

A [post](#) published on the website [bilaterals.org](#), a collaborative space that supports movements struggling against bilateral trade and investment deals which are accused to serve more the interests of corporations than people, raises concerns regarding the African Continental Free Trade Area (AfCFTA) and in particular regarding the Protocol on digital trade. We will not address all the points in the article, but at least a few ones deserve attention. The post has a very critical view in general of the AfCFTA and its Protocols, being in some cases overly pessimistic regarding the purported dangerous effects of this agreement. In any case, it also raises some interesting issues that deserve at least some attention.

We will start from the conclusion of the post, which states that the AfCFTA has been negotiated in secrecy and at closed doors since its inception, without any public debate. Actually, the fact that still today the texts of the AfCFTA complementary Protocols are not publicly available, except in “leaked” versions which are accessible on the same website, seems to support such assumption. A parallel can be drawn with the process of approval of key regulations in the European Union. Let’s consider the new Customs Code for example. The Commission presented a proposal to reform the current EU Customs Code in 2023. Since then, all the proposals, draft texts, amendments made by the EU institutions and stakeholders position papers have been published on the European Union website so to allow to any interested person, both from the public and private sectors, as well as from academic institutions, also external to the EU, to provide comments. The process of development of the EU Customs Code is largely democratic and participatory. Has this happened in Africa with regards to the AfCFTA and its protocols?

No wonders than if only very few Africans are aware of the AfCFTA implications or even of its existence. A point this in favor of Bilaterals.

The AfCFTA is also described as a trade agreement based largely on neoliberal concepts from the North. Bilaterals asks... how these concepts which have contributed to growing inequalities, social and economic tensions, environmental degradation and climate change in industrialized nations, can be the answer to the challenges the continent is facing?

But the question is: have the inequalities, social and economic tensions, environmental degradation and climate change in industrialized nations really been caused by trade agreements? This is a pure speculation.

With specific regard to the protocol on digital trade, which aims at liberalising electronic commerce and the digital economy in Africa, Bilaterals argues that this Protocol will deprive African governments of the right to regulate e-commerce operations over their territories in the public interest, leaving African nations vulnerable to uneven playing fields. In fact, under this Protocol, African states can easily be taken to a dispute settlement body and be found liable if they try to introduce new laws that restrict the ability of technology corporations to operate in their territory. For example, in the past, large corporations have incentivised governments to pursue WTO disputes in their favour. Big multinationals could fund cases against African governments for failing to comply with the Protocol's provisions that benefit their interests. More developed countries could therefore exploit the provisions of this Protocol for putting in place predatory and anti-competitive practices in Africa leaving these governments at the mercy of international corporations. This position seems excessively pessimistic. The post wonders why the Protocol does not include any specific carve-out to effectively protect the right of states to regulate, like other countries they did? For instance, it mentions the digital [trade chapter of the New Zealand-EU trade agreement](#), which includes a clause titled "right to regulate" where the two counterparties to the Agreement maintain the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of human, animal or plant life or health, social services, public education, safety, the environment including climate change, public morals, social or consumer protection, animal welfare, privacy and data protection, the promotion and protection of cultural diversity, and - in the case of New Zealand - the promotion or protection of the rights, duties, interests and responsibilities of the Maori ethnic group.

Also regarding this option, despite the reasoning is correct, there is the risk that it will become a trojan horse nullifying the other provisions of the Protocol. In fact, those who habitually navigate within the African regulatory frameworks know very well that in Africa the exception becomes usually the rule.

The article also notes that the digital trade Protocol includes clauses previously rejected by the United States during World Trade Organisation (WTO) negotiations on e-commerce because deemed restrictive of the right for the US to regulate digital trade over their territory. In other words, what industrialized nations refuse, it's recycled to Africa. Policy interests, however, in US and Africa are not the same, as the same article admits.

Moreover, the article analyses the article 46 of the protocol on digital trade, which states that the parties to the AfCFTA "shall, after the adoption of this protocol, develop [...] annexes", including on cross-border data transfers, disclosure of source code and financial technology. Such annexes, which are 8 in total and still under negotiations, are being negotiated disjointly and separately from the main Protocol (which has already been approved), which among others, does not specify their content. Moreover, the main text of the AfCFTA sets out the

procedure and the minimum number of ratifications needed for the entry into force of the agreement and the Protocols (Article 23), but does not say anything about how the annexes must be approved. It is therefore unclear when they will be finalised and whether they will be debated democratically or negotiated behind closed doors. Another point in favor of Bilaterals: this conclusion is factual.