

AfCFTA, Gender, and IP

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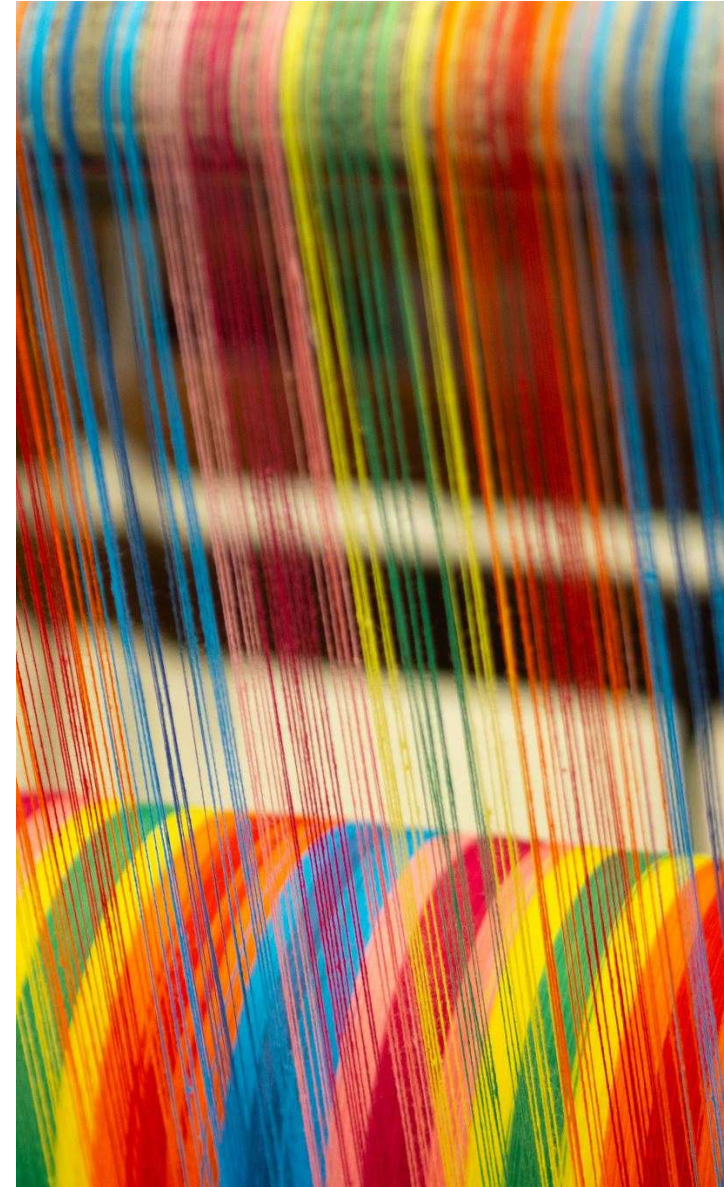
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Women are overrepresented as SMEs

- **African context:** MSMEs, online and informal enterprises, cross-border traders
- **AfCFTA provides an incentive for participation in formal trade** and integration of MSMEs in regional value chains and supply chains. The Agreement's success also depends on MSME participation.
- Consultations suggest **constraints to SMEs leveraging IP** include administrative complexity, high IP registration costs, a lack of enforcement, mixed capacity of countries for negotiating, risks of IP through e-commerce, and lack of awareness and capacity.
 - Wider market access through tools like e-commerce may expose smaller businesses to risks of IP infringement
 - Unfair competition practices may prevent them from being able to enforce IP protection due to cost
 - Weak enforcement may disincentivise entrepreneurs from paying to protect their work nationally and across borders.
 - Particularly acute for women traders who often trade informally or lead micro and small enterprises with limited resources to pay for registration costs.
- **AfCFTA implementation is critical** – national and regional complementary policies and strategies can prioritise IP interventions and solutions appropriate for SMEs.

Protection of IP in women-dominated sectors is challenging

- African women comprise a significant portion of the labour force in **agricultural value chains** and **creative industries** like textiles and fashion, often informed by traditional knowledge. There is a tendency not to protect women-dominated industries.
- **Traditional/indigenous knowledge may not be considered “new” for patent purposes**
 - Many goods relying on traditional knowledge such as basket-weaving, bead-making, quilting and knitting, receive limited to no IP protection as they are not deemed to be ‘new’ or ‘original’ to be protected by IP
- **Women operate economic activities in rural, informal, communal settings**
 - IP laws are based on masculine notions of a single inventor and singular ownership
 - Prioritisation of men’s art forms over women, ascribing different value
 - Women entrepreneurs in rural areas and smaller urban centres, already time poor, can face long journeys to access national IP offices.
- **One solution: GI – communal, cheaper, easier to register**
 - GI protections across borders can also incentivise the formalisation of businesses currently trading informally.
- **Information barriers persist:** Women have limited understanding of the advantages of IP protection, in particular related to agro-food processing and GI.



Solutions: addressing information barriers through trade facilitation

- Establishment of information centres and support desks at border posts for women to obtain advice on IPR at the point of entry into national markets
- Capacity building and financial support/fee waivers for women in registration, use, and protection of IP
- Sharing methods and procedures for the collection of sex-disaggregated data on women's participation and the challenges confronting women in accessing IPR

Gender & IP in the AfCFTA

IP Protocol – no specific treatment of women, consider women through the lens of other vulnerable groups, primarily SMEs | *single undertaking*

- Data gaps
- Negotiation context
- One explicit provision on utility models:
 - State Parties **may, subject to their capabilities**, make available **technical assistance** to micro, small and medium enterprises or individual entrepreneurs, with special consideration to women, youth and persons with disabilities, in various **manufacturing fields** to effectively utilise utility models.
- Implicit: Article on Traditional Knowledge
- Annexes adopted Feb '26 (39th Assembly):
 - (1) Utility Models (2) Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources (3) Plant Variety Protection (4) Patents (5) Marks (6) Industrial Designs (7) Geographical Indications (8) Copyright and Related Rights

Women and Youth in Trade Protocol – refers to IP protocol and commits SPs to support on registration, use, protection, access to information

- Tried to build capacity at this level
- Explicit Provisions:
- State Parties **shall**, in accordance with the relevant provisions of the IPR Protocol:
 - (a) establish **mechanisms** to assist Women and Youth in Trade in the **registration and use** of intellectual property rights; and
 - (b) provide **capacity building** to Women and Youth in Trade in various sectors to effectively **utilise and protect** their intellectual property rights.
- State Parties **shall** facilitate **affordable access to resources and knowledge** relating to intellectual property rights for Women and Youth in Trade.

Even if gender-blind, implementation matters

Working across different regimes

- **Barriers to understanding rules across borders is compounded by lack of harmonisation**
- **Two main regional IP bodies**
ARIPO and OAPI have different legal traditions, difficult to merge, e.g.: flexibilities.
- **AfCFTA IP Protocol tries to provide a baseline** - the basics are the same, but a business must still deal with different institutions.
- The creation of a **continental IP office** within the AfCFTA aims to provide a structure above the two regional approaches.
- A women-led business trading across borders must navigate different intellectual property laws in other jurisdictions, making the barriers for SMEs more acute. **Divergence increases transaction costs, which are more acute for MSMEs.**
- **Limited enforcement of IP rights turns these high transaction costs into costs with potentially limited pay-offs** (due to lack of capacity and funding, limited knowledge at border posts on IP rights in different markets, administrative complexity).
- **Solutions:** *capacity building for women to work across various jurisdictions (more feasible in the medium term than harmonisation), and addressing national capacity gaps for enforcement.*

Gender mainstreaming debate



All provisions in trade agreements, including those on IP, and national IP laws apply to women as well as men

Is the access equal?

IP is law gender blind – is there a way in which it can be gender-sensitive?



Growing trend of women's economic empowerment / gender equality being specified as an objective of trade agreements

If this is specified in the overall agreement and applicable to all chapters, would an IP chapter or protocol need to further specify this?

Are there provisions specific to women that can be included?

What would effective gender mainstreaming look like?

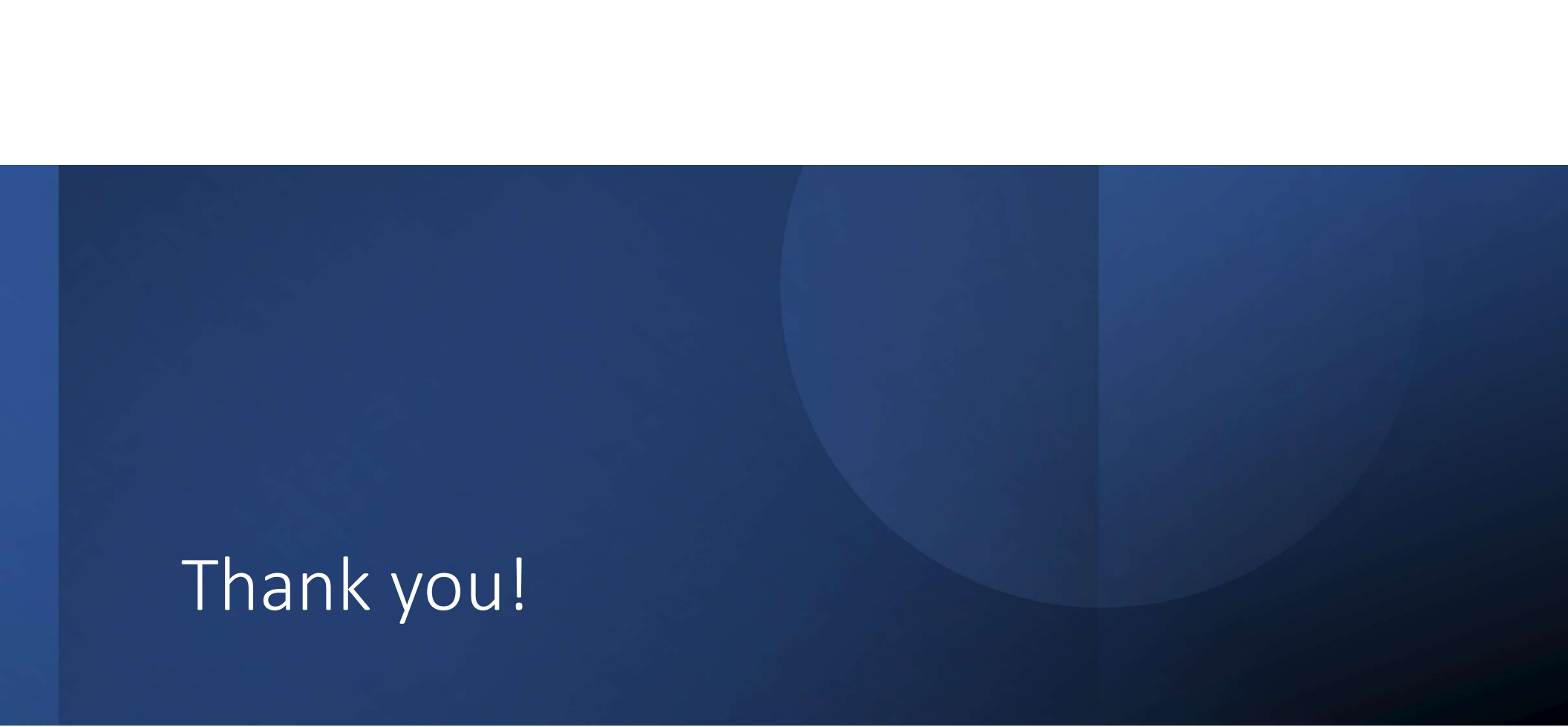


Trade agreements vs implementation

Complementary policies

Fee waivers

Capacity building of women as well as policy makers and trade negotiators



Thank you!

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