Expanding intra-African Trade through Market Governance Tools

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Since its establishment in 1995, the World Trade Organization (WTO) has been unsuccessful in coming to an agreement on new commitments to liberalise market access at the multilateral level – for both goods and services. Its members have also been unable to address 'new' policy issues on the negative effects of domestic regulation on international trade and investment.[1]This is notwithstanding entry into force of the Trade Facilitation Agreement in 2017. In addition, there is a deadlock in negotiations on key items in the Doha Round of negotiations. This is mainly due to the existing differences across the WTO Membership in the substance of product regulations and national conformity assessment processes.[2]

Rather than addressing these differences at the multilateral level, Members have resorted to regional and plurilateral initiatives to address these issues. In this sense, the world has experienced a boom in regional integration processes in the last decade, resulting in a 'Spaghetti Bowl', of more than 267 regional

trade agreements[3] currently in place.[4] Africa has shared in this global tendency, and where there are at least 18 different trade agreements. Even with this increasing number of trade agreements, intra-African trade remains negligible. In 2017, it accounted for approx. USD 69 billion, i.e. the equivalent to 13.9 percent of the continent's imports and 16.5 percent of the continent's exports. In contrast, intra-EU trade amounted to more than 60 percent of the Union's total trade in 2017, whilst in that same period, intra-ASEAN trade accounted for approximately 24.6 percent of the region's trade with the world.[5] In response to this situation, in June 2015, the African Heads of States, reunited at the 25thSummit of the African Union (AU), agreed to start negotiations over a Continental Free Trade Area (AfCFTA). The final text of the AfCFTA was agreed on in March 2018. The AfCFTA expects to expand intra-African trade through better harmonization and coordination of trade liberalization and facilitation regimes and instruments across RECs and across Africa in general.[6] With 54 expected Contracting Parties, the AfCFTA is expected to bring together a combined population of more than one billion people and a combined Gross Domestic Product (GDP) of over USD 3.4 trillion.[7]

This new treaty also offers an opportunity to transform the diverse ranging and heterogeneous economies in Africa into a more unified and homogeneous market. The creation of a single continental unit is meant to allow the formation of larger economies of scale and enhance the region's specialization in agricultural and industrial production. However, the reduction or even elimination of tariffs will not be enough to reach the AU's objective of doubling the existing level of intra-African trade, as significant and continent-specific challenges lie ahead, such as:

1. a) inequitable distribution of gains;
2. b) paucity of financial resources;
3. c) weak will and commitment [for implementation]; and
4. d) existence of non-tariff barriers (NTBs).[8]

In this context, when a country decides to open up to trade, it might also decide to adopt certain measures to reduce the impact of its NTBs, and, more generally, its non-tariff measures. In this sense, regulatory cooperation as part of economic integration initiatives have relied mainly in three main instruments

to achieve such objective: harmonization, equivalence, and mutual recognition. 'Harmonization' is a straightforward process, consisting in the replacement of two or more rules and/or procedures by a single one. This approach addresses regulatory differences by 'aligning different standards or regulations in two or more jurisdictions and requiring both follow the same substantive regulations'.[9] 'Equivalence', also known as 'unilateral recognition', refers to the acknowledgement by a country that certain regulatory measures, such as standards, technical regulations, SPS measures, *inter alia*, implemented by another country are effective in pursuing the same policy objective as achieved by the importing country's NTMs, and it can therefore enter the domestic market.[10] 'Mutual recognition', as highlighted by Nicolaidis (2001), embodies the principle that 'products lawfully produced and marketed in one jurisdiction, can be sold and marketed freely in the other jurisdiction, without having to comply with all the details of the regulatory standards of the other state.'[11] In practice, mutual recognition requires some minimum level of regulatory harmonization.[12] A second conception of mutual recognition is linked to so-called Mutual Recognition Agreements (MRAs) on conformity assessment procedures. MRAs consist in the reciprocal acceptance of each other's assessment procedures as equivalent, ensuring the compliance with prevailing regulatory requirements.[13]

A recent survey carried out by the International Trade Centre (ITC) (2014) identified conformity assessments, Rules of Origin and related certificate of origin, pre-shipments inspections and technical requirements as the most common types of non-tariff measures (NTMs) suffered by Tanzanian exporting companies.[14] As highlighted by Veggeland and Elvestad (2004 & 2005), there are a series of steps necessary to determine what tool should be finally adopted. One step involves a cost-benefit analysis. In this sense, and before negotiations start, it is necessary to determine whether: (1) trade is actually impeded; (2) trade volumes are relevant; and (3) the economic benefits arising from the agreement are tangible. In this sense, Jorgensen and Schroder (2014) highlight that international negotiations on the coordination of standards should, for markets featuring price competition and/or fairly homogeneous products, a pre-commitment to mutual recognition. The authors argue that aiming at harmonization standards should be reserved for markets that mirror competition in quantities or where product/producer differentiation is high.[15]

A certain degree of symmetry between the regulatory systems of the parties should also exist, ensuring that negotiations develop smoothly.[16] One of the possible methods to approach the tool's design consists of a variety of elements including standards, and technical regulations. However, this approach might be a risky one, especially if the time and resources necessary to enforce the chosen mechanism is taken into consideration. Another method would be to adopt a sector-specific approach, consisting in inserting a *rendezvous* clause in the agreement laying down the principles that will guide future sectoral arrangements.[17] Following the approach introduced by Cadot and Ing (2015), the negotiating partners to the AfCFTA should consider adopting a 'soft' harmonization approach through the convergence on best practices. In this sense, it would be necessary to put in place, at the national level, "*an institutional setup ensuring that regulations pass tests of economic rationality and properly internalise key societal trade-offs*".[18]

This particular approach, rather than adopting the typical conception where each step in eliminating NTMs / NTBs is seen as a concession, it would embrace a 'country-centred' view where national regulatory improvement efforts lead to regional convergence. Unlike the approach described by Cadot and Ing, in the context of the AfCFTA a supra-national institution, such as the African Organisation for Standardisation (ARSO), would be in charge of ensuring that convergence is effectively met. Nevertheless, "*regulatory convergence between parties is a process over time that requires information exchange, mutual learning, training and trust building*".[19] Trust and confidence between the countries and their regulatory agencies is an important condition for making it possible to establish and maintain an effective market governance tool.[20]

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[1]Hoekman, B. & Mavroidis, P. C. (2015). 'Regulatory Spillovers and the Trading System: From Coherence to Cooperation'. E15 Initiative, ICTSD-WEF, April, p. 1.

[2]Nicolaidis, K. & Egan, M. (2001). 'Transnational market governance and regional policy externality: why recognize foreign standards?'. Journal of European Public Policy, Vol. 8, Number 3, Special Issue, pp. 454-455.

[3]The term ‘regional trade agreement’ makes reference to any kind of trade agreement by which a reciprocal trade preference is granted, such as free trade agreements and customs unions. It excludes unilateral trade preferences, i.e. Generalised Scheme of Preferences, AGOA, *inter alia*.

[4]See WTO – Regional Trade Agreements. Available at: https://www.wto.org/english/tratop_e/region_e/region_e.htm

[5]Source: UN Comtrade

[6]African Union: CFTA – Continental Free Trade Area. Available at: http://www.au.int/en/ti/cfta/about(accessed on June 10, 2017).

[7]*Ib.*

[8]UNECA (2012). ‘Assessing Regional Integration in Africa V: Towards an African Continental Free Trade Area’. UN Economic Commission for Africa, African Union, African Development Bank. p. 36. A series of additional reasons, such as (1) lack of trade infrastructure; (2) low productive capacity; (3) weak implementation of regional trade agreements (RTAs) and overlapping memberships to RECs; and (4) external market access and trade policy. See Mbekeani, K. K. (2013). ‘Understanding the Barriers to Regional Trade Integration in Africa’, African Development Bank, NEPAD, Regional Trade and Integration Department, pp. 19-29.

[9]Osborne, K. (2002). ‘Harmonisation and Mutual Recognition of Product Standards in Europe: what options for an Australia United States Free Trade Agreement?’ Paper presented at the Australia/United States Free Trade Agreement Conference, on the 29th of August 2002, National Press Club, Canberra, p. 3.

[10]Piermartini, R. & Budetta, M. (2009), ‘A mapping of regional rules on technical barriers to trade’, in Estevadeordal, A., Suominen, K. & Teh, R. (eds), ‘Regional Rules in the Global Trading System’, Cambridge University Press, p. 258.

[11]Nicolaidis, K. (2001). ‘Harmonisation and Recognition: What Have We Learned?’ In Trade and Regulatory Reform: Insights from Country Experience. Organisation for Economic Co-operation and Development, Paris, p. 98.

[12]Hoekman, B. (2015). ‘Trade Agreements and International Regulatory Cooperation in a Supply Chain Worls’. European University Institute Working Paper RSCAS 2015/04, p. 4.

[13]Veggeland, F. & Elvestad, C. (2004). ‘Equivalence and Mutual Recognition in Trade Agreements: Relevance for the WTO and the Codex Alimentarius Commission’. Norwegian Agricultural Economics Research Institute, p. 9.

[14]The survey also found that the majority of these measures are applied by EAC and SADC Member States, RECs to which Tanzania is also Member. ITC (2014). ‘The United Republic of Tanzania: Company Perspectives – An ITC Series on Non-Tariff Measures’. International Trade Centre (UN-WTO), Geneva, pp. 23-25.

[15]Jorgensen, J. G. & Schroder, P. J. H. (2014). ‘Harmonization versus Mutual Recognition: Some pitfalls for the coordination of product standards under imperfect competition’, Discussion Papers on Business and Economics, No. 23/2014, University of Southern Denmark, p. 14.

[16]See Veggeland, F. & Elvestad, C. (2004), supra at 15. See also Elvestad and Veggeland (2005). International Trade and Guidelines on Equivalence and Mutual Recognition, Norwegian Agricultural Economics Research Institute, NILF 2005-1.

[17]See Elvestad and Veggeland (2005), *ib*.

[18]Cadot, O. & Ing, L. Y. (2015). Non-tariff Measures and Harmonisation: Issues for the RCEP. ERIA Discussion Paper Series, ERIA-DP-2015-61, pp. 34-35.

[19]Veggeland, F. & Elvestad, C. (2004), supra n. 15 at 52.

[20]*Ib*.

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