UNCONVENTIONAL WISDOM: TRADE DIVERSION AS A POTENTIAL STUMBLING BLOCK TO THE IMPLEMENTATION OF AfCFTA

By:

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In a previous article, Melaku Desta, Guillaume Gérout, and Jamie MacLeod argued that the AfCFTA is vulnerable to externally-imposed threats of fragmentation because of bilateral agreements concluded between other world economies and African countries. They argued that these agreements would hamstring the AfCFTA's implementation.

This article contends that premised on being Africa's major trading partners, economies such as the US, the EU, and China are likely to experience trade diversion when the AfCFTA comes into force. As a result of such potential trade diversion, the implementation of the AfCFTA could be hindered. It is only by addressing the interests of these economies that AfCFTA will foreclose the possibility of a "crisis of implementation".

Pacta tertiis nec nocent nec prosunt (a treaty binds the parties and only the parties)

A discussion of trade diversion has to be preceded by mention of one of the sacrosanct principles in the law of treaties, namely that "a treaty only creates law as between States which are parties to it, and no rights can be deduced from it in favour of third Parties". This rule is provided in Article 34 of the Vienna Convention on the Law of Treaties. Notwithstanding this rule, preferential trade agreements (PTAs), such as AfCFTA, concluded among some states alter, by definition, the flow of trade to and from non-party nations. Third parties are routinely excluded from any stage of negotiation, implementation or enforcement of deals struck by parties to an agreement.

The most elementary conceptualisation of trade diversion is that just as in a contract for sale of goods between a seller and her consumers takes wealth away from that seller's competitors, PTAs divert trade away from third, at times more efficient, States. History's most prominent account of trade diversion as a result of accordance of regional preferences is the death of Algeria's wine industry owing the formation of the European Economic Community; Algeria was hitherto the world's largest exporter of wine, but the nascent EEC required boosting agriculture inside the new trade bloc, thus necessitating protecting EEC wine production from competitive imports.

Gaining at Algeria's expense was Italy, which had comparable weather conditions, plenty of vineyards, and much to gain from the elimination of barriers on their wine exports within the EEC. Negative externalities qua trade diversionwill thus be inevitably prominent within a discussion of AfCFTA.

Trade diversion as potential hindrance to AfCFTA implementation

Part V of AfCFTA on continental preferences to be extended to fellow African exports are likely to offset existing preferences in favor of the said, and many other, economies. Although the AfCFTA may boost intra-African trade, it is important to bear in mind Jacob Viner's argument that "a tariff that is high, but uniform in its treatment of imports regardless of their origin, may divert trade from the channels which it would follow if allowed freely to choose its own path much less than would a moderate tariff which applies different treatment to imports according to their country of origin”.

Preferential treatment of goods and services, he went further to argue, by virtue of being discriminatory and not uniformly extended to all, “operates as a deterrent instead of a stimulus to the optimum allocation of the world’s resources”, leading to an internecine price increase for the consumer, reduced exports for the third Party producer, and reduced revenue for the importing State. This prospect would render AfCFTA inimical to the “promise of free trade and free movement” and “prosperity for all Africans”. Commodities which one AfCFTA member will now newly import from the other would previously be imported from a third Party, because that was the cheapest possible source of supply even after payment of duty, and would thus involve a shift between “a low-cost third country and the other, high-cost, member country.”

Owing to preexisting bilateral trade agreements such as the Greater Arab Free Trade Area (GAFTA) and Economic Partnership Agreements (EPAs) between the EU and ACP countries, non-parties to AfCFTA enjoy some preferential access to the African market. Needless to say, due to AfCFTA’s potential of upsetting preexisting trade equilibria that favour other world economies, these economies have the motivation to hinder its implementation by pursuing bilateral agreements, as a means to leverage disproportionate economic heft.

Conclusion

In furtherance of the foregoing, the confinement of the negotiation of AfCFTA to the African market, however well-intentioned, may have some counterproductively consequences. For example, the AfCFTA may have the negative effect of raising prices on market actors who are excluded from the Agreement.The AfCFTA pursues boosting intra-African trade as one of its chief objects, but caution ought to be exercised to preclude the possibility of excluding the remaining 96% of World GDP, thereby rendering AfCFTA an instrument of “afro-protectionism”.

Since PTAs such as AfCFTA allow for trade liberalisation between a lower number of States than would be possible via multilateral negotiations, non-parties to AfCFTA have to be afforded audience in pursuance of “an assessment of the requirements for the establishment of a future common market including steps to be taken as well as their implications and challenges”. It also ought to be emphasised that AfCFTA will operate in a global economic milieu, and therefore greater prominence ought to be lent to the AU Assembly's resolution "engage external partners as one bloc", lest the potential victims of trade diversion exploit the fissures between African countries to bottleneck the implementation of AfCFTA.

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