Empowering Women Through Investment

IN THE CONTEXT OF AFRICAN CONTINENTAL FREE TRADE AREA

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Introduction

Investment is essential to expand and diversify Africa's capacity to produce goods and services competitively. Intra-African investment will also strengthen regional value chains contributing to regional industrial development. Both are pathways to boosting intra-Africa trade and to achieve the broader development objectives of the African Continental Free Trade Area (AfCFTA). An important lesson from the COVID-19 pandemic is that productive capacity development is important to increase resilience to future crises and pandemics.

The pandemic has caused major disruption in all African economies and the International Monetary Fund's projections are that Africa's economic activity this year will contract by 3.2 percent. Uncertainty related to the ongoing impact of the pandemic and the restrictive measures that countries have adopted to curb the spread of the virus, as well as weak demand for Africa's commodities combined with the slump in commodity prices make Africa's overall economic outlook rather bleak.

The pandemic has revealed the dearth of productive capacity for medical equipment, pharmaceutical products and agriculture, amongst other products on the continent. The lack of capacity in the healthcare sector in many countries has also been starkly exposed, and the challenges associated with the digital divide have impacted many sectors including education. These deficits present important opportunities for investment, which may well be made more attractive as a result of the AfCFTA.

The COVID-19 pandemic is also expected to lead to a significant decline in FDI to Africa in 2020. UNCTAD estimates that in 2020 FDI to Africa will be 25 to 40 percent lower than in 2019. While these estimates refer to global FDI to African countries; declines in intra-Africa FDI can be expected in 2020 too. For 2021 it is expected that easing of restrictions will bring a rebound in FDI. FDI, whether from global sources or intra-Africa investment, will be critical to Africa's recovery, reconstruction and transformation, after the pandemic.

Investment, including intra-African investment, will also support regional integration, economic growth and sustainable development. Although the Protocol on Investment will only cover intra-African investment, the AfCFTA is expected to attract global FDI too. Complementary AfCFTA initiatives to facilitate investment and trade by reducing tariff and non-tariff barriers (NTBs) will enhance Africa's investment environment.

Investment and the AfCFTA

The AfCFTA is a free trade area (FTA) and also one of the flagship projects of the African Union (AU). These include the Accelerated Industrialisation for Africa (AIDA), the Comprehensive Africa Agriculture Development Program (CAADP) and Boosting intra-Africa Trade (BIAT) programs. The flagship projects contribute to Africa's continental development objectives in Agenda 2063.

The Agreement establishing the African Continental Free Trade Area, the Protocol on Trade in Goods, the Protocol on Trade in Services and the Protocol on Rules and Procedures on the Settlement of Disputes have been concluded. A number of Annexes to the Protocols on Trade in Goods and Trade in Services have also been concluded.

Member States of the African Union are expecting to complete phase I negotiations before end of 2020, so that trade under the AfCFTA can begin on 1 January 2021. The outstanding issues for trade in goods, are tariffs and rules of origin. For trade in services, Member States are preparing offers of sector commitments in the 5 priority sectors – financial, communication and transport services, tourism and professional services. They will also conclude frameworks for regulatory cooperation. Based on experience during the pandemic several Member States have suggested that healthcare and education services be included in the negotiations.

The reduction of tariffs and NTBs for trade in goods, and the negotiation of sector commitments and frameworks for regulatory cooperation for services can be expected to provide access to larger continent-wide markets. These markets will present attractive opportunities for investors, both from African countries and global sources.

Investment, industrial development and trade are closely connected, and these connections are recognised in the AfCFTA. Investment and industrial development are expected to be leveraged as dynamic effects of the trade liberalisation under the AfCFTA. Member States of the African Union have agreed to negotiate a Protocol on Investment in phase II of the AfCFTA negotiations. These negotiations are expected to start early in 2021.

BOX 1 **INVESTMENT-RELATED PROVISIONS IN THE AFCFTA AGREEMENT**

The Agreement establishing the AfCFTA includes several provisions that are relevant to the negotiations on Investment. These include:

ARTICLE	DETAILS
ARTICLE 3 **General Objectives**	presents the general objectives of the AfCFTA. For investment the aim is to 'facilitate investments building on the initiatives and developments in the State Parties and RECs.' Reference to 'investment' without qualification suggests that the intent is broader than leveraging investment among the State Parties, and can include investments from global sources. This makes sense, as a larger integrated African market, where tariff and non-tariff barriers will be reduced, can serve to attract global investors too.
ARTICLE 4 **Specific Objectives**	the Agreement establishing the AfCFTA states that State Parties shall 'cooperate on investment, intellectual property rights and competition policy. These issues will be negotiated in Phase II.
ARTICLE 5 **Principles**	provides that the Agreement shall be governed by specific principles, including - 'preservation of the acquis.' Although the term 'acquis' is not defined in the Agreement; it does refer to preserving and building on what exists already in the RECs, presumably on investment too.
ARTICLE 19.2 **Conflict and Inconsistency with Regional Agreements**	confirms that the RECs and other trading arrangements and customs unions will continue to exist. This means that the investment regimes of the RECs will continue, and that the AfCFTA will build on the comprehensive legal instruments that have already been adopted in the RECs.

Investment in Africa's Integration Agenda

Trade agreements generally now include investment chapters or protocols, and address policy issues that influence investment location decisions. Beyond investment chapters, provisions on competition policy, intellectual property rights and the movement of professionals are also now commonly included in trade agreements. These issues are closely connected to investment decisions. If, for example, an investment takes place via a merger transaction, the competition authority will have to be notified. Equally investors will be keen to protect their intellectual property in the host state.

Global and regional value chains exemplify the interdependencies between trade and investment. Enterprises generally blend their trade and investment strategies to be able to source inputs, skills and new technology and to provide goods and services to consumers in new markets.

International investment agreements cover cross-border private investments, focusing on the protection, promotion and liberalization of investments. Some cover foreign direct investment and portfolio investment; some may exclude the latter. State Parties (those that have ratified the specific agreement) must adhere to **specific standards** on the treatment of investments in their territory. The right of governments to regulate investments and investors is, of course, also recognized.

Several RECs that already have investment regulations, include:

- **Arab Maghreb Union (AMU)** – Agreement for Investment Promotion and Protection
- **Common Market for East and Southern Africa (COMESA)** – Investment Agreement for the COMESA Common Investment Area
- **Economic Community of West African States (ECOWAS)** – Community Rules on Investment and the Modalities for the Implementation
- **East African Community (EAC)** – Protocol on the Establishment of the EAC Common Market
- **Southern African Development Community (SADC)** – Finance and Investment Protocol

There are also a large number of *bilateral investment treaties* (BITS) between AU Member States. Most also have investment policies and laws. AU Member States have also adopted a Pan African Investment Code (PAIC), in 2016. The PAIC is not binding, but rather a 'guiding' instrument adopted to promote, facilitate and protect investments.

A number of African countries are participating in the *Investment Facilitation Working Group in the World Trade Organization*. The group argues that investment facilitation is important to create an efficient, predictable and investor-friendly business climate. Market access, investment protection and dispute settlement are not on the agenda. The objectives of this initiative resonate very much with the investment facilitation agenda that we can expect in the AfCFTA investment negotiations.

They include:

- Improving **transparency and predictability of regulations**: including publication of investment-measures, establishment of enquiry points (similar to the single window for trade facilitation);
- Improving and expediting **administrative procedures**: including licensing and approval processes;
- Supporting **international cooperation and addressing the needs of developing countries**: provision of technical assistance and capacity building for developing countries and LDCs;
- A collection **other investment facilitation matters**: government-investor cooperation, corporate social responsibility and the use of an ombudsperson to resolve investor grievances.

This agenda resonates with some of the investment facilitation issues that could contribute to enhancing and making investment opportunities for women, even for small-scale investors, more accessible across the continent.

In recent years dispute settlement, in particular investor-state dispute settlement (ISDS), has generated significant controversy, and led, to South Africa, for example cancelling a number of its BITs. Some REC instruments do provide for access to regional courts to settle investment disputes, while others provide for dispute resolution via consultations and access to domestic courts. This ecosystem of investment instruments and dispute settlement arrangements will have to be taken into account, and inform the negotiations of the AfCFTA Protocol on Investment.

The AfCFTA Investment Protocol

In 2021, negotiations on competition policy and intellectual property rights negotiations will be undertaken simultaneously. E-commerce negotiations were scheduled for phase III, but it has been agreed by senior trade officials and Ministers of Trade that this agenda should be brought forward to phase II. It is expected that this decision will be confirmed by Summit in early December 2020.

The Investment Protocol is expected to be anchored on four pillars: investment promotion and facilitation, investment protection, investor obligations and State commitments. The substantive provisions of the four pillars will be supported by provisions on dispute prevention and resolution. Investor-state dispute resolution will not be on the agenda.

Most Member States have an Investment Promotion Agency (IPA), and active investment promotion initiatives. The IPA is usually instrumental in assisting investors to establish a commercial presence and may well offer a 'one-stop investment shop' arrangement. This service is designed to reduce the transaction costs and to facilitate access to the various government departments or agencies that are involved in the establishment of a new investment. Assistance with company registration, licensing and work permits may be provided.

Investor protection will most likely include matters such as non-discrimination, transfer of funds, expropriation and some provisions related to the treatment of investors. Compliance with domestic laws, including labour and human rights, environmental legislation and consumer protection can be expected to be on the agenda too, both under investor obligations and State commitments. The figure below provides a schematic representation of what the Investment Protocol could include and its possible architecture.

BOX 1 **AFCFTA INVESTMENT PROTOCOL OPTIONS**

DISPUTES	DISPUTE RESOLUTION ↑ DISPUTE PREVENTION			
PILLARS	Investment Promotion & Facilitation →	Investment Protection	Investor Obligations	State Commitments
SUBSTANTIATIVE OPTIONS	• Exchange of information between investment promotion agencies • Dissemination of information to investors • Shared principles or rules for administrative procedures • Shared review mechanisms • Best-practive platforms • Technical cooperation	• Most-favoured nation treatment • National treatment • (Alternative to) fair and equitable treatment • Full protection and security • Expropriation • Transfer of funds	• Compliance with domestic laws • Human rights • Business ethics • Environmental protection • Rights of indigineous peoples • Capacity building • Anti-corruption • Taxation • Corporate social responsibility	• Environemental protection • Labour protection • Consumer protection • Financial reporting standards

Source: Assessing Regional Integration in Africa IX (United Nations Economic Commission for Africa) p.187

What does the AfCFTA mean for business?

The AfCFTA does not have detailed provisions dealing with gender. Article 3 (e) does, however, state that a general objective of the AfCFTA is to promote gender equality. This means that it is incumbent on the State Parties (i.e. the Member States of the African Union that have ratified the AfCFTA) to ensure that gender is mainstreamed in their implementation strategies. While it may be easy to focus on the sectors where women are traditionally employed or informal cross-border trade, where women are predominant, opportunities for women across the AfCFTA must be promoted.

For all investors, the elimination of tariffs and NTBs, red tape, as well as supportive trade facilitation provisions can support access to inputs, to skills and services, as well as access to markets for the products and services produced.

What are the benefits for women entrepreneurs? The AfCFTA opens new market opportunities for investors and traders in AU Member States that do not currently belong to the same REC. Investment opportunities in these non-traditional markets across the continent will now become more accessible to women investors across all sectors - in agriculture, manufacturing and especially in services. Trade facilitation-related services, including communication, financial services, transport and logistics which are increasingly digitised, offer excellent opportunities, also for SMEs. The trade liberalisation provisions of the AfCFTA, which cover trade in goods and services, are complementary to the Investment Protocol, which covers investment in all sectors. Regional value chain linkages will become easier and more cost effective with investment facilitation and cooperation by investment promotion agencies. Women's business associations should now broaden their agendas beyond national investment opportunities. They can provide information about investment incentives and opportunities, becoming investment connector hubs with a regional focus.

RECs will continue to exist alongside the AfCFTA. This confirms that the contribution of the AfCFTA will be to open new trade and investment opportunities between AU Member States that are not currently in the same trade arrangement. The AfCFTA will open opportunities for trade and investment between countries in east and west Africa (e.g. EAC and ECOWAS), southern and west Africa (e.g. ECOWAS and the Southern African Customs Union (SACU)), and southern and northern Africa (SACU and AMU). The geographic distance between these RECs makes investment facilitation a priority. Reducing red tape and other restrictions associated with cross-border investments will lower the transaction costs of doing business, making both trade and investment opportunities more accessible.

Foreign direct investment from global sources (outside the continent) will not be governed by the AfCFTA Investment Protocol. The applicable legal instruments for such FDI will be the investment provisions in relevant trade agreements or bilateral investment treaties, that exist between the source country and the host African country. However, once a foreign investor establishes a commercial presence in one of the State Parties of the AfCFTA, that enterprise will be able to take advantage of AfCFTA trade preferences, including preferential tariffs and rules of origin. This will mean that there may well be increased competition from such firms in the domestic markets of AfCFTA State Parties.

Looking Ahead and Recommendations

The Investment Protocol is still to be negotiated. This provides an opportunity for women investors, producers and traders to participate in national and regional preparatory processes to ensure that their interests and concerns are taken on board. Investment in all sectors should be considered: agriculture, industry and services, as well as e-commerce. Below are some interventions to support the active engagement of women to ensure that the AfCFTA Protocol on Investment facilitates, protects and promotes investment by women.

One of the key recommendations pertains to the development of a **Women's Investment Agenda**. A key objective of the AfCFTA is to, progressively liberalise trade and investment across the continent. This means that implementation of the AfCFTA will be sequenced over a period of time. Herein lies an opportunity for the development of a forward-looking Women's Investment Agenda for the AfCFTA. It is fortuitous that strategies are also currently being developed in response to the pandemic for recovery, reconstruction and transformation of our economies. Investment will play a pivotal role post-COVID, and this strengthens the opportunity to develop a Women's Investment Agenda for the AfCFTA. Women's business associations must play a key role to ensure that investment opportunities for women across all sectors are on the agenda, and investment barriers are addressed. Access to finance for women investors must be a priority. The development of non-traditional collateral requirements is important to take into account constraints women face. Very importantly this agenda must emphasise the linkages between investment, industrialisation and trade. Regional investment and regional value chain development require borders that function efficiently and expeditious resolution of non-tariff barriers. Digital trade solutions and digital platforms to disseminate information about investment and trade opportunities must be implemented.

BOX 2 **RECOMMENDATIONS:**
WOMEN INVESTORS AND THE AFCFTA

ISSUE	RECOMMENDATIONS	OBJECTIVES
01 **A negotiating agenda to support women entrepreneurs**	• Develop a Women's Investment Agenda for the AfCFTA • Engage national governments and RECs in preparation for the negotiations **Role Players** *Women's Business Associations, Regional Business Associations, RECs, Investment Promotion Agencies*	Protocol on Investment supporting intra-African investment, especially by women, in a transparent, predictable environment so that women investors can contribute to • post-COVID-19 recovery, reconstruction and transformation • Africa's regional integration and Agenda 2063
02 **Capacity building and Advocacy**	Training for women entrepreneurs/investors/ business associations – focus especially on MSMEs Investment Governance dialogue events **Role Players** *ITC, AUC, RECs, Investment Promotion Agencies, Women's business associations*	• Good understanding of investment governance • Active dialogue on investment – opportunities, governance and facilitation • Improvements in investment policy and governance – at national, regional and continental levels
03 **Investment governance**	Provide investment-related information (on Protocols, incentives, disputes) on the African Trade Observatory **Role Players** *ITC, Investment Promotion Agencies, regional courts, RECs, AUC, Women's business associations*	Access to information on what is required to invest in another AfCFTA Member State: company registration requirements, tax registration, work permit requirements, investment incentives available to foreign investors

#SheTrades

Women's economic empowerment is not a matter for government policy, the private sector, or social change alone. All have critical roles to play. This is why the International Trade Centre (ITC) launched the SheTrades Initiative, which seeks to connect three million women entrepreneurs to market by 2021.

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For more information on SheTrades, visit our *website*