The Movement of People to Provide Services in the AfCFTA: Taking Stock of the Progress and Tackling Some Challenges Ahead

By:

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1. Introduction

The Negotiations that led to the signing of the Agreement Establishing the African Continental Free Trade Area (AfCFTA) on 21 March 2018 marked a turning point in Africa's economic integration. These negotiations were peculiar in that they tackled both goods and services concurrently, thereby departing from the paradigmatic linear model that had heretofore characterized African trade blocs where services were always relegated to the queue of the integration phases. By this conceptual shift, African countries recognize that trade in goods can no longer be isolated from services that are usually essential for the realization of the benefit of merchandise trade. However services tend to be heavily regulated. This has to do in part with the diverse sources of rules

governing the different sectors of services. Indeed, contrary to goods whose rules are generally adopted by states at the domestic level, services regulations are not only done by states, but also come from business and professional associations, trade unions, etc. While it is undisputed that regulation of services serves a number of legitimate purposes including consumer protection, these necessary regulatory interventions usually raise a number of questions among trading partners, including whether they should harmonise their regulations or even use mechanisms through which they recognize one another's standards as equivalent to theirs (Fink and Jansen, 2009). For service suppliers to benefit from the liberalization of services at regional level, a lot has to happen domestically to provide them with a sense of ownership of the good intentions contained in the treaties. This piece discusses the obstacles faced particularly by individuals as service providers, which need to be addressed in order to meet the "substantial liberalization" principle contained in Article 5(j) of the AfCFTA Agreement. These are immigration and mutual recognition of qualifications and training.

2. The Movement of People as Services Providers in the AfCFTA

The goal of the AfCFTA Protocol on Trade in Services(the Services Protocol) is "to create a single liberalised market for trade in services".Pursuant to Article 1(p)(iv) of the Services Protocol, trade in services should be understood as the supply of services "by a supplier of one State Party through the presence of natural persons of a State Party in the territory of any other State Party". This is the supply of services through what is known in the trade jargon as "Mode 4". The latter describes a situation where a worker crosses the border to provide a service. The discipline applies to both the services suppliers in an individual capacity (e.g. independent consultants) or natural persons employed by a company that is itself a service supplier. Beneficiaries can either be employed in their home country and be present in the host state to supply a service or be employed by a service supplier established in the host state. The supply of services through Mode 4 faces significant barriers however. These barriers range from immigration-related restrictions to quantitative restrictions as well as other discriminations based not only on qualifications and trainings, but also on preferences for domestic service suppliers (Chanda, 2001). While intra-

regional trade in services is already happening on the continent in a number of sectors like hairdressing, agricultural services, construction and even health and education, despite the obstacles on the movement of services and service suppliers, these volumes of trade are seldom captured by statistics due to their informal nature (Dihel and Goswami, 2016). Consequently, the challenges lie in the creation of the conditions for trade to move out of informality. This would certainly boost exchanges further and encourage not only national but also cross-border investments in the services sector. While the liberalization of intra-African air transport through the creation of a Single African Air Transport Market(SAATM) is a great step to accelerate the movement people across the continent, among which those travelling to provide services in other countries, it may only materialize if the usual barriers are lifted. Consequently, one way to harness the benefit of services trade liberalization is to address immigration-related barriers (including the prohibitive cost of obtaining visas, the obstacles on residency and work permits as well other immigration obstacles), or to recognise one another's training and qualifications as equivalent for service supply purposes.

a) Mutual recognition of training and qualifications as necessary step for deep integration

Recognition is in itself an advanced instrument of trade liberalizationthat requires a degree of economic andpolitical integration beyond traditional instruments of liberalization suchas non-discrimination or market access. While the practice so far is the recognition of professional qualifications, recognition also extends to academic qualifications that can either facilitate direct access to employment in the host state or enable applicants to enroll in further study or training in the host country. Recognition generally requires a minimum standard of regulatory cohesion between different systems, which exists more frequently at a regional than at the global level. In Africa, the East African Community (EAC)also makes use of mutual recognition of professional qualifications among its members as complement to the commitments to liberalize services in the other sectors. The EAC is a model of an advanced integration in services in Africa and is today the only intra-African trade pact in services notified as such at the World Trade Organization (WTO) . As of October 2014, mutual recognition agreements in the EAC were in place for architectural,

accountancy, and engineering services, with the ones on legal, medical, nursing, quantity surveying, and veterinary services still in negotiation (Hook, 2016). The AfCFTA Services Protocol stipulates that its members can achieve mutual recognition through harmonisation, either autonomously or by entering into mutual recognition agreements. The Protocol requires the State Parties to afford “adequate” opportunity to any requester to demonstrate that it satisfies the requirements for recognition, while warning them from using mutual recognition as a means of discrimination or a disguised restriction on services trade.

b) Doing away with immigration hurdles

Immigration obstacles are reasons why a bulk of trade in services in Africa has so far remained in informality (Dihel and Goswami, 2016). The Protocol on the Free Movement of Personsis a welcome development in that respect as it purports to address these hindrances. In effect, this Protocol prohibits all types of discrimination against nationals of other Member States ‘entering, residing or established’ in one’s territory. Interestingly, the Free Movement Protocol also requires members to recognize, “individually or through bilateral, multilateral or regional arrangements”, academic and professional qualifications between themselves. The Free Movement Protocol is also based on progressive liberalization, the first phase of which is dedicated to the implementation of the right of entry and the suppression of visa requirements. The discussions around the adoption of the African Passport are taking place against this context. Indeed, the African Passport is intended to facilitate the movement of all Africans, including services providers, within the continent. This indeed aims at giving a meaning to the Protocol on the Free Movement of Persons. However, the slow pace of the Protocol’s ratification is alarming and should be tackled as a matter of emergency. This is especially imperative because the realization of the potential of Mode 4 trade in the Protocol on Trade in Services is inextricably linked to the progress made in the Free Movement of Persons Protocol. As of July 2018, out of 55 African countries, 32 had signed the Protocol, while only Rwanda had ratified. It is unfortunate that no other country has since followed suit.

3. Conclusion

The provisions regarding the movement of people as services suppliers in the AfCFTA are a welcome development in the agenda of boosting intra-African trade in services. The next phases of trade in services are currently under negotiations at the end of which State Parties are expected to take specific commitments in sectors and modes of supply. It is only upon completion of that phase that the breadth and depth of service liberalization in the AfCFTA will be appreciated and possibly quantified. Before that time arises, it is already essential to emphasize on eliminating discrepancies regarding qualifications and trainings as well as immigration obstacles. However, the rate of ratification of the free movement protocol at the current stage is far from encouraging. In fact, it appears as though the usual demons of free movement of people nurtured by anti-immigration sentiments is still haunting African states. If Africa is to exploit the benefits of services trade and achieve substantial liberalization, the necessary conditions need to be put in place, and this necessitates, among others, addressing the barriers to the provision of services by individuals.

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