

TRADE AGREEMENTS AND WORKERS BENEFITS IN NAMIBIA: IS THE INCLUSION OF MANDATORY LABOUR PROVISIONS IN TRADE AGREEMENTS AN ANSWER?

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Abstract

Trade which is voluntary exchange of goods or services between different economic actors has been seen as a major contributor towards socio-economic development especially in Africa. Namibia is located at the west coast of Africa, sharing borders with South Africa, Botswana, Angola, Zambia and Zimbabwe. Namibia is rich in mineral resources such as Diamonds, Copper, Gold and Lithium and exports these minerals to other countries. In the Agricultural sector, Namibia exports Beef and in the fisheries sector, it exports fish. Most recently, Namibia recognized its ability to produce green hydrogen which seems to have drawn international investment attention to the country. Namibia has also been part of most regional agreements such as Southern African Customs Union (SACU), Southern African Development Community (SADC), African Caribbean and Pacific (ACP) countries, and the African Continental Free Trade Area (AfCFTA). Despite the fact that there could be noticeable benefits derived by Namibia from being a member party to these agreements, the extent to which the employment sector and employees at the grass-root level derives benefits from these agreements is questionable. This paper aims to investigate the benefits which workers in Namibia derive from the identified regional and international agreements. In doing so the paper briefly looks at the key elements of the Decent Work Agenda such as employment opportunities, adequate earnings and productive work; decent working time; stability and security of work; combining work, family and personal life; equal opportunity and treatment in employment; safe work environment; social security; social dialogue, employers' and workers' representation, which are crucial in drafting social clauses. The paper furthermore, seeks to recommend various ways in which employees can possibly benefit from regional and international trade agreements. Should Namibia include labour provisions in trade agreements for the maximum benefit of its employees? These are some of the key issues that the paper aims to investigate.

Keywords: employment, employees, export, import, trade, trade agreements, investment, Namibia, social clauses, decent work agenda.

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1. Introduction

Namibia is a country where the disparity between the rich and the poor continues to increase. Namibia's Gini Coefficient Index is 64.2 as was most recently measured in 2019. Some of the pieces of legislation enacted to foster development in Namibia includes Foreign Investments Act 27 of 1990; Minerals (Prospecting and Mining) Act 33 of 1992; Namibia Investment Promotion Act (2016); Harambee Prosperity Plan, National Development Plans; The New Equitable Economic Empowerment Framework (NEEEF). Despite the enactment of laws and policies aimed at reducing poverty and promoting development, there is an unequal distribution of income and wealth.¹ Namibia is rich in mineral resources such as copper, zinc, diamonds and lithium, all of which is exported to other countries.² If Namibia exports mineral resources to other countries and with the assumption that it receives good income from such exports, why is the Namibia population still faced with poverty and inequality. Looking at the population size of Namibia of approximately 2.6 million,³ and the richness of the country looking at its mineral resources and vastness of the available land, it is shocking that the majority of the people in Namibia are poor. The total size of Namibia is 824, 292 sq km; this includes 823, 290 sq km of land and 1, 002 sq km of water.⁴

In certain circumstances, the trading partners, do not take the initiative to employ Namibian workers whereas in other instances, the law and trade agreements are silent on the need for foreign investors to employ Namibian workers. These approaches do not promote development especially for the poorer sections of the Namibian population. There is a need to critically review Namibia's trade and investment policies, and the trade agreements where Namibia is a party to, to determine the extent to which such laws, policies and agreements foster socio-economic development especially for the Namibian workforce. The rationale for the review of the trade and investment policies is to determine whether the law and policies foster trade and investment with the aim to drive socio-economic development. This is the ideal situation. The converse could equally hold true, where the law and policies stand as impediments to economic growth and development. Depending on the outcome of the review, this paper seeks to provide recommendations aimed at using trade and investments to foster socio-economic developments especially in the context of the labour market.

2. Essence of trade and investment

The concept of sustainable development poses a challenge to policymakers, transcending the conventional agenda items of economic expansion. It makes the case that current prosperity shouldn't come at the expense of social fairness within and between nations, nor should it come

¹Some of the pieces of legislation enacted to foster development in Namibia includes Foreign Investments Act 27 of 1990; Minerals (Prospecting and Mining) Act 33 of 1992; Namibia Investment Promotion Act (2016); Harambee Prosperity Plan, National Development Plans; The New Equitable Economic Empowerment Framework (NEEEF).

²<https://www.cia.gov/the-world-factbook/countries/namibia/>

³<https://www.worldometers.info/world-population/namibia-population/>

⁴<https://www.cia.gov/the-world-factbook/countries/namibia/>

at the expense of future generations. In addition to social issues concerning the marginalization of the world's poorest nations and unskilled laborers, respect for fundamental labour norms, and rising wealth disparity, it also raises environmental concerns about renewable resources and habitat deterioration.⁵

Trade and foreign direct investment (FDI) are important for emerging economies' ability to thrive economically and create jobs. Foreign direct investment (FDI) and trade liberalization have been viewed as opportunities to further the economic growth of underdeveloped nations.⁶ This is so that FDI and trade openness might contribute to the development of knowledge regarding the function and significance of the particular sector in a given environment. Additionally, it can produce information about the necessary policies and actions to support the growth and participation of the particular sector in the new continental free trade framework.⁷ Global economic development and inclusive growth can be achieved by using a fair tax system and pro-poor fiscal policies to redistribute income, foreign investment, and international commerce.⁸ An expansion of the manufacturing base, the introduction of new knowledge and technology, and the generation of jobs are some advantages linked to the FDI inflow.⁹

The self-regulating market, the international gold standard, the balance of power system, and the liberal state formed the foundation of 19th-century European civilization. While each of these establishments held significance, a certain culture was born out of the self-regulatory market.¹⁰ A self-regulatory market economy is one in which market prices alone serve as the only source of control and direction. The premise that economic agents maximize benefit and/or profit gives rise to this economy. Self-regulation suggests that all output is meant to be sold on the open market, and that all profits come from these sales.¹¹ By the end of the 18th century, markets had evolved from regulated to self-regulatory, resulting in a total change in the way society was organized. The institutional divide of society into political and economic domains—which had never existed before—was necessary for the self-regulatory market. An economic system

⁵Fortanier F and Maher M "Foreign Direct Investment and Sustainable Development" *Financial Market Trends*, No. 79, June 2001 <https://www.oecd.org/industry/inv/investmentstatisticsandanalysis/1906135.pdf>

⁶Dicaprio, A., Santos-Paulino, A., & Sokolova, M. (2017). *Regional trade agreement, integration and development*. UNCTAD Research Paper No. 1. Geneva: United Nations Conference on Trade and Development.

⁷Togkoz, S., Allen, S., Majeed, F., Paris, B., Olajide, A., & Osabuohien, E. (2020). *Distortions to agricultural incentives: Evidence from Nigerian Value Chain*. *Review of Development Economics*, 24(3), 1027–1045. doi:10.1111/rode.12664

⁸Gillson, I., Poulton, C., Balcombe, K., & Page, S. (2004). *Understanding the impact of OECD agricultural and trade policies on developing countries and poor people in those countries—piloting an approach with cotton*. Working draft. Overseas Development Institute, March. Working draft, Overseas Development Institute.

⁹Fortanier F and Maher M "Foreign Direct Investment and Sustainable Development" *Financial Market Trends*, No. 79, June 2001 <https://www.oecd.org/industry/inv/investmentstatisticsandanalysis/1906135.pdf>

¹⁰Miguel Alvarez Texocotitla, David Alvarez Hernández and Shaní Alvarez Hernández "The Doctrine of Free Markets: Origin, Nature and Implications" available at https://www.researchgate.net/publication/327237441_The_Doctrine_of_Free_Markets_Origin_Nature_and_Implications.

¹¹Miguel Alvarez Texocotitla, David Alvarez Hernández and Shaní Alvarez Hernández "The Doctrine of Free Markets: Origin, Nature and Implications" available at https://www.researchgate.net/publication/327237441_The_Doctrine_of_Free_Markets_Origin_Nature_and_Implications.

isolated from society has never existed. The social order that surrounds the economic system determines its existence.¹²

Open markets thus enable more effective and efficient use of resources, may give nations access to technology not found locally, and by enabling businesses to access global markets, they can expand sales potential and realize economies of scale. In turn, efficiency promotes economic expansion and income increases. In addition, liberalization can give citizens concrete benefits like more variety and cheaper costs, as well as an increase in the purchasing power of their income.¹³

Better organizational and managerial abilities are among the benefits of increased corporate governance that might result from FDI influx through mergers and acquisitions. The adherence of firms to fundamental principles of sound corporate governance is becoming a more significant consideration when making international investment decisions. Corporate governance initiatives, which set forth guidelines to safeguard shareholders and promote lucidity and openness in financial reporting, are crucial for both economic expansion and the growth of equity markets, which provide companies with access to a wider range of investors for funding.¹⁴

Corporate governance practices encourage the effective use of resources and help the capital markets which include the market for corporate control function more efficiently. With the rise in foreign direct investment (FDI) through mergers and acquisitions, this is especially important for foreign investment. Maintaining investor confidence and attracting patient, longer-term capital are two benefits of having an effective corporate governance system in place, and these are especially critical for emerging nations. Corrupt practices and bribery are major roadblocks to economic expansion. In addition to being a major barrier to investment, corruption stifles advancements in society.¹⁵

Bilateral investment treaties cannot be removed from the equation of using trade and investment to foster economic growth and development. Because they give foreign investors and their assets legal security, bilateral investment treaties (BITs) have grown in importance as a means of fostering and safeguarding investment flows. They set forth guidelines for how host nations should handle foreign investors and their investments, including how to treat them as citizens and as the most favoured nation, how to compensate expropriating parties promptly, adequately, and effectively, and how to allow capital to move freely and for other investment-related

¹²Miguel Alvarez Texocotitla, David Alvarez Hernández and Shaní Alvarez Hernández "The Doctrine of Free Markets: Origin, Nature and Implications" available at https://www.researchgate.net/publication/327237441_The_Doctrine_of_Free_Markets_Origin_Nature_and_Implications.

¹³Fortanier F and Maher M "Foreign Direct Investment and Sustainable Development" *Financial Market Trends*, No. 79, June 2001 <https://www.oecd.org/industry/inv/investmentstatisticsandanalysis/1906135.pdf>

¹⁴ MAHER, M. and T. ANDERSSON (2001), "Corporate Governance: Effects on Firm Performance and Economic Growth", in Renneboog, L., J. McCahery, P. Moerland and T. Raaijmakers (eds.), *Convergence and diversity of corporate governance regimes and capital markets*, Forthcoming, Oxford University Press.

¹⁵Fortanier F and Maher M "Foreign Direct Investment and Sustainable Development" *Financial Market Trends*, No. 79, June 2001 <https://www.oecd.org/industry/inv/investmentstatisticsandanalysis/1906135.pdf>

financial flows. Moreover, provisions for conflict resolution are included in BITs, covering investor-state arbitration as well as state-to-state arbitration.¹⁶

-It is also evident that public investment in infrastructure development and the provision of public goods can complement private investment. This kind of public investment can increase capital productivity and open up new investment opportunities for the private sector. It can also boost demand for ancillary services and private output and increase the availability of resources overall by increasing aggregate output and savings.¹⁷ It does seem that public and private investments have distinct effects on the long-run rate of economic growth. Stated differently, there are differences in the average productivity of public and private investment in developing nations.¹⁸

3. Labour and economic development

An important measure of how efficiently an economy generates goods and services is labour productivity.¹⁹ One of the key elements affecting the competitiveness of national economies in general and of companies and organizations in particular is labour productivity.²⁰ A major barrier to earnings development is inadequate human capital quality, which is partly reflected in low labour productivity levels in many emerging nations.²¹ The promotion of sustainable development is greatly aided by employment and the quality of that employment. Thus, it could be incorrect to look at the concept of labour or employment without focusing on decent work agenda in desire to achieve economic development. The goals that people have for their careers are summed up by decent work. Equitable opportunities and treatment for men and women are involved, as well as security in the workplace and social protection for all, better opportunities for social integration and personal growth, freedom to organize and express concerns, and the ability to work productively and fairly.²² The decent work agenda has four pillars namely, employment creation, social protection, rights at work, and social dialogue. These four pillars are integral elements of 2030 Agenda for Sustainable Development. In order to ensure that labour effectively contributes to development, it is essential that the domestic legislation and policies speak to employment creation, social protection, employees' rights are protected and there is

¹⁶Fortanier F and Maher M "Foreign Direct Investment and Sustainable Development" *Financial Market Trends*, No. 79, June 2001 <https://www.oecd.org/industry/inv/investmentstatisticsandanalysis/1906135.pdf>

¹⁷Khan M and Reinhart C "Private Investment and Economic Growth in Developing Countries" *World Development*. Vol. 18, No. 1, pp. 19-27, 1990.

¹⁸Khan M and Reinhart C "Private Investment and Economic Growth in Developing Countries" *World Development*. Vol. 18, No. 1, pp. 19-27, 1990.

¹⁹Cornelia Caroline "Does Innovation, Investment and Trade influence Labour Productivity? Empirical Evidence from Selected Countries" *Management Science and Business Decisions* 2021 Volume 1 Issue 2: 57-66

²⁰Van Tam, N., Huong, N. L., & Ngoc, N. B. (2018). Factors affecting labour productivity of construction worker on construction site: A case of Hanoi. *Journal of Science and Technology in Civil Engineering*, 12(5), 127-138. [https://doi.org/10.31814/stce.nuce2018-12\(5\)-13](https://doi.org/10.31814/stce.nuce2018-12(5)-13)

²¹Barua, S. (2021). Human Capital, Economic Growth, and Sustainable Development Goals: An Evaluation of Emerging Economies. In: Shahbaz, M., Mubarik, M.S., Mahmood, T. (eds) *The Dynamics of Intellectual Capital in Current Era*. Springer, Singapore. https://doi.org/10.1007/978-981-16-1692-1_6

²²The ILO's Decent Work Agenda available at <https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>.

continues and effective social dialogue that effects the rights and duties of the parties to the employment relationship, especially the employees. Generally, there is a concern that foreign businesses that employ local employees to not observe, the crucial four pillars of decent work as mentioned above. There is therefore a need that governments through its legislation and policies establish mechanisms that forces trading partners and foreign investors to uphold the pillars of decent work.

4. Namibia trade and investment laws and policies

Since the attainment of independence, Namibia has enacted various laws and policies aimed at fostering economic growth and development. At apex of all laws is the constitution, against which all laws and policies are judged to determine its fairness and legitimacy. Apart from the constitution, Namibia as an investment hub has enacted various legislation and adopted a number of policies to monitor and guide its trade and investment. This section thus outlines trade and investment legislation with the aim to determine the efficacy of these legislation in recognizing and promoting the interests of workers when it comes to trade and investment. Before looking at the specific investment legislation, it is crucial to scrutinize the constitution in recognition workers benefits from trade agreements.

4.1 The Constitution

Namibia is founded upon constitutional supremacy as opposed to legislative sovereignty. The constitution as the supreme law of Namibia²³ sets out principles of state policy. These are non-binding guiding principles that are to guide the government in promulgating laws and drafting policies to foster economic growth and development in Namibia. In particular article 95 of the constitution calls on the State actively promote and maintain the welfare of the people.²⁴In doing this the state is required to adopt policies by adopting, inter alia, policies aimed at enactment of legislation to ensure that the health and strength of the workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age and strength;²⁵ensurance that every citizen has a right to fair and reasonable access to public facilities and services in accordance with the law;²⁶ensurance that workers are paid a living wage adequate for the maintenance of a decent standard of living and the enjoyment of social and cultural opportunities;²⁷ (j) consistent planning to raise and maintain an acceptable level of nutrition and standard of living of the Namibian people and to improve public health.²⁸ There is a clear commitment of the State through this principles to take steps to improve the well-being and living standards of Namibia. However, there are no enforcement mechanism for the masses to hold the state accountable for its commitment and even if the state fails to live up to its commitment, the masses cannot enforce article 95 principles of state policy

²³Article 1 (6).

²⁴Article 95.

²⁵Article 95 (b).

²⁶Article 95 (e).

²⁷Article 95 (i).

²⁸Article 95 (j).

through a court order. In fact, article 101 of the same constitution clearly state that the principles of state policy are not legally enforceable on their own. Other than article 95, article 23 of the Constitution which deals with affirmative action permits the legislative branch of government to enact laws that are aimed at advancing the socio-economic position of the Namibians who because of the pre-independent regime were denied access to economic opportunities. Despite these constitutional provisions, the constitution offers little assistance with regards to the enforcement of socio-economic provisions as contained in the constitution. The Namibian constitution does equally not recognise labour rights. There is no substantive benefits included in the constitution as far as labour rights are concerned, except for the prohibition of forced labour²⁹ and the freedom to choice any occupation or trade³⁰ and the freedom to participate in trade union activities.³¹ The workforce carries bulk of burden in driving the economy of the country and it is indispensable that workers should share in the trade and investment returns. The youth and other sections of the population should equally benefit from trade and investment in Namibia. However, there is no express mention in the Constitution regarding any tangible benefits that trade and investment guarantees to the workforce.

Importantly, Articles 98 and 99³² firmly speaks to the economic order of the country. Article 98 in particular sets out the principles of economic order by stating that: “(1) *The economic order of Namibia shall be based on the principles of a mixed economy with the objective of securing economic growth, prosperity and a life of human dignity for all Namibians.* (2) *The Namibian economy shall be based, inter alia, on the following forms of ownership: (a) public; (b) private; (c) joint public-private; (d) cc-operative; (e) co-ownership; (f) small-scale family.*”

Furthermore, Article 99³³ states that foreign investments shall be encouraged within Namibia subject to the provisions of an Investment Code to be adopted by Parliament.

Hence, there is a legislative will at least from the constitutional perspective to promote trade and investment in Namibia.

4.2 Foreign Investments Act 27 of 1990

The Foreign Investment Act was enacted shortly after independence, to make provision for the promotion of foreign investments in Namibia.³⁴ The Act requires any party who is interested in investing in Namibia to obtain a Certificate of Status Investment through formal application to the relevant Minister. In considering such an application, the Minister is required to have special regard to (a) *the extent to which the proposed investment is likely to contribute towards Namibia’s development objectives.* Furthermore, the Minister must look at (b) *the extent to which the enterprise in which the proposed investment is to be made will utilize Namibian resources, including labour and natural resources so as to contribute to the economy, by, inter alia - (i) increasing employment opportunities in Namibia; (ii) providing for the training of Namibians;*

²⁹ Article 8.

³⁰ Article 21 (1) (j).

³¹ Article 21 (e).

³² Constitution of Namibia.

³³ Constitution of Namibia.

³⁴ Preamble of the Act.

(iii) *earning or saving foreign exchange; (iv) generating development in the less developed areas of Namibia.*

It is commendable that the Act places an obligation on the Minister to impose certain conditions such as employment creation before issuing Certificate of Status Investment to a foreign investment. This way Namibia will ensure that investors do not rip off the country from its resources without tangible returns and benefits especially for the poorer sectors of the society. Though the Act places an obligation on the Minister who set conditions relating to the creation of labour and employment opportunities for the Namibians, there is nothing in Act that empowers any action to be taken against the Minister by those aggrieved in the event the minister fails to impose reasonable conditions related to labour and employment creation for Namibians. One could argue that the constitutional provisions such as article 18 and article 25 could be used by aggrieved persons to enforce their 'rights'. Article 18 calls for administrative bodies and officials to act fairly and reasonably and comply with the principles of natural justice, whereas article 25 gives powers to aggrieved persons to approach the competent court to enforce their rights.

4.3 Namibia Investment Promotion Act (2016)

The Namibia Investment Promotion Act has been passed by Parliament but has not yet been brought into force. The purpose of the Act is to provide for the promotion of economic development, lower unemployment, speed up growth, and diversify the economy, by mobilizing and attracting both domestic and foreign investment. Additionally, the legislation aims to provide for the reservation of specific business sectors and industries specific investor categories. Lastly the Act provides for the dispute resolution of investment-related disputes resolution procedures, and incidental matters.³⁵

Importantly the Act places an obligation on an investor to absorb available skills in the Namibian labour market; to invest in human capacity development in the Namibian labour market; and ensure the transfer of skills to the Namibians, so as to enhance the sustainability of the investment and its linkages within the Namibian economy and achieving the developmental objectives of Namibia. The fact that Namibia's legislative arm recognized the importance of absorbing the available skills from the Namibian market and investment in the human capacity development in the Namibian labour market is highly commendable. This shows that the worker at the bottom of a particular institution will benefit both directly and indirectly from foreign investment. If properly handled, foreign investment could guarantee employment to the Namibian population. Apart from employment, Namibian workers could be trained in critical and specialized areas. Human capital development will lead to the overall socio-economic development for the country.

³⁵*Preamble of Namibia Investment Promotion Act, 2016.*

5. TRADE AGREEMENTS

Apart from the investment legislation, Namibia because of its international obligations, has entered into other regional and international agreements and instruments. Namibia has entered into these agreements and instruments, not only because of its international obligations, but also for the benefit of the Namibians. This section identifies and discusses key African and international instruments governing trade in Namibia.

5.1 African Continental Free Trade Area (AfCFTA)

AfCFTA is the world's largest free trade area bringing together the 55 countries of the African Union (AU) and eight (8) Regional Economic Communities (RECs) to create a single market for the continent. These includes Arab Maghreb Union (UMA); Common Market for Eastern and Southern Africa (COMESA); Community of Sahel–Saharan States (CEN–SAD); East African Community (EAC); Economic Community of Central African States (ECCAS); Economic Community of West African States (ECOWAS); Intergovernmental Authority on Development (IGAD)² and Southern African Development Community (SADC). The aim is to enable the free flow of goods and services across the continent and boost the trading position of Africa in the global market.

It is estimated that the AfCFTA has the potential both to boost intra-Africa trade by 52.3 percent by eliminating import duties and to double this trade if non-tariff barriers are also reduced.³⁶

With average tariffs of 6.1 percent, businesses currently face higher tariffs when they export within Africa than on the continent.³⁷ The AfCFTA will progressively eliminate tariffs on intra-Africa trade, making it easier for African businesses to trade within the continent and benefit from the growing African market.

Being a member of the AfCFTA holds both potential benefits and challenges for Namibia's workforce. The agreement aims to create a single market for goods and services across Africa, which could lead to increased demand for Namibian products and services, thereby driving economic growth and industrial development. However, the agreement does not specifically address labour rights or benefits, nor does it include mandatory labour provisions to protect workers.

For Namibian employers, AfCFTA offers opportunities for accessing larger markets and expanding their businesses. They may benefit from increased demand for their goods and services within the free trade area. However, increased competition from other member states could also pose challenges, particularly for small and medium-sized enterprises (SMEs) that may struggle to compete with larger companies. Employees in Namibia may see benefits such as potential job creation through the expansion of value chains and increased investment flows. However, there are also risks of job displacement, particularly in sectors that may face increased

³⁶*Trade, Industry and Competition on implementation of the African Continental Free Trade Area (AfCFTA) available at <https://www.gov.za/news/media-statements/trade-industry-and-competition-implementation-african-continental-free-trade>*

³⁷<https://au-afcfta.org/about/>

competition from imports. Without strong labour provisions in the agreement, workers may face challenges in terms of job security, wages, and working conditions. Moreover, the liberalization of trade and investment may lead to social tensions and challenges, especially for vulnerable groups such as unskilled workers, women, and those in the informal sector.

In terms of mandatory labour provisions, AfCFTA does not include comprehensive mechanisms for enforcing labour standards or addressing labour-related disputes. Instead, it emphasizes cooperation on trade-related areas such as investment, intellectual property rights, and competition policy. Therefore, ensuring adequate labour protections and rights enforcement remains primarily within the purview of individual member states. Trade unions in Namibia have raised concerns about the lack of consideration for labour rights and vulnerability in the AfCFTA negotiations. They advocate for the inclusion of labour provisions in the agreement to ensure that workers are not left behind and that their rights are protected. Additionally, they emphasize the importance of social dialogue and the active involvement of trade unions in policy formulation to ensure that workers benefit from free trade.

5.2 Namibia-Zimbabwe Preferential Trade Agreement

This agreement is meant to improve the existing trading relations between Namibia and Zimbabwe on a basis of equality and mutual benefit both countries.³⁸ The agreement removes customs duty that could be imposed on exports and imports between the two countries.³⁹ This arrangement is crucial as it seeks to foster free trade between the two nations, despite the fact that customs duty remain an essential component of public revenue. Thus, in order to ensure that free trade between the two nations does not comply devoid custom duty of the purpose it seeks to achieve, Article 2 provides a limitation and states that “*customs duty includes surcharge as levied in Namibia on imported goods and surtax as levied in Zimbabwe on imported goods, but does not include sales tax as levied both on internal transactions and on imported goods in each country.*” The Agreement, as far as labour clauses are concerned, defines in its annexure the concept direct labour to “*refer to those procedures applied to the input materials from which the product is manufactured from the time they first come into the hands of the workforce which actually manufactures the product to the time the finished article is put into retail packaging.*”⁴⁰

It is commendable that reference is made in the Agreement in relation to labour. However, it could be ideal to have a concise mention of the fact that local workforce or nationals could be used to perform the labour.

5.3 Southern African Customs Union (SACU) – European Free Trade Association (EFTA)

The objectives of this Agreement are to: (a) achieve the liberalisation of trade in goods in conformity with the General Agreement on Tariffs and Trade (hereinafter referred to as “the GATT 1994”); (b) substantially increase investment opportunities in the free trade area; (c) promote adequate and effective protection of intellectual property rights; (d) establish a framework for the further development of their trade and economic relations with a view to

³⁸ Preamble of the Agreement.

³⁹ Article 1 of the Agreement.

⁴⁰ Annexure A, section 6.

expanding and enhancing the benefits of this Agreement; and (e) contribute in this way to the harmonious development and expansion of world trade by the removal of barriers to trade.

The SACU-EFTA Agreement intends to create new employment opportunities and to improve working conditions and living standards in their respective territories while promoting sustainable development. This is vital as the effective and meticulous implementation of the agreement will in turn contribute to socio-economic development for the parties to the agreement, especially for the African counter-part.

Assistance by the EFTA States shall focus on sectors affected by the process of liberalisation and restructuring of the economy of the SACU States as well as on sectors likely to bring the economies of the EFTA States and the SACU States closer together, particularly those generating growth and employment.⁴¹

This agreement only refers to the aspect of employment of two instances. Firstly, where it speaks to the desire created by the agreement to create new employment opportunities.⁴² Secondly, the mandate to focus on the liberalization and restricting of the economy focusing on growth and employment.⁴³ The provisions contained in the agreement, particularly those related to employment creation is not only minimal but are vague. There is no indicating how the process of creating employment opportunities will be approached by the parties to the agreement. There is nothing in the agreement that guarantees or mandates the parties to ensure that the agreement's undertaking to foster the creation of employment opportunities becomes a reality.

5.4 Southern African Customs Union (SACU) – Southern Common Market (MERCOSUR)

The MERCOSUR member states consist of Argentine Republic, Federative Republic of Brazil, Republic of Paraguay and Oriental Republic of Uruguay. These member states have concluded a preferential trade agreement with the member states of the Southern African Customs Union (SACU). This agreement creates a free trade area between SACU and MERCOSUR. Importantly, the agreement recognise and uphold the principles of trade liberalization.⁴⁴ Another equally important principle of trade that is recognised by the agreement is the national treatment principle. The agreement that guarantees that *“in matters relating to taxes, fees or any other domestic duties, the products originating from the territory of any of the Signatory Parties shall receive in the territory of the other Signatory Parties the same treatment applied to the national product in accordance with article III of GATT 1994.”*

5.5 Southern African Customs Union (SACU)

Being a member of the Southern African Customs Union (SACU) presents both opportunities and challenges for Namibia's workforce and labour regulations. As outlined in Article Article 2 of the 2002 SACU Agreement, SACU aims to facilitate cross-border movement of goods, promote fair competition, enhance economic development, and create effective institutions for equitable trade benefits among member states. However, while SACU primarily focuses on trade

⁴¹Article 30 (3) of Free Trade Agreement between the EFTA States and the SACU States.

⁴²Preamble of Free Trade Agreement between the EFTA States and the SACU States.

⁴³Ibid.

⁴⁴Chapter 2 of the Agreement.

facilitation and economic integration, its impact on workers' rights and labour benefits is indirect but significant.

One key aspect is SACU's role in fostering economic growth and investment opportunities within the common customs area. By promoting conditions of fair competition and enhancing competitiveness, SACU aims to attract investment, stimulate industrialization, and create employment opportunities. Increased investment and industrialization have the potential to generate new jobs and improve living standards for Namibia's workforce. Moreover, SACU's agreements and frameworks, including the common external tariff, can indirectly influence labour markets by shaping trade patterns and industrial structures. For instance, the revenue-sharing mechanisms within SACU, although facing challenges such as volatility, provide member states with resources that can be allocated towards labour-intensive sectors and social welfare programs, benefiting workers.

However, SACU's impact on labour rights and employment benefits is not without challenges. The volatility of SACU revenue, particularly for smaller member states like Namibia, poses fiscal management challenges and affects public finances, which may impact government spending on social programs and labour-related initiatives. Additionally, SACU faces the pressing issue of high unemployment rates across member states, including Namibia. While SACU's focus is primarily on economic integration and trade facilitation, addressing unemployment requires comprehensive policies that align with the needs of the labour market. SACU members must invest in education and skills development programs to address the skills gap and enhance workforce productivity. Moreover, promoting economic diversification and creating labour-intensive sectors are essential for generating employment opportunities.⁴⁵

Unlike the Southern African Development Community (SADC), which has specific protocols and agreements addressing labour matters, the SACU Agreement does not include provisions or ancillary instruments related to labour. This absence of labour-related provisions within the SACU Agreement means that labour matters, such as employment rights, working conditions, and social protection, are not explicitly regulated at the regional level by SACU mechanisms. Instead, member states retain autonomy over their respective labour laws, policies, and regulations, independently addressing labour-related issues within their own national frameworks.⁴⁶

As a result, the benefits and protections enjoyed by workers within SACU member states are primarily determined by national labour laws and regulations. Each member state is responsible for establishing and enforcing its labour standards, ensuring compliance with international labour conventions, and safeguarding the rights and well-being of workers within its jurisdiction. Overall, while SACU plays a crucial role in promoting economic integration and trade facilitation within the region, it does not have the same level of involvement in labour matters as organizations like SADC. As a result, labour-related issues within SACU member

⁴⁵SADC Major Achievements and Challenges: 25 Years of Regional Cooperation and Integration https://www.sadc.int/sites/default/files/2021-12/Achievements_booklet.pdf

⁴⁶*Ibid.*

states are primarily addressed through national policies and regulations rather than through regional mechanisms.⁴⁷

5.6 Southern African Customs Union (SACU) and Mozambique- United Kingdom (UK) Economic Partnership Agreement

The UK has signed an Economic Partnership Agreement (EPA) with the Southern African Customs Union Member States (SACU) and Mozambique (SACUM), which is in effect. The SACUM countries covered by this agreement includes Botswana, Eswatini (formerly Swaziland), Lesotho, Mozambique, Namibia and South Africa.⁴⁸

EPAs are principally development-focused trade agreements that aim to promote increased trade and investment. They contribute to sustainable growth and poverty reduction in developing countries. This guidance provides information on aspects of trade covered by the SACUM-UK EPA. It is for UK businesses trading with SACU Member States and Mozambique. With the exception of South Africa, the UK pledges to grant instant duty-free and quota-free access to products exported from Mozambique and SACU Member States. Mozambique and the SACU Member States agree to gradually liberalize goods tariffs in return. Mozambique and the SACU Member States do not liberalize tariffs on some domestically sensitive products. This EPA includes provisions on trade in goods - including provisions on preferential tariffs, tariff rate quotas, rules of origin and sanitary and phytosanitary measures; and intellectual property, including geographical indications.⁴⁹

5.7 Southern African Development Community (SADC)

Membership in the Southern African Development Community (SADC) holds potential benefits for Namibia in terms of workers' rights and labour regulations. SADC's protocols and agreements aim to harmonize labour standards and policies among member states, providing a framework for the promotion of decent work and the elimination of issues like forced labour, child labour, discrimination, and workplace violence. By adhering to these standards, Namibia can enhance the overall working conditions for its labour force, aligning them with international norms and ensuring their rights are protected. Additionally, SADC initiatives focus on increasing employment opportunities in the region, which could benefit Namibian workers by providing avenues for formal employment and reducing reliance on informal and subsistence farming activities.

There are specific provisions and instruments within the Southern African Development Community (SADC) framework that directly impact workers' rights and labour regulations in Namibia. Firstly, the Protocol on Employment and Labor (ELP), signed in 2014, plays a key role. Article 3 of the SADC ELP outlines its objectives, including providing strategic direction for harmonizing employment and labour policies, enhancing cohesion among member states, and promoting sustainable development through decent work. Moreover, Article 4 of the Protocol

⁴⁷ *Ibid.*

⁴⁸ [Trade with Southern African Customs Union Member States and Mozambique \(SACUM\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/trade-with-southern-african-customs-union-member-states-and-mozambique-sacum)

⁴⁹ [Trade with Southern African Customs Union Member States and Mozambique \(SACUM\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/trade-with-southern-african-customs-union-member-states-and-mozambique-sacum)

aims to set minimum standards on employment and labour, ensuring social protection, safety, and health at the workplace.

Furthermore, the approval of the SADC Protocol on Employment and Labour in 2023 during the annual meeting of Ministers and Social Partners underscores the commitment to address unemployment challenges and promote decent work. This Protocol establishes a regional cooperation framework on employment and labour, emphasizing the adoption of minimum labour standards and fundamental labour guarantees. Notably, it addresses various issues such as forced labour, child labour, discrimination, and workplace violence, which are crucial for protecting workers' rights in Namibia.⁵⁰

Moreover, the focus on enhancing labour productivity and promoting employment opportunities within SADC is significant for Namibia's workforce. Initiatives such as the long-term program aimed at increasing employment in the region, with funding from the International Labour Organization (ILO), demonstrate efforts to create avenues for formal employment. Additionally, SADC's emphasis on addressing structural distortions in the economy and promoting gender equality in the labour market aligns with Namibia's goals of fostering inclusive and sustainable development.⁵¹

However, challenges persist, particularly concerning the impact of trade liberalization and technological advancements. While increased competition and structural changes may create new job opportunities, they could also lead to job losses and a mismatch between the skills demanded by employers and those possessed by the workforce. Furthermore, a significant portion of Namibia's labour force remains engaged in informal employment, highlighting the need for comprehensive policies that provide support and protections for these workers.

Despite these challenges, SADC's focus on promoting employment and enhancing labour productivity presents opportunities for Namibia's workforce. By addressing structural distortions in the economy, promoting gender equality in the labour market, and strengthening institutional capacities for labour market information and data collection, SADC seeks to create an enabling environment for sustainable and inclusive development. Moreover, the approval of the SADC Protocol on Employment and Labor marks a significant step in addressing unemployment challenges and promoting decent work in the region, signaling a commitment to improving the labour landscape.⁵²

5.8 The African, Caribbean and Pacific Group of States (ACP)

As a member of the Organisation of African, Caribbean and Pacific States (OACPS), formerly known as the African, Caribbean and Pacific Group of States (ACP), Namibia can potentially derive several benefits related to labour and employment rights, although the direct impact may vary depending on the specific provisions of agreements and the implementation mechanisms. While the main objectives of the ACP primarily focus on sustainable development and poverty

⁵⁰<https://www.sadc.int/latest-news/sadc-ministers-employment-and-labour-and-social-partners-call-enhanced-measures-create>

⁵¹<https://www.sadc.int/latest-news/sadc-ministers-employment-and-labour-and-social-partners-call-enhanced-measures-create>

⁵²<https://www.sadc.int/pillars/employment-labour-0>

reduction, the organization also emphasizes the importance of promoting policies that benefit the well-being of the peoples of its member states, which necessarily includes labour rights and employment opportunities.⁵³

The OACP's engagement in trade agreements, such as the Cotonou Agreement with the European Union, provides opportunities for Namibia to strengthen its economy through increased trade, investment, and access to financial resources. These agreements may indirectly contribute to improved labour conditions by fostering economic growth and creating job opportunities, especially in sectors that benefit from enhanced trade and investment flows.⁵⁴

However, it's essential to critically assess the extent to which these agreements address labour rights and provide protections for workers, particularly at the grassroots level. The ACP objectives highlight the importance of promoting policies that benefit the well-being of member states' populations. However, similar to other regional and international agreements focused primarily on economic cooperation and development, the OACPS lacks specific labour provisions or standards. While the main objectives of the OACPS emphasize sustainable development, poverty reduction, and greater integration into the world economy, the organization's focus on economic goals often takes precedence over detailed considerations of labor rights and protections. Consequently, trade agreements negotiated under the auspices of the OACPS may prioritize economic growth and market access without comprehensive provisions to safeguard workers' rights or ensure decent working conditions.⁵⁵

In the absence of explicit labour standards within OACPS agreements, the impact on workers in member states like Namibia can be variable and contingent on domestic labour laws, enforcement mechanisms, and the overall socio-economic context. While trade agreements may stimulate economic activity and create job opportunities, they may also exacerbate inequalities or lead to exploitative labour practices if adequate safeguards are not in place. Thus, the absence of mandatory labour provisions within OACPS agreements highlights the importance of domestic policy frameworks and civil society advocacy to protect workers' rights and promote equitable development.

5.9 World Trade Organisation

It's a trade opening organization. Governments can negotiate trade agreements in this venue. They use it as a venue to resolve disagreements about commerce. It runs a set of trade regulations. In essence, the World Trade Organization (WTO) serves as a forum for member nations to resolve trade disputes with one another.⁵⁶ The governments of the WTO's members run it. The membership as a whole makes all significant decisions, either through the ministers (who typically convene at least twice every two years) or through their ambassadors or representatives (who frequently convene in Geneva).⁵⁷

⁵³ <https://www.oacps.org/about-us/>

⁵⁴ <https://www.oacps.org/about-us/>

⁵⁵ <https://www.oacps.org/about-us/>

⁵⁶ https://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm

⁵⁷ https://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm

The WTO comprises of a secretariat. The Secretariat's primary responsibilities include conducting economic research, organizing ministerial conferences, monitoring developments in global trade, providing technical assistance to developing nations, providing technical and professional support to the WTO's councils and committees, and disseminating information on WTO activities to a variety of audiences. In addition, it counsels states looking to join the WTO and offers legal support in the organization's dispute resolution procedure. About 80 different nationalities are represented among the Secretariat staff members who offer the governments of WTO members unbiased support. Economists, attorneys, and experts in finance, communications, information technology, international trade policy, human resources, and language services make up the majority of its members. English, French, and Spanish are the WTO's official working languages.⁵⁸

There is a clear consensus that all WTO member nations will adhere to a more limited set of globally accepted "core" criteria, which include freedom of association, prohibitions on forced labour, the elimination of child labour, and prohibitions on workplace discrimination, including gender discrimination.⁵⁹ There has been a lot of debate in the WTO, especially between 1996 and 1999. During the Singapore conference in 1996, participants pledged to uphold internationally recognized basic labour norms, but they should not be exploited for protectionism. The statement noted that while the WTO and ILO secretariats would maintain their current cooperation, the economic benefit of low-wage nations should not be questioned. The trade and industry minister of Singapore, Mr. Yeo Cheow Tong, stated in his closing remarks that the declaration does not place labour on the WTO's agenda. There are currently no working groups or committees addressing the matter, but the concerned.⁶⁰

There has been debates regarding whether the WTO is the right forum to advocate for and protect workers rights with regards to trade and investment. Though investment, trade and labour cannot be separated, it has often been agreed that WTO is not necessarily the right forum for promoting workers rights. The ILO on the hand, whose direct mandate is to protect and promote workers rights, is the right forum as far as worker activism regarding worker benefits from investment and trade is concerned.

6. International Labour Organisation (ILO) position on the inclusion labour provisions in trade agreements

The ILO participates in trade agreements' labour provisions design and implementation in a number of ways. Trade partners have asked the ILO for technical assistance on a range of issues pertaining to labour standards and practices, as well as guidance. They have also made use of publicly available information from the ILO, such as comments made via its special procedures and supervision system. In addition, the ILO has occasionally been involved in partnerships and

⁵⁸https://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm

⁵⁹[WTO | Understanding the WTO - Labour standards: highly controversial](#)

⁶⁰[WTO | Understanding the WTO - Labour standards: highly controversial](#)

development cooperation programs aimed at advancing the application of global labour standards as represented in labour commitments.⁶¹

In addition, the ILO participates in the actual implementation of labour standards through trade agreements-related development cooperation initiatives. Certain initiatives center on enhancing the capabilities of trading partners to promote the execution of labour regulations. The ILO's technical departments and field offices carry out these programs in coordination with the nation's tripartite members and occasionally with trading partners.

The ILO Framework provides ten substantive elements which corresponds to the four strategic pillars of the Decent Work Agenda. It is crucial that these substantive elements are taken into consideration when trade agreements are concluded. These elements are outlined and discussed below.

(a) Employment opportunities

The Decent Work Agenda recognizes the need to create employment opportunity. Establishing avenues for employment is crucial for socio-economic development. It is impossible to assign sole responsibility for the creation of work possibilities to one social agency. Employment opportunities are jointly the responsibility of political actors (those defining policies compatible with the creation of employment opportunities), organizational leaders (as entrepreneurs starting new businesses), and individual workers (who must participate in becoming contributors to wealth creation).⁶² Thus at legislative and policy level, where aspects of trade and investment is considered, it is essential to ensure that any trade agreement entered into will adequately address the issue of unemployment by promoting the agenda of employment creation.

(b) Adequate earnings and productive work

It is not enough to provide employment opportunities. Governments through legislative and policy directives must ensure that workers are adequately paid for the work they do. "Earnings" could include remuneration for rest periods, bonuses, awards, and discounts that are available to the worker and his family (which could be considered a type of payment).⁶³ Social clauses included in trade agreements must be of such a nature that workers in the trading country are receive adequate earnings to live a decent life.

(c) Decent working time

During the colonial periods, most workers, especially in the African context, where Namibia finds itself, were exposed to unfair labour conditions. The pre-colonial laws did not protect any worker as it was crafted by the colonial master for his or her benefit and to unnecessarily punish the 'slave' worker. With the attainment of independence⁶⁴ and the adoption of human rights

⁶¹ Policy Development Section *Employment and Social Protection Segment. Labour-related provisions in trade agreements: Recent trends and relevance to the ILO*

⁶² Tânia Ferraro, Leonor Pais, Nuno Rebelo Dos Santos "Decent Work: An Aim for All Made by All" *International Journal of Social Sciences* Vol. IV, No. 3 / 2015, 32.

⁶³ Tânia Ferraro, Leonor Pais, Nuno Rebelo Dos Santos "Decent Work: An Aim for All Made by All" *International Journal of Social Sciences* Vol. IV, No. 3 / 2015, 32.

⁶⁴ Namibia gained independence on 21 March 1990.

through the Constitution's bill of rights, all unfair practices were outlawed. Though the Namibian constitution does not necessarily set out extensive labour rights, it provides fundamental basic rights such as the right to life, dignity, equality and freedom from discrimination, liberty and a right to a fair hearing. In the labour context, the Labour Act regulates working hours by stating that for example: no shift may be longer than eight hours in cases of continuous shifts.⁶⁵ In terms of ordinary hours, the Act provides that no employer may require any employee to work for more than 45 hours in any week. Furthermore, an employee may not be required to work for more than nine hours on any day, if the employee works for five days or fewer in a week; or eight hours on any day, if the employee works for more than five days in a week.⁶⁶ Namibia's legislative framework supports the principle of decent working time. However, the policy makers must ensure that business especially those that come in Namibia with the disguised promises of providing employment opportunities do not exploit the Namibian labour force by exposing workers to unhealthy and extremely long and tiring hours of work. Social clauses must adequately incorporate labour provisions pertaining to decent hours of work in trade agreements.

(d) Combining work, family and personal life

In order to lead a balanced life, it is essential for employees to be allowed to organize their affairs in such a way that there is a balance between work, family and personal life.

(e) Work that should be abolished

Namibia has with the adoption of supreme constitution, abolished slavery and forced labour. This was essential in an effort to turn a new leaf for the independent Namibia. It is however, imperative for Namibia through its legislation and policies to continuously do introspection and abolish systems that could be akin to the labour system of the pre-colonial era. Trade agreements could be one place where the countries' laws and policies on trade will require trading partners to ensure that there are no unfair social clauses in trade agreements.

(f) Stability and security of work

Freight by night business often times does not offer job stability and job security to employees. The Business and Intellectual Property Authority of Namibia (BIPA) must do thorough background checks before it registers business. It is also crucial for the Ministry of Labour, Industrialization and Employment to work closely with BIPA and other agencies especially those regulating trade and investment in Namibia such as the Namibia Investment Promotion and Development Board to ensure that employee rights are protected at all relevant times.

(g) Equal opportunity and treatment in employment

The discussion around equal treatment is two-fold. Firstly, it is imperative that employers treat men and women equally in the workplace. Thus, both men and women must be exposed to the same opportunities in the workplace. In fact, the Namibian constitution outlaws discrimination expressly and calls on equality before the law. Secondly, employers, especially foreign business

⁶⁵Section 15 (2) of Labour Act 11 of 2007.

⁶⁶Section 16 (1) (a) of Labour Act 11 of 2007.

owners operating in Namibia and who employees Namibians and nationals from other countries must ensure that all employees are treated equally and expose to equal opportunities of training and promotion. Social clauses in trade agreements must recognise and promote equal treatment of all employees in the workplace. Potential investors and trading partners must be carry the compulsory obligation to guarantee equal opportunity and treatment for its entire workforce in Namibia.

(h) Safe work environment

Occupational safety and health have been on the workplace relations agenda for most jurisdictions. In the Namibian context, the Labour Act requires the employer to provide a safe working environment for its employees. The Act in particular states that an employer must “(a) provide a working environment that - (i) is safe; and (ii) is without risk to the health of employees; and (iii) has adequate facilities and arrangements for the welfare of employees”⁶⁷ Employees are equally required to—“(a) take reasonable care to ensure - (i) the employee’s own safety and health in the workplace; and (ii) the safety and health of any individual who may be affected by the employee’s activities at work; and (b) co-operate with the employer to enable the employer to perform any duty imposed under this Chapter or the regulations”⁶⁸ Namibia’s position is in line with the decent agenda on the provision of safe working environment. It is however, peremptory that the social clauses speaks the some language as the country’s legislation on the subject.

(i) Social security

Social Security is a social insurance program run by the government that offers retired people, disabled workers, and their families financial support. It also benefits other specific beneficiaries and qualifying surviving workers of deceased workers.⁶⁹ Apart from understanding social security from the governmental perspective, all employees must provide ‘social security insurance’ to their employees for the benefit of the latter should the need arise. In Namibia, the Social Security Commission is established by an Act of Parliament to administer all aspects relating to social security. These include the provision for the payment of maternity leave benefits, sick leave benefits and death benefits to employees and to establish for that purpose the maternityleave, sick leave and death benefit fund; to provide for the payment of medical benefits to employees.⁷⁰ Furthermore, the Commission also provide for the payment of pension benefits to retired employees amongst others.⁷¹ It is the firm conviction of this paper, that foreign companies operating in Namibia by investing in the Namibian economy must ensure that its employees are registered with the Social Security Commission of Namibia and benefits from the opportunities made available in terms of the Commission. Though this is provided for in terms of the Labour Act and the Social Security Act, there is a need for the social clauses to incorporate the mandatory requirement to register employees for social security.

⁶⁷Section 39 (1) (a) of Labour Act 11 of 2007.

⁶⁸Section 41 (a) and (b) of the Labour Act 11 of 2007.

⁶⁹<https://www.financestrategists.com/retirement-planning/social-security/>

⁷⁰Preamble of Social Security Act 34 of 1994.

⁷¹*Ibid.*

(j) Social dialogue, employers' and workers' representation

In order to guarantee in conducive working environment where both the interests of the employer and that of the employees are met, it is essential to continue the social dialogue amongst all relevant stakeholders. Employers as providers of employment and their representatives, employees who perform work and their representatives and government as a policy and laws' custodian must continuously engage with the aim of ensuring maximum benefit for the parties to the employment relationship. In the case of potential investors and trading partners, who will ultimately become providers of employment, there is a need that they play an active role in crafting social clauses that guarantees continuous social dialogue amongst interested and affected parties.

7. Essence of including labour provisions in trade and investment legislation and agreements

One of the most divisive topics in the world right now is the trade-labour standards nexus dispute. In response to requests for the addition of a social clause in international trade regulations, the majority of Southern African nations have not cooperated.⁷² In fact with the aim to attract foreign direct investment, most African countries, especially in the southern region have decided keep their labour standards low and maximise trade gains at the expense of workers.⁷³ This directly affects the workers who could have otherwise benefited from the trade and investment agreements.

Trade, investment and labour cannot be separated. In order to achieve the overall objective of trade and investment, it is crucial that labour needs to be place on the agenda of trade and investment. Development countries benefit from trade and investment. However, to maximise the benefits derived from trade and investment, the workforce and rights that could potentially accrue to the workforce should be recognized, protected and promoted.⁷⁴

Labour productivity is one of the factors that impacts development. There are three crucial determinants of labour productivity. The first being human capital. Human capital is the result of an average employee's ability, experience, and education gained over time in the economic process. The evolution of technology is the second component. Innovations and new inventions spur the creation of fresh goods and services, which raise productivity. Economies of scale, which lower production costs, are the third. The basis for capital productivity is added values or gross outputs. As a result of advancements in machinery and equipment, capital productivity raises the caliber of labour. Return on capital and capital productivity are two distinct ideas. While the other is a measure of revenue that correlates capital income to the value of capital

⁷² Warikandwa T "International Trade Agreements and Labour Linkage Debate: A Southern African Perspective- Pat 1" in *Grid-Locked African Economic Sovereignty- Decolonising the Neo- Imperialism Socio-Economic and Legal Force-fields in the 21st century*. Edited by Warikandwa T, Nhemachena A, Mpofu N and Chitimira H.

⁷³ Warikandwa T "International Trade Agreements and Labour Linkage Debate: A Southern African Perspective- Pat 1" in *Grid-Locked African Economic Sovereignty- Decolonising the Neo- Imperialism Socio-Economic and Legal Force-fields in the 21st century*. Edited by Warikandwa T, Nhemachena A, Mpofu N and Chitimira H.

⁷⁴ Policy Development Section *Employment and Social Protection Segment. Labour-related provisions in trade agreements: Recent trends and relevance to the ILO*

stock, capital productivity is a measure of both physical and partial productivity.⁷⁵ In order for the trade and investment are two important aspects that fosters development. Effective and continuous development processes require development in human capital and technology. Inclusion of labour provisions in trade agreements is thus essential.

Requiring trade agreements to include labour provision may lead to employment creation for the development countries such as Namibia. Once an investment partner who decides to operate its business in Namibia is required to ensure that at least 60% of its workforce is from Namibia, this will help address the issue of unemployment in the local context. This approach will assist to improve the living conditions and livelihoods of those who benefit from such arrangements.

Another way in which mandatory labour provisions can achieve development goals for Namibia is by requiring knowledge and skills transfer. In terms of Namibia's investment laws, i.e. the Investment Promotion Act of 2016, the relevant Minister has powers before approving a certain trade agreement has to place certain obligations on the investment partner to transfer skills to Namibian workforce. This is essential as it promotes capacity development. Even after the investing partner have left Namibia, human capital development will continue to contribute to and drive development in Namibia.

8. Recommendations

Namibia's legislative framework on trade and investment should recognise the importance of labour in fostering socio-economic development. As has been pointed out trade, investment and labour is intertwined these policies on trade and investment should to a certain extent reflect the importance of labour. Namibia must revisit all its trade and investment laws, policies and agreements and ensure that it reflects labour provisions to the extent that this is possible.

One key proposition is that in order for labour provisions to be effective, trade agreements must involve stakeholders, particularly social partners. This is indicative of a broader movement to reduce the opaqueness of trade negotiations, which have historically taken place between governments with little to no public input or participation. Specifically, trade agreements have come to refer to the involvement of stakeholders more frequently and comprehensively. This development has been aided by the fact that trade agreements now cover a wider range of issues, including public procurement, environmental protection, health and safety, labour standards, and public procurement, among other regulations that may have an impact on people's daily lives.⁷⁶

The ILO, in line with its mandate, can contribute to enhanced coherence between labour provisions and the international system of labour standards. This can be done by providing advice and technical expertise, as well as through its development cooperation programmes. ILO can provide advice and guidance, through the information which is publicly available from its supervisory mechanisms, provided an important reference in terms of how best to implement

⁷⁵Suna Korkmaz & Oya Korkmaz "The Relationship between Labor Productivity and Economic Growth in OECD Countries" *International Journal of Economics and Finance*; Vol. 9, No. 5; 2017.

⁷⁶Julie Gilson (2023) *Sustainable development and the environment in EU and Japanese free trade agreements: embedding anthropocentric narratives*, *Environmental Politics*, DOI: [10.1080/09644016.2023.2274750](https://doi.org/10.1080/09644016.2023.2274750)

labour provisions. Namibia must thus make use of ILO's expert opinion and advice on the inclusion of labour provisions in its trade and investment policies.

One size fits all approach is not feasible and will definitely not reach the desired results. It is thus proposed that Namibia looks at its unique position to determine how the amendment of laws and policies and the introduction of new laws and policies can solidify the existing lines between trade, investment and labour.

9. Conclusion

Labour is an essential aspect of development. Hence, labour, trade and investment have one underlying objective in common and this is socio-economic development. This objective can only be adequately achieved if the golden thread that runs through the three themes of labour, trade and investment is recognised. Apart from recognizing the golden thread there is a need to take reasonable steps to ensure that the three themes speak to one another at legislative, policy and institutional framework levels.

Foreign investment has the potential to enhance competitiveness, optimize resource allocation, and enable the global dissemination of technologies. In fact, nations with open investment policies have typically displayed faster rates of economic growth than those without. Though global prosperity has improved overall as a result of economic progress, inequality has expanded both within and between rich and developing nations. Since the vast majority of people on the planet reside in developing nations, it is crucial to consider how they view the problems associated with sustainable development. In order to ensure sustainability, it is obviously desirable to have high international standards for employment and the environment, but developing nations may find it more difficult to achieve these standards than developed ones.⁷⁷

References

1. <https://www.cia.gov/the-world-factbook/countries/namibia/>
2. <https://www.worldometers.info/world-population/namibia-population/>
3. <https://www.cia.gov/the-world-factbook/countries/namibia/>
4. Fortanier F and Maher M "Foreign Direct Investment and Sustainable Development" *Financial Market Trends*, No. 79, June 2001 <https://www.oecd.org/industry/inv/investmentstatisticsandanalysis/1906135.pdf>
5. Dicaprio, A., Santos-Paulino, A., & Sokolova, M. (2017). Regional trade agreement, integration and development. UNCTAD Research Paper No. 1. Geneva: United Nations Conference on Trade and Development.

⁷⁷Fortanier F and Maher M "Foreign Direct Investment and Sustainable Development" *Financial Market Trends*, No. 79, June 2001 <https://www.oecd.org/industry/inv/investmentstatisticsandanalysis/1906135.pdf>

6. Togkoz, S., Allen, S., Majeed, F., Paris, B., Olajide, A., & Osabuohien, E. (2020). Distortions to agricultural incentives: Evidence from Nigerian Value Chain. *Review of Development Economics*, 24(3), 1027–1045. doi:10.1111/rode.12664
7. Gillson, I., Poulton, C., Balcombe, K., & Page, S. (2004). Understanding the impact of OECD agricultural and trade policies on developing countries and poor people in those countries—piloting an approach with cotton. Working draft. Overseas Development Institute, March. Working draft, Overseas Development Institute.
8. Fortanier F and Maher M “Foreign Direct Investment and Sustainable Development” *Financial Market Trends*, No. 79, June 2001 <https://www.oecd.org/industry/inv/investmentstatisticsandanalysis/1906135.pdf>
9. Miguel Alvarez Texcotitla, David Alvarez Hernández and Shaní Alvarez Hernández “The Doctrine of Free Markets: Origin, Nature and Implications” available at https://www.researchgate.net/publication/327237441_The_Doctrine_of_Free_Markets_Origin_Nature_and_Implications.
10. Miguel Alvarez Texcotitla, David Alvarez Hernández and Shaní Alvarez Hernández “The Doctrine of Free Markets: Origin, Nature and Implications” available at https://www.researchgate.net/publication/327237441_The_Doctrine_of_Free_Markets_Origin_Nature_and_Implications.
11. Miguel Alvarez Texcotitla, David Alvarez Hernández and Shaní Alvarez Hernández “The Doctrine of Free Markets: Origin, Nature and Implications” available at https://www.researchgate.net/publication/327237441_The_Doctrine_of_Free_Markets_Origin_Nature_and_Implications.
12. Fortanier F and Maher M “Foreign Direct Investment and Sustainable Development” *Financial Market Trends*, No. 79, June 2001 <https://www.oecd.org/industry/inv/investmentstatisticsandanalysis/1906135.pdf>
13. MAHER, M. and T. ANDERSSON (2001), "Corporate Governance: Effects on Firm Performance and Economic Growth", in Renneboog, L., J. McCahery, P. Moerland and T. Raaijmakers (eds.), *Convergence and diversity of corporate governance regimes and capital markets*, Forthcoming, Oxford University Press.
14. Fortanier F and Maher M “Foreign Direct Investment and Sustainable Development” *Financial Market Trends*, No. 79, June 2001 <https://www.oecd.org/industry/inv/investmentstatisticsandanalysis/1906135.pdf>
15. Fortanier F and Maher M “Foreign Direct Investment and Sustainable Development” *Financial Market Trends*, No. 79, June 2001 <https://www.oecd.org/industry/inv/investmentstatisticsandanalysis/1906135.pdf>

16. Khan M and Reinhart C “*Private Investment and Economic Growth in Developing Countries*” World Development. Vol. 18, No. 1, pp. 19-27, 1990.
17. Khan M and Reinhart C “*Private Investment and Economic Growth in Developing Countries*” World Development. Vol. 18, No. 1, pp. 19-27, 1990.
18. Cornelia Caroline “Does Innovation, Investment and Trade influence Labour Productivity? Empirical Evidence from Selected Countries” Management Science and Business Decisions 2021 Volume 1 Issue 2: 57–66
19. Van Tam, N., Huong, N. L., & Ngoc, N. B. (2018). Factors affecting labour productivity of construction worker on construction site: A case of Hanoi. Journal of Science and Technology in Civil Engineering, 12(5), 127-138. [https://doi.org/10.31814/stce.nuce2018-12\(5\)-13](https://doi.org/10.31814/stce.nuce2018-12(5)-13)
20. Barua, S. (2021). Human Capital, Economic Growth, and Sustainable Development Goals: An Evaluation of Emerging Economies. In: Shahbaz, M., Mubarik, M.S., Mahmood, T. (eds) The Dynamics of Intellectual Capital in Current Era. Springer, Singapore. https://doi.org/10.1007/978-981-16-1692-1_6
21. The ILO's Decent Work Agenda available at
22. <https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>.
23. Article 1 (6).
24. Article 95.
25. Article 95 (b).
26. Article 95 (e).
27. Article 95 (i).
28. Article 95 (j).
29. Article 8.
30. Article 21 (1) (j).
31. Article 21 (e).
32. Constitution of Namibia.
33. Constitution of Namibia.
34. Preamble of Namibia Investment Promotion Act, 2016. Preamble of the Act.

35. Trade, Industry and Competition on implementation of the African Continental Free Trade Area (AfCFTA) available at <https://www.gov.za/news/media-statements/trade-industry-and-competition-implementation-african-continental-free-trade>
36. <https://au-afcfta.org/about/>
37. Preamble of the Agreement.
38. Article 1 of the Agreement.
39. Annexure A, section 6.
40. Article 30 (3) of Free Trade Agreement between the EFTA States and the SACU States.
41. Preamble of Free Trade Agreement between the EFTA States and the SACU States.
42. Preamble of Free Trade Agreement between the EFTA States and the SACU States.
43. Chapter 2 of the Agreement.
44. SADC Major Achievements and Challenges: 25 Years of Regional Cooperation and Integration https://www.sadc.int/sites/default/files/2021-12/Achievements_booklet.pdf
45. SADC Major Achievements and Challenges: 25 Years of Regional Cooperation and Integration https://www.sadc.int/sites/default/files/2021-12/Achievements_booklet.pdf
46. SADC Major Achievements and Challenges: 25 Years of Regional Cooperation and Integration https://www.sadc.int/sites/default/files/2021-12/Achievements_booklet.pdf
47. [Trade with Southern African Customs Union Member States and Mozambique \(SACUM\) - GOV.UK \(www.gov.uk\)](#)
48. [Trade with Southern African Customs Union Member States and Mozambique \(SACUM\) - GOV.UK \(www.gov.uk\)](#)
49. <https://www.sadc.int/latest-news/sadc-ministers-employment-and-labour-and-social-partners-call-enhanced-measures-create>
50. <https://www.sadc.int/latest-news/sadc-ministers-employment-and-labour-and-social-partners-call-enhanced-measures-create>
51. <https://www.sadc.int/pillars/employment-labour-0>
52. <https://www.oacps.org/about-us/>
53. <https://www.oacps.org/about-us/>
54. <https://www.oacps.org/about-us/>
55. https://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm

56. https://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm
57. https://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm
58. [WTO | Understanding the WTO - Labour standards: highly controversial](#)
59. [WTO | Understanding the WTO - Labour standards: highly controversial](#)
60. Policy Development Section Employment and Social Protection Segment. Labour-related provisions in trade agreements: Recent trends and relevance to the ILO
61. Tânia Ferraro, Leonor Pais, Nuno Rebelo Dos Santos “Decent Work: An Aim for All Made by All” International Journal of Social Sciences Vol. IV, No. 3 / 2015, 32.
62. Tânia Ferraro, Leonor Pais, Nuno Rebelo Dos Santos “Decent Work: An Aim for All Made by All” International Journal of Social Sciences Vol. IV, No. 3 / 2015, 32.
63. Namibia gained independence on 21 March 1990.
64. Section 15 (2) of Labour Act 11 of 2007.
65. Section 16 (1) (a) of Labour Act 11 of 2007.
66. Section 39 (1) (a) of Labour Act 11 of 2007. Section 41 (a) and (b) of the Labour Act 11 of 2007.
67. <https://www.financestrategists.com/retirement-planning/social-security/>
68. Preamble of Social Security Act 34 of 1994.
69. Preamble of Social Security Act 34 of 1994
70. Warikandwa T “International Trade Agreements and Labour Linkage Debate: A Southern African Perspective- Part 1” in Grid-Locked African Economic Sovereignty- Decolonising the Neo- Imperialism Socio-Economic and Legal Force-fields in the 21st century. Edited by Warikandwa T, Nhemachena A, Mpofu N and Chitimira H.
71. Warikandwa T “International Trade Agreements and Labour Linkage Debate: A Southern African Perspective- Part 1” in Grid-Locked African Economic Sovereignty- Decolonising the Neo- Imperialism Socio-Economic and Legal Force-fields in the 21st century. Edited by Warikandwa T, Nhemachena A, Mpofu N and Chitimira H.
72. Policy Development Section Employment and Social Protection Segment. Labour-related provisions in trade agreements: Recent trends and relevance to the ILO
73. Suna Korkmaz & Oya Korkmaz “The Relationship between Labor Productivity and Economic Growth in OECD Countries” International Journal of Economics and Finance; Vol. 9, No. 5; 2017.

74. Julie Gilson (2023) Sustainable development and the environment in EU and Japanese free trade agreements: embedding anthropocentric narratives, Environmental Politics, DOI: [10.1080/09644016.2023.2274750](https://doi.org/10.1080/09644016.2023.2274750)
75. Fortanier F and Maher M "Foreign Direct Investment and Sustainable Development" Financial Market Trends, No. 79, June 2001 <https://www.oecd.org/industry/inv/investmentstatisticsandanalysis/1906135.pdf>