter.org/spotlight/african-biodiversity-loss-risk-human-security/#:~:text=Africa's%20rich%20biodiversity%20is%20under,are%20at%20risk%20of%20extinction>.

11 World Wildlife Fund, 'Living Planet Report 2014,' <https://www.worldwildlife.org/pages/living-planet-report-2014>.

12 The World Bank, 'The African Continental Free Trade Area.'

13 UNCTAD, 'Implications of the African Continental Free Trade Area.'

14 UNCTAD, 'Implications of the African Continental Free Trade Area.'

30% of the value of Africa's exports. It is quite remarkable that in sub-Saharan Africa, more than 60% of the population consists of smallholder farmers.<sup>15</sup>

The AfCFTA promises to promote agricultural growth, food security and competitiveness by developing regional value chains and encouraging investments in production and marketing infrastructure. Its potential impact on agriculture is significant,<sup>16</sup> as that it could strengthen production networks in Africa, increase intraregional trade flows, and deepen agricultural and food value chains at the regional level.

Although the AfCFTA has a critical role to play in realising Africa's full agricultural potential, there are fears that the implementation of the agreement may impact negatively on smallholder farmers and industries.<sup>17</sup> For instance, an inherent shortcoming of the agreement is that many nutrition-sensitive goods may escape full liberalisation or progressive liberalisation for an extended period.<sup>18</sup> Goods that are protected under the agreement include live animals, meat, fish, milk and dairy products, fruit and vegetables, coffee, tea, spices, oilseeds and sugars.

Another major concern about the likely impact of the AfCFTA on agriculture is that, despite the agreement's lofty ambitions, its implementation will come with many challenges, which have hampered the effective implementation of similar agreements supporting the regional economic communities (RECs), including the Economic Community for West African States, the Southern African Development Community and the East African Community. Such challenges include the absence of data on agriculture and agricultural productivity in the region, government interference, and bans on food exports within the RECs because of fears about domestic food shortages. In addition, agricultural competitiveness within the RECs has been constrained by low levels of investment in rural infrastructure (such as roads, markets, storage facilities and electrification) which is essential for reducing farming distribution costs and boosting competitiveness in production, processing and trade.<sup>19</sup>

Ultimately, the ability of the AfCFTA to improve agriculture will largely depend on existing national and local agricultural development policies and practices being overhauled.

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15 Lutz Goedde, Amandla Ooko-Ombaka and Gillian Pais, 'Winning in Africa's agricultural market,' McKinsey & Company, February 15, 2019, <https://www.mckinsey.com/industries/agriculture/our-insights/winning-in-africas-agricultural-market>.

16 Ilaria Fusacchia, Jean Balie and Luca Salvatici, 'The African Continental Free Trade Area agreement impact on agricultural and food trade: a value added perspective,' Rice Today, April 19, 2022, <https://ricetoday.irri.org/the-african-continental-free-trade-area-agreement-impact-on-agricultural-and-food-trade-a-value-added-perspective/>.

17 Food and Agriculture Organization (FAO) of the UN, 'The African Continental Free Trade Area Agreement and agricultural development: challenges and prospects' (Summary of the online discussion No. 15, 2020), <https://www.fao.org/agrifood-economics/publications/detail/en/c/1305332/>.

18 Ameer Mbonde, 'AfCFTA: What has worked and the way forward on agricultural trade,' Africa Renewal, January 4, 2022, <https://www.un.org/africarenewal/magazine/january-2022/afcfta-what-has-worked-and-way-forward%C2%A0-agricultural%C2%A0trade>.

19 New Partnership for Africa's Development (NEPAD), *Comprehensive African Agriculture Development Programme*, <https://www.fao.org/3/Y6831E/y6831e-02.htm>.

## Interrelationship between biodiversity protection, (smallholder) agricultural development and food security

There is a complex interrelationship between biodiversity protection, (smallholder) agricultural development and food security. Biodiversity protection is fundamental to building resilience in the interests of agricultural development and food security. The (smallholder) agricultural sector is one of the main natural resource-based sectors that can provide biodiversity benefits and food security. It does this by applying sustainable management systems that support the ecosystem, such as enhanced soil fertility and biological regulation.<sup>20</sup> Moreover, the adoption, by smallholder farmers, of alternative and innovative technologies and practices is a key factor in bringing about biodiversity benefits and food security, and in buffering communities against the negative effects of climate change.

There has been a significant decline in biodiversity across Africa. This decline has been accelerated by the industrialisation of agriculture, which involves the intensive use of mechanisation and chemical inputs, farm specialisation and conventional intensification. Unfortunately, the loss of biologically diverse ecosystems to grow nutritious and abundant food is affecting (smallholder) agricultural development in Africa, jeopardising livelihoods, local production, consumption and food security.

Ensuring biodiversity protection and sustainable use and management is fundamental to (smallholder) agricultural development and food security. In recent decades, sustainable farming systems have been proposed by researchers and policymakers for the purposes of addressing biodiversity loss and improving productivity. Figure 1 shows a conceptual framework for a sustainable farming system that fosters biodiversity protection and food security.

Biodiversity-based agriculture<sup>21</sup> or 'eco-functional intensification' comprises ecological, social and economic dimensions.<sup>22</sup> Ecologically, (smallholder) agricultural development can be geared towards protecting biodiversity and optimising the ecosystem services that underpin agricultural production, resulting in less pressure on the environment, fewer negative externalities and improved regenerative systems. It also has the potential to promote nature-based solutions and the adoption of sustainable practices such as agroecology, agroforestry, aquaculture, conservation tillage, integrated nutrient management, integrated pest management, crop-livestock integration, water harvesting, rangeland, peatlands, and mangrove restoration.

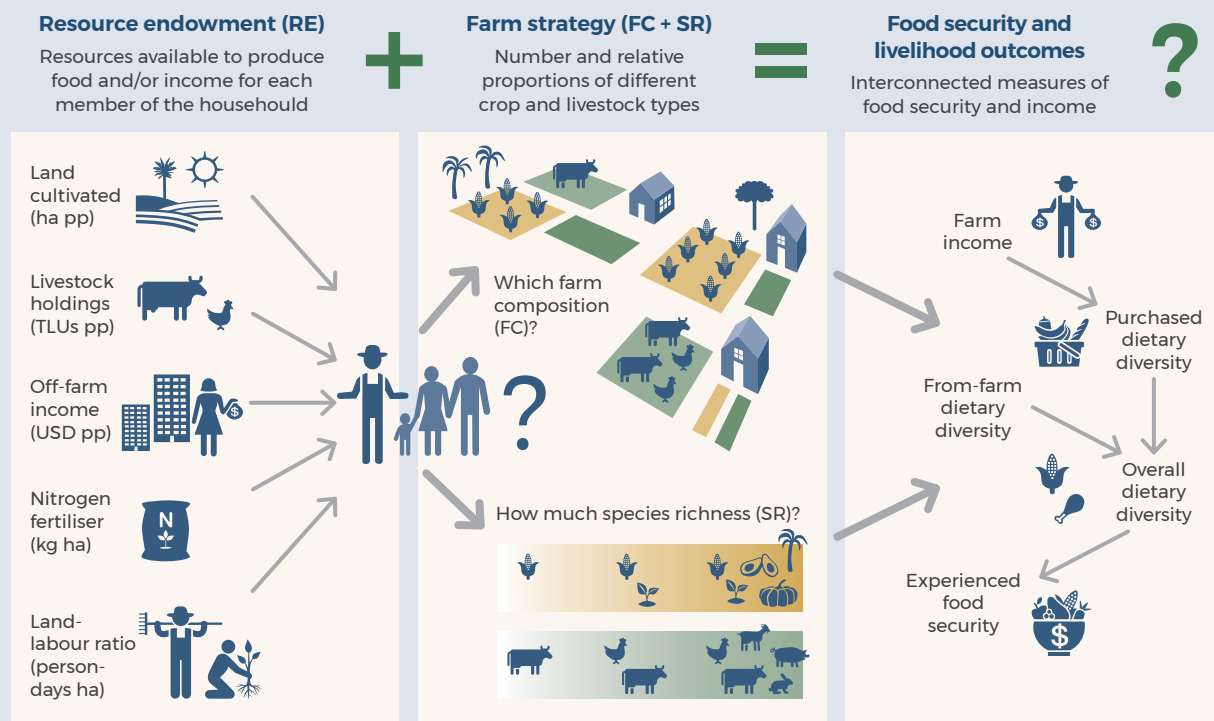
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20 Biological regulation refers to the control mechanisms that living organisms use to maintain their internal environment within a narrow range of conditions, despite changes in external factors.

21 Michel Duru et al., 'How to implement biodiversity-based agriculture to enhance ecosystem services: a review,' *Agronomy for Sustainable Development* 35 (2015): 1259-1281, <https://link.springer.com/article/10.1007/s13593-015-0306-1>.

22 Lucas A. Garibaldi et al., 'Farming Approaches for Greater Biodiversity, Livelihoods, and Food Security,' *Trends in Ecology and Evolution* 32, no. 1 (2017): 68-80, <https://www.sciencedirect.com/science/article/abs/pii/S0169534716301768>.

**Figure 1** A conceptual framework depicting the nexus between biodiversity protection, (smallholder) agricultural development and food security



Source: Chloe MacLaren et al., 'Can the Right Composition and Diversity of Farmed Species Improve Food Security Among Smallholder Farmers?' *Frontiers in Sustainable Food Systems* 6, April 1, 2022, <https://www.frontiersin.org/articles/10.3389/fsufs.2022.744700/full>

Socially, the pivot for biodiversity-based agriculture is small-scale farmers who produce about 80% of the food in Africa.<sup>23</sup> Therefore, empowering smallholder farmers and rural communities is the basis for eco-functional production which promotes biodiversity protection and food security. As reiterated by the International Fund for Agricultural Development (IFAD): 'Rural communities and small-scale farmers are important custodians of biodiversity, growing a wider range of species and varieties than large farms.'<sup>24</sup>

The final dimension of biodiversity-based agricultural development is economic viability. Economically, biodiversity-based agricultural development that guarantees food security should be geared towards the provision of stable incomes, employment and livelihoods.

23 International Fund for Agricultural Development (IFAD), 'No biodiversity, no farmers, no food security,' press release no. IFAD/74/2022, December 6, 2022, <https://www.ifad.org/en/web/latest/-/no-biodiversity-no-farmers-no-food-security>.

24 IFAD, 'No biodiversity, no farmers.'



The eco-centric relationships between biodiversity protection, agricultural development and food security demonstrate that policies promoting these areas can and should be mutually dependent and reinforcing rather than conflicting.

## AfCFTA and trade negotiations

The AfCFTA is a significant step forward in boosting intra-Africa trade and creating a unified African market.<sup>25</sup> Trade negotiations are thus regarded as an essential part of the AfCFTA agreement. The agreement includes provisions for the negotiation of trade liberalisation measures among the participating countries, such as the elimination of tariffs, the reduction of non-tariff barriers and the harmonisation of trade policies. The negotiations are designed to ensure that the trade liberalisation measures are implemented in a way that benefits all countries involved and helps to create a level playing field for all businesses operating within the AfCFTA region.

One of the key benefits of the AfCFTA is that it will help to reduce barriers to trade in Africa. By reducing tariffs, streamlining customs procedures and harmonising regulations, the AfCFTA has the potential to make it easier for businesses to trade with each other, which should boost trade and investment across the continent.<sup>26</sup> However, this approach is not without its challenges. One of the main challenges is the varying levels of economic development among African countries.<sup>27</sup> This makes it difficult to negotiate trade liberalisation measures because of countries' differing interests in protecting domestic markets and industries. Another challenge is the lack of capacity building and technical assistance in African countries,<sup>28</sup> resulting in an unequal distribution of benefits, slower trade integration and difficulties in negotiating complex trade agreements, with the latter exacerbated by non-tariff barriers that require intricate regulatory frameworks and technical standards.<sup>29</sup>

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25 The World Bank, 'The African Continental Free Trade Area: Economic and Distribution Effects.' <https://www.worldbank.org/en/topic/trade/publication/the-african-continental-free-trade-area>.

26 IMF, *The African Continental Free Trade Agreement: Welfare Gains Estimates from a General Equilibrium Model*, Working Paper No. 2019/124, (Washington, DC, June 7, 2019), <https://www.imf.org/en/Publications/WP/Issues/2019/06/07/The-African-Continental-Free-Trade-Agreement-Welfare-Gains-Estimates-from-a-General-46881>.

27 IMF Finance & Development, *A Competitive Africa*, December 2018, <https://www.imf.org/en/Publications/fandd/issues/2018/12/afcfta-economic-integration-in-africa-fofack>.

28 Lunenburg, 'Phase 1B of the AfCFTA negotiations.'

29 South Centre, 'Strengthening Developing Countries' Capacity for Trade Negotiations: Matching Technical Assistance to Negotiating Capacity Constraints' (Background paper no. 4, South Centre, Geneva, 2004); Bonapas Onguglo, Aimé Murigandé and Emily Mburu, 'Preparing African Countries to Benefit from Continuous International Trade Negotiations and Complex Agreements' (Paper presented at African Economic Conference, Addis Ababa, Ethiopia, November 15-17 2007), [https://www.afdb.org/fileadmin/uploads/afdb/Documents/Knowledge/Conference\\_2007\\_anglais\\_05-part-I-4.pdf](https://www.afdb.org/fileadmin/uploads/afdb/Documents/Knowledge/Conference_2007_anglais_05-part-I-4.pdf).

# Assessing the AfCFTA's compliance with biodiversity-related multilateral environmental agreements

Environmental issues and international trade are interlinked, and environmental concerns are increasingly recognised as a significant issue facing those engaged in trade.<sup>30</sup> The production, transportation and consumption of goods and services can result in environmental degradation, including climate change, air and water pollution, and biodiversity loss.<sup>31</sup> As these environmental issues can prompt the imposition of trade barriers and negatively impact market access and competitiveness, they are increasingly being regarded as potential impediments to the promotion of regional trade blocs like the AfCFTA.<sup>32</sup>

Multilateral environmental agreements (MEAs), specifically the Convention on Biological Diversity, were introduced as a means of tackling trade-related environmental issues.<sup>33</sup> The primary objectives of these agreements are: curb resource overuse; discourage harmful production methods; promote eco-friendly consumption and disposal; limit harmful imports; reduce free rider incentives; and improve adherence to global environmental rules.<sup>34</sup> However, compliance with MEAs has numerous implications for trade policies at the national, regional and continental levels. These include:

- **Implications for tariff liberalisation:** Tariff liberalisation is a key component of the AfCFTA agreement, which aims to eliminate tariffs on 90% of goods traded on the continent.<sup>35</sup> However, MEAs could have negative consequences for tariff liberalisation. These agreements often require the imposition of restrictions on the trade in endangered species or products derived there from.<sup>36</sup> Compliance with biodiversity-related MEAs in the AfCFTA may require member countries to limit trade or demand fees for using specific natural resources to meet MEA biodiversity compliance

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30 World Trade Organization & UNEP, *Making trade work for the environment, prosperity and resilience*, [https://www.wto.org/english/res\\_e/publications\\_e/unereport2018\\_e.pdf](https://www.wto.org/english/res_e/publications_e/unereport2018_e.pdf).

31 Margareta Timbur, 'Multilateral Environmental Agreements and the Trade Measures Contained in the These Agreements' (CES Working Papers 4(2), Centre for European Studies, Romania, 2012), <https://www.econstor.eu/bitstream/10419/198174/1/ceswp-v04-i2-p256-273.pdf>.

32 Colette van der Ven and Landry Signé, 'Greening the AfCFTA: It's not too late' (Policy Brief, Africa Growth Initiative at Brookings Institute, Washington, DC, September 2021), <https://www.brookings.edu/wp-content/uploads/2021/09/21.09.15-Greening-the-AfCFTA.pdf>.

33 FAO, 'Building capacity related to Multilateral Environmental Agreements in African, Caribbean, and Pacific countries,' <https://www.fao.org/in-action/building-capacity-environmental-agreements/overview/what-are-meas/en/>; Australian Government, Department of Climate Change, Energy, the Environment, and Water, 'UN Convention on Biological Diversity,' <https://www.dcceew.gov.au/environment/biodiversity/international/un-convention-biological-diversity>.

34 Dona Azizi, Frank Biermann and Rakhyn Kim, 'Policy Integration for Sustainable Development Through Multilateral Environmental Agreements,' *Global Governance* 25 (September 25, 2019): 445-475, [https://brill.com/view/journals/gg/25/3/article-p445\\_6.xml](https://brill.com/view/journals/gg/25/3/article-p445_6.xml).

35 The World Bank, 'The African Continental Free Trade Area: Economic and Distributional Effects,' 2020, <https://openknowledge.worldbank.org/bitstream/handle/10986/34139/9781464815591.pdf>.

36 Organisation for Economic Co-operation and Development (OECD), 'How are trade and environmental sustainability compatible?,' <https://www.oecd.org/trade/topics/trade-and-the-environment/>.

requirements. Balancing trade promotion with environmental protection could be difficult. The imposition of tariffs or export limits may lead to a backlash from other members, affecting a country's AfCFTA market competitiveness.

- **Implications for technical barriers to trade and non-tariff barriers:** Technical barriers to trade (TBTs) and non-tariff barriers (NTBs) are two types of trade barrier that can restrict or impede international trade between countries. While NTBs are a broader category of trade barrier and include any measure other than tariffs that can restrict trade,<sup>37</sup> TBTs are measures that are applied to imported goods in order to protect domestic industries.<sup>38</sup> However, they can also be used to enforce environmental regulations or product safety standards. As MEAs set standards for environmentally friendly production and trade, they affect TBTs, NTBs and market access.<sup>39</sup>

Compliance with MEAs can limit market access for, and trade in, products not meeting environmental standards, such as those derived from endangered species, and impact AfCFTA trade more broadly. MEAs can also influence the product standards that AfCFTA member countries set for goods and services. For instance, the Montreal Protocol on Substances that Deplete the Ozone Layer led to the phasing out of ozone-depleting substances in refrigeration and air-conditioning systems.<sup>40</sup> This affected the manufacturing processes of companies producing goods that contained these substances as well as their product standards. AfCFTA member countries that are signatories to MEAs may have to adjust their product standards to comply with the requirements of these agreements, which could create TBTs.

- **Implications for protection of intellectual property rights:** Intellectual property rights (IPRs) refer to the legal protection granted to innovators for their intellectual creations, such as inventions, new products and trademarks, to prevent others from using their creative works without permission.<sup>41</sup> The AfCFTA Protocol on IPRs can drive Africa's economy towards knowledge-based growth by promoting technology transfer and diffusion.<sup>42</sup> MEAs, including those in the AfCFTA, impact IPRs, especially in terms of technology transfer. For example, MEAs may require the transfer of environmentally sound technologies to developing countries, which can affect patents.<sup>43</sup>

Some MEAs facilitate technology transfer and capacity building and can, within the context of the AfCFTA, promote sustainable development. Furthermore, MEAs can

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37 Luisa Kinzius, Alexander Sandkamp and Erdal Yalcin, 'Trade protection and the role of non-tariff barriers,' *Review of World Economics* 155, no. 4 (2019): 603-643, [https://ideas.repec.org/a/spr/weltar/v155y2019i4d10.1007\\_s10290-019-00341-6.html](https://ideas.repec.org/a/spr/weltar/v155y2019i4d10.1007_s10290-019-00341-6.html).

38 WTO, 'Technical Barriers to Trade,' WTO Agreements Series (Geneva, Switzerland, 2020), [https://www.wto.org/english/res\\_e/booksp\\_e/tbt3rd\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/tbt3rd_e.pdf).

39 UNCTAD, 'Non-Tariff Measures to Trade: Economic and Policy Issues for Developing Countries,' 2013, [https://unctad.org/system/files/official-document/ditctab20121\\_en.pdf](https://unctad.org/system/files/official-document/ditctab20121_en.pdf).

40 UNEP, 'About Montreal Protocol,' <https://www.unep.org/ozonaction/who-we-are/about-montreal-protocol>.

41 Marumo Nkomo, Jabulani Mthombeni and Trod Lehong, 'The African Continental Free Trade Area: a significant role for IP,' World Intellectual Property Organization, December 2020, [https://www.wipo.int/wipo\\_magazine/en/2020/04/article\\_0005.html](https://www.wipo.int/wipo_magazine/en/2020/04/article_0005.html).

42 Nkomo et al., 'The African Continental Free Trade Area.'

43 Rod Falvey, Neil Foster and Olga Memedovic, 'The Role of Intellectual Property Rights in Technology Transfer and Economic Growth: Theory and Evidence,' (Working Paper, UN Industrial Development Organization (UNIDO), Vienna, 2006), [https://www.unido.org/sites/default/files/2009-04/Role\\_of\\_intellectual\\_property\\_rights\\_in\\_technology\\_transfer\\_and\\_economic\\_growth\\_0.pdf](https://www.unido.org/sites/default/files/2009-04/Role_of_intellectual_property_rights_in_technology_transfer_and_economic_growth_0.pdf).

impact IPRs, especially patents which rely on such resources or knowledge. For instance, MEAs such as the Convention on Biological Diversity<sup>44</sup> and the Nagoya Protocol<sup>45</sup> recognise the importance of the conservation and sustainable use of biodiversity and traditional knowledge and require the sharing of benefits arising from their utilisation. These benefits may include financial compensation, technology transfer or capacity building. The sharing of benefits helps to ensure that local communities and countries that are the custodians of biodiversity and traditional knowledge are fairly compensated for their contributions to scientific and commercial endeavours.

## Policy recommendations

The AfCFTA can develop and implement guidelines to harmonise NTBs and TBTs that comply with MEAs, tariff liberalisation schedules that catalyse bio-trade, and intellectual property rights. Here are some possible guidelines:

- 1 **Establish a common framework for addressing NTBs and TBTs:** The AfCFTA and RECs can work together to develop a common framework for identifying, reporting and addressing NTBs and TBTs that comply with MEAs. This could include the creation of a common reporting mechanism, such as a digital platform, to enable member states to report on the types and incidence of NTBs and TBTs.
- 2 **Conduct regular assessments of compliance with MEAs:** The AfCFTA and RECs can establish a regular assessment mechanism to determine compliance with MEAs across all member states. This could involve the formation of an independent assessment body, composed of experts in the relevant fields, which would examine the data provided by member states and identify areas where compliance could be improved.
- 3 **Establish a common approach to intellectual property rights protection:** The AfCFTA and RECs can work together to establish a common approach to intellectual property rights protection for indigenous genetic resources. This could involve the creation of a common legal framework for member states to follow, which would provide a clear set of rules for accessing, using and sharing genetic resources.
- 4 **Ensure that the right policies are in place to support biodiversity-based agriculture:** To harness the AfCFTA's agricultural potential, governments must revise their policies on investment, trade and intellectual property rights. This will safeguard smallholder farmers' rights to utilise native crops and livestock for biodiversity. Furthermore, land access and resource rights must be ensured, with sustainable agricultural investment focusing on eco-functional intensification.

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44 UN Convention on Biological Diversity (1992), <https://www.cbd.int/doc/legal/cbd-en.pdf>.

45 Convention on Biological Diversity, 'The Nagoya Protocol on Access and Benefit-Sharing' (2014), <https://www.cbd.int/abs/>.

- 5 **Invest more in capacity development, research and partnerships:** A vital condition for blending biodiversity protection with African agriculture is enhancing the capacity of smallholder farmers. For instance, functional farmer field schools offer training in good agricultural practices, including reducing chemical usage and boosting nutritious food production. This will foster knowledge exchange, technology transfer and government-led partnerships geared towards sustainable intensification.
- 6 **Promote and enable access of biodiverse and nutritious produce from smallholder farmers to local, national and regional markets:** A key reform by African governments will be promoting biodiversity-friendly systems for smallholder farmers via market regulation and certification. Integrating biodiversity into African agriculture needs innovative marketing designed for diverse produce, which will boost incomes and sustainable practices.
- 7 **Synergise MEAs and the AfCFTA:** According to an UNCTAD report,<sup>46</sup> a recommended strategy for advancing sustainable trade is establishing effective collaborations between existing MEAs and the AfCFTA. It also suggests incorporating enforceable environmental protocols into a new chapter in a subsequent phase of the negotiation process. Through this process, the AfCFTA will be able to integrate environmental concerns into operations, fostering an eco-conscious trading system. This will promote growth and long-term sustainability.

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46 UNCTAD, 'Implications of the African Continental Free Trade Area.'



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# About SAIIA

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### Cover image

Mount Kenya is silhouetted by early morning sun as men buy milk to sell in the market on September 30, 2023 on the outskirts of Mount Kenya National Park, Kenya. The second-highest peak in Africa, Mount Kenya, holds some 11 shrinking glaciers said to be rapidly melting due to the burning of fossil fuels, fires, deforestation and land use changes as well as industrial and agricultural developments. Mount Kenya National park and the forest reserve, combined, are inscribed as a UNESCO World Heritage Site (Ed Ram/Getty Images)

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