Of the Global Rush for Personal Protective Equipment, Regional Value Chains and Lessons for Africa

By:

Daniel O. Achach
Patrick Wasonga Anam

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Africa Could be headed for Huge Infection Numbers

As at the time of the writing of this paper in mid-April 2020, the Covid-19 pandemic is just settling on the African continent. With the numbers expected to rise astronomically in the weeks ahead. In our view, Africa could well be on the brink of a full-blown catastrophe. According to the World Health Organization (WHO), Africa now has over 29,000 confirmed Covid- 19 cases and over 1000 deaths. In Kenya, for instance, the cases have been rising steadily since the first case was reported on 13th March, 2020 and the country's Ministry of Health has warned that unless radical containment measures are engaged, there could be as much as 10,000 infections by the end

of April, 2020. The fear is that as the curves in China , Europe and USA start to level, Africa could experience drastic surges.

Africa's Health Care Systems among the Weakest in the World

The projected upsurge is likely to tremendously stretch and strain the healthcare system in fundamentally all African countries and, sadly, lead to more deaths. We need to remember that presently, African countries have some of the weakest healthcare systems in the world. In fact, most countries on the continent can barely effectively address the health needs of the citizenry, even during normal times. The needs now are not only of the patients but also of health workers alike.

Health Workers in Dire Need of Personal Protective Equipment

One cannot belabor the vulnerabilities that the health workers and first responders dealing with the victims of Covid 19 face every time they attend to the patients. As WHO aptly puts it,

> *"Health workers are at the front line of any outbreak response and as such are exposed to hazards that put them at risk of infection with an outbreak pathogen (in this case COVID-19). Hazards include pathogen exposure, long working hours, psychological distress, fatigue, occupational burnout, stigma, and physical and psychological violence. This document highlights the rights and responsibilities of health workers, including specific measures needed to protect occupational safety and health."*

Since the pandemic ravaging the world currently is highly infectious, it is critical that the health workers have access, at all times, to adequate Personal Protective Equipment (PPE). The products in question are reportedly in very short supply globally and we are likely to witness even more severe shortages as leading exporters move to restrict exportation.

Is Africa Ready for Trade Restrictions on PPEs During [Covid-19] Pandemic?

While addressing the press on 30th March, 2020, Kenya's Cabinet Secretary for Trade confidently spoke of Kenya being in the process of engaging local [Kenyan] industries who can make some of the components of the PPEs such as surgical masks, face masks and gloves. This is welcome news for the companies involved but this would have been recognized much earlier had Kenya and its neighbours been keener on implementing their industrial policies.

Earlier, there had been reports that Kenya had banned exportation of face masks as a way of stocking up in readiness for the infections. By the same token we have seen Tanzania ban export of ethanol to Kenya to enable its industries be in a position to make hand sanitizers and disinfectants. However given the projections of the infections, Africa could certainly require more PPEs and disinfectants than her manufacturers can produce even if it includes the highly publicized Jack Ma Foundation donations and other philanthropic ventures that could come in.

The International Trade Centre (ITC) in its latest Trade and Market Intelligence notes that some of the main suppliers of personal protective equipment have recently introduced export bans or restrictions. That whereas the total supply of personal protective equipment products is highly concentrated, five countries alone (China, United States, Germany, Malaysia and Viet Nam) account for almost two thirds of global exports. Four of these countries have introduced new export measures on at least one product.

It is also apparent that Turkey, Switzerland and the European Union have introduced a license and permission scheme to protect the availability of PPEs by requiring that exports of such equipment outside of the European Union are subject to an export authorization by Member States. The ITC further notes that 21 other countries have entirely banned the exports of these products, with the result that almost three quarters of world imports originate from the countries that currently ban or restrict exports. Whereas there have been concerted efforts in various African countries to manufacture certain comportments of PPEs, mass production of high-tech PPEs may not be supported by most African economies. This explains the enthusiasm with which any donations in the form of PPEs is welcome [in Africa].

Countries Relying on Importation of PPEs Could Suffer Greatly

Access to medical supplies by African countries is perceptibly in great jeopardy. According to available data, up to 50% of these medical imports particularly surgical masks as well as masks with filters originate from the countries that, out of self-preservation have put in place export restrictions. Of course there have been calls for “solidarity" by the WHO discouraging exports restrictions but which country will freely export masks to Africa amidst domestic scarcities? The world is fast resorting to self-preservation days and herein lies the greatest lesson for Africa; the time for our regional value chains is not nigh but now.

There have been similar calls for maintaining open trade by other global institutions and leaders like the European Commission (EC), the Association of German Chambers of Industry and Commerce and Belgium’s Deputy Prime Minister and UNCTAD among others. The rallying call has been avoiding unnecessary obstacles to trade. The tone herein is encouraging all the stakeholders to keep the trading lines especially for essential goods and services open despite the global pandemic. But will the world listen? And more fundamentally, are these trade restrictions supported under the Multilateral Trading System (MTS)?

Export Restrictions at the Multilateral Trading System

Article XI of the General Agreement on Trade and Tariffs (GATT 1994) provides for the general elimination of quantitative restrictions. Clearly, there are instances where the restrictions are allowed such as Article XI: 2 which is to the effect that export prohibitions or restrictions could be temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party. Significantly, Article XI: 2(a) has been construed by the Appellate Body as a carve-out (the general rule does not apply in the first place), not an exception. Consequently, an export restriction falls outside the scope of the general prohibition if it is temporarily applied to prevent or relieve critical shortages of foodstuffs or other essential products.

Notably, GATT Article XIII provides that all quantitative export restrictions must similarly prohibit or restrict exportation of like products to all third countries.

GATT Article I, in turn, provides that "*all rules and formalities in connection with … exportation*" must be applied on an MFN-basis. Articles XIII: 2 to 4 deal with specific rules in regard of import restrictions. Article XIII: 5 provides that these shall "*in so far as applicable … also extend to export restrictions*". The main "guiding principle" is stated in Article XIII:2: When applying an export restriction, WTO Members "*shall aim at a distribution of* trade*… approaching as closely as possible the shares which various [WTO Members] might be expected to obtain in the absence of such restrictions*". Impliedly, for example, where a WTO Member limits the export of ventilators, it ought to aim at an allocation of ventilator exports between other WTO Members that is as close as possible to the relative shares of ventilators that these other Members imported before the export restrictions were imposed.

It must however be noted that all the GATT provisions set out above are subject to the general exceptions in GATT Articles XX and XXI. For instance, Article XX which deals with security exceptions allows a WTO Member to take "*any action which it considers necessary for the protection of its essential security interests* " including action "*taken in time of war or other emergency in international relations*". Some WTO Members (including the United States) have argued that given the explicit terms "*any action with it considers necessary*", it is up to individual WTO Members alone to decide what Article XXI includes. This provision was discussed recently by a WTO Panel which reviewed compliance of certain Russian transit restrictions with the language in Article XXI, at the request of Ukraine.

Evidently, the countries that are currently employing the export restrictions can and will easily argue that these [medical] products cannot be exported as before as they are critical for their domestic health sectors, legitimately so within the GATT provisions.

Can Africa Develop Its Value Chains at the Continental Level and Regionally?

Global Value Chains (GVCs) refer to international production sharing, a phenomenon where production is broken into activities and tasks carried out in different countries. They can be thought of a large-scale extension of division of

labour.GVCs differ from Regional Value Chains (RVCs) in that, in the latter , the finished product is exported by a country within the region, either globally or regionally. Accordingly, they offer opportunities to the countries in the region to climb up the value chains by using the region to boost their competitiveness by producing and exporting higher value-added products.

According to UNCTAD, RVCs in Africa can also provide an opportunity to the countries in the region to link gainfully into the GVCs and increase their bargaining power with the lead firms. Africa therefore needs to thinks seriously about RVCs. RVCs are recognized in various legal instruments in Africa. Article 3 of the Treaty Establishing the African Continental Free Trade Area (AfCFTA) describes the objects of the AfCFTA to include the enhancement of competitiveness of the economies of state parties within the continent and the global market (3b). It also addresses industrialization object in Article 3(b) which speaks to promotion of industrial development through diversification and Regional Value Chains.

Africa has several Regional Economic Communities (RECs) which are indeed the building blocks of the AfCFTA. This is a realization that is embodied in the Article of the Article 3(c) of AfCFTA Treaty which states that one of the objectives of the AfCFTA is to contribute to the movement of capital and natural persons and facilitate investments building on the initiatives and developments in the State Parties and RECs. Further pursuant to Article 5 of the Treaty, the AfCFTA is to be governed by RECs' Free Trade Areas (FTAs) [as building blocs] for the AfCFTA. Accordingly, the principles of these RECs such as developing the Regional Value Chains are aptly espoused in AfCFTA. The East African Community (EAC) encourages RVCs by focusing on Industrialization and SME development which aims at "Improving the competitiveness of the industrial sector so as to enhance the expansion of trade in industrial goods within the Community and the export of industrial goods from the Partner States".

A cursory glance at the sector's expected outcomes include streamlined and coherent policy framework to support deepening of regional production systems and business linkages, harmonized policies, strategies and business climate regarding Small and Medium-sized Enterprise (SME) activities in the region and enhanced exports capacities and imports substitution and stronger

linkages across the priority value chains and many other fanciful aspirations.

Interestingly, most of these African aspirations remain paper policies and laws. There are no industries deliberately set up or supported by the regions to address strategic needs such as manufacture of medical equipment. Yet the Kenya Cabinet Secretary has recently been on record stating that Kenya could in fact be a regional supplier of the components needed for the PPEs. If the EAC partner states were focused on realizing the objects of EAC such industries would be operational today. Instead, we have seen increased importation of products that can be made regionally such as sanitizers. We are also witnessing instances of protectionism in the region, which is unsurprising given the partner states have not made any serious investments on regional value chains beyond paper pronouncements. Unfortunately, this sorry state is true for almost all RECs in Africa. The question therefore remains, will the continent succeed where the regions failed? Unless incisive and radical changes are made in the transition from the boardroom to the industries, real prospects appear dim.

Lessons for Kenya and the Rest of Africa

Even before the Covid-19 pandemic, it would appear that there were firms that could manufacture some of the PPEs. It is little wonder that within a very short time we are seeing companies indication they have capacity to manufacture these products. The question that begs is what has Kenya been waiting for? And have the relevant governments been deploying the need incentives to these firms?

There is chance for African countries to come up with trade policies that can encourage local manufacturers to engage in the making of products that are currently being imported including PPEs. This can be achieved by tax incentives, zero rating the importation of the components needed, lowering energy costs and encouraging innovation hubs. Regionally there is an opportunity for Kenya to be pioneer and leader in the Regional Value Chains.

As an illustration, Kenya's National Industrialization Policy in its preamble talks of *"recognizing the importance of promoting resource based industries, and in particular, labour intensive, export-oriented industries for increased productivity and growth in all the industrial sub-sectors, bearing in mind the*

impact of forward and backward linkages in the economy".

This is an ambitious policy which is yet to be implemented by the Kenyan government. Noteworthy, one of the strategies the Kenyan Government intends to employ is to "*Facilitate the creation of a business-friendly environment for private sector-led industrialization".* Is the environment friendly? Arguably not, otherwise these products that the country direly needs now would be available in plenty. The boardroom policies must be moved to the industries.

It is hoped that the Covid-19 pandemic will be a wake-up call for Africa. And Africa needs to minimize reliance on Aid as this experience clearly shows that donors will only donate if they are not in the same situation as the recipient.

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