The Trade Facilitation Efforts of the SADC States: Prospects of Advancement by the African Continental Free Trade Agreement

By:

Tsotang Tsietsi

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Regional integration requires not only the elimination of tariff and non-tariff barriers, but also the removal of impediments that cause the physical movement of goods across borders to be slow and costly. These impediments may arise due to defects in policies, laws or procedures. Thus, trade should not only be *liberalised*, but it also needs to be *facilitated*. The World Trade Organization (WTO) defines trade facilitation as "the simplification, modernization and harmonization of export and import processes." Six of the Southern African Development Community (SADC) countries are land-locked (Botswana, Lesotho, Malawi, Swaziland, Zambia and Zimbabwe). Therefore, inefficiency and high costs in cross-border trade have detrimental impacts on their ability to participate in global, as well as in regional trade. SADC states are parties to several agreements that aim at facilitating trade. However, the

implementation of obligations remains a chronic challenge.

The latest agreement is the African Continental Free Trade Agreement (AfCFTA). It is argued that, on paper, it contains the most ambitious and comprehensive provisions on trade facilitation that SADC countries have ever agreed to, and that it can, thus, potentially, be a game changer. There are numerous agencies which execute various functions at Southern African borders. These authorities include immigration officials who control the movement of persons, and customs officials who control the movement of goods. Officials from the departments of agriculture, fisheries, forestry and port health control the entry of goods that may pose a threat to the health and lives of plants, animals and humans. Transport officers control the movement of private and commercial vehicles. The security cluster (police, defence and intelligence) ensure that borders are safe spaces. In order for trade to be facilitated, all of these agencies must operate efficiently and in a co-ordinated manner. Where there is lack of co-ordination, for example, in the form of turf wars, or duplications, and where systems and processes do not speak to each other, this will cause delays in the conduct of trade. Trade facilitation addresses issues such as these. It also addresses other delay-causing hurdles such as:

- Onerous requirements and procedures for trade.
- Lack of transparency regarding applicable trade laws and procedures.
- The low use of technology and mechanisation, which compromises efficiency.
- High trade costs (including unofficial costs from bribery and corruption).
- Deficiencies in the quantity and quality of staff, which affects service delivery.

Such deficiencies have resulted in it being exceedingly expensive and time-consuming to trade on the African continent, including in Southern Africa. It has been reported that "shipping a car from Japan to Abidjan costs US$1,500 but shipping the same car from Abidjan to Addis Ababa costs US$5,000." High trade costs and sluggish processing times contribute to low rates of intra-SADC trade, and thus, threaten the very core purpose of SADC. The African Union (AU) has reported that there are comparatively low rates of intra-African trade (10%), as opposed to 60% in Europe, 40% in North America, and 30% in the Association of South-East Nations.

SADC Trade Facilitation Efforts

Five of the SADC states participate in the Southern African Customs Union (SACU). The arrangement is an effort to facilitate trade because members adopt common tariffs and common trade regulations. However, only one article of the SACU Agreement, Article 23 (2), addresses trade facilitation. Members are to "take measures that are necessary to ensure the simplification and harmonisation of trade documents and procedures." The deficiency with this provision is that it is not specific enough to inspire implementation because it does not specify exactly what it is that members should do. Annex III to the 1996 SADC Trade Protocol (TP) represents a further effort to facilitate trade. It requires members to reduce the number and costs of trade documentation, reduce the number of agencies involved in cross-border trade, and to standardise trade documents. It, further, requires the establishment of a Sub-Committee on Trade Facilitation. This was the first instance where there were more concrete obligations for members. However, there is a limited number of trade facilitation measures, and the institution is not given a mandate to oversee implementation. In June 2011, SADC states joined their counterparts in the Common Market for Eastern and Southern Africa (COMESA) and the East African Community (EAC) in launching negotiations towards the creation of a Tri-Partite Free Trade Area (TFTA). Again, trade facilitation featured in this agenda. The trade facilitation annex to the Protocol on Goods to the Tri-Partite Free Trade Agreement is a mirror image of that of the SADC Protocol on Trade. Therefore, this effort did not advance the expansion of trade facilitation measures, nor the concretisation of legally binding obligations. It only expanded the coverage of members. The agreement has not yet entered into force because of an insufficient number of ratifications. However, it shows that SADC states have the ambition to address trade facilitation challenges beyond their immediate region.

The African Continental Free Trade Agreement (AfCFTA)

Recently, SADC states have joined the AfCFTA. Annex 4 of the AfCFTA's Protocol on Trade deals with trade facilitation. Unlike the previously discussed agreements, this annex has several advantages.

- It has a more elaborate definition of trade facilitation terms (eleven terms, as opposed to three in the SADC TP and TFTA). Members will have greater clarity on the meaning and scope of obligations.
- The number of trade facilitation measures covered is far expanded as compared to in the previous agreements. For example, new obligations to: establish enquiry points, give advance rulings, have risk management systems, install expedited procedures for perishable goods, provide mechanisms for appeal and review, and require reasonable fees, charges and penalties.
- Most of the provisions (14 out of 22) are couched in binding legal language, for instance, members “shall establish/adopt/maintain/ensure”, or “shall not”.

It is expected and hoped that, with political will and technical assistance, the implementation of the AfCFTA by SADC will finally yield benefits for traders in the region.

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