Regional Economic Communities as the building blocs of African Continental Free Trade Area Agreement: Challenges and Way Forward

By:

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The conclusion of African Continental Free Trade Area (AfCFTA) agreement is a culmination of African Union's (AU) effort to foster closer continent-wide economic integration and intra-African Trade.[1]It is estimated that AfCFTA will result in gross domestic product (GDP) of over $2.5 trillion, covering a market of 1.2 billion people, across 55 member states of the AU. AfCFTA constitutes the world's largest free trade area in terms of the number of participating countries. With the current tariffs rate of roughly over 6.1 per cent, Africa is characterized by higher tariffs for export within Africa than export outside it. AfCFTA is poised to progressively eliminate tariffs and non-tariff barriers (NTBs) on intra-African trade, thereby simplifying and fostering enhanced businesses

activities within the continent.It is expected that AfCFTA will provide significant opportunities for 'trading enterprises, businesses and consumers across Africa and the chance to support sustainable development in the world's least developed region'. The Economic Commission for Africa (ECA) estimates that AfCFTA has the potential 'both to boost intra-African trade by 52.3 per cent by eliminating import duties, and to double this trade if non tariff barriers are also reduced'. Overall, liberalization engendered by AfCFTA is expected to foster socio-economic development and industrial competitiveness in Africa.

Regional Economic Communities as the building blocs of AfCFTA

Regional Economic Communities (RECs) currently recognized by the AU are eight, namely:(1)Arab Maghreb Union (UMA);**(2)** Common Market for Eastern and Southern Africa (COMESA);**(3)** Community of Sahel-Saharan States (CEN-SAD);**(4)** East African Community (EAC);**(5)** Economic Community of Central African States (ECCAS);**(6)** Economic Community of West African States (ECOWAS);**(7)** Intergovernmental Authority on Development (IGAD); and **(8)** Southern African Development Community (SADC).

AfCFTA recognizes RECs as its building bloc. This is in line with the historical efforts reflected in the Lagos Action Plan of 1980 and the transitional plan of AU articulated in the 1991 Abuja Treaty establishing African Economic Community (Abuja Treaty) to make RECs the building blocs of continent-wide integration. Hence, AfCFTA enjoins State Parties that are members of other RECs, which have attained among themselves higher levels of elimination of customs duties and trade barriers than those provided for under the Protocol, to continue maintaining, and where possible improve upon, those higher levels of trade liberalization among themselves.This approach constitutes a bottom-up approach to embedding uniformity of trade norms. But this is faced with potential challenges.

Potential Challenges

1. *Fragmentations and divergences in trade norms and practices*: The RECs evolved individually and are underpinned by differing roles and structures. Accordingly, the obligations imposed by the various RECs on AfCFTA members are both complementary and contradictory to AfCFTA

obligations. Hence, prioritizing best practices among RECs over AfCFTA entails existing differences and divergences among RECs trade practices will continue to hold sway, leading to further fragmentation and lack of uniformity in the continent-wide trade norms and practices.

2. *Sub-optimal performance of RECs*: RECs members are generally bedeviled by capacity constraints, lack of viable infrastructure such as inter-state transport infrastructure and unreliable supply of electricity; and prevalence of NTBs applied to protect national interests. Regulatory barriers and political considerations are being applied time and again to protect national interest and small and medium scale enterprises. This distorts the goal of liberalization.
3. *Prevalence of lack of institutional accountability and transparency*: There is a prevalent institutional weakness among RECs members. Democratic practices and governance norms have generally failed to foster institutional independence and accountability. In other words, there is generally low accountability and transparency of processes and outcomes.
4. *The rulings of regional courts are often ignored by RECs members.* There are still vestiges of autocratic disposition to governance among RECs members. Apart from non-democratic governments prevalent among RECs members, even the so-called democratic governments have not fully adhered to democratic accountability and norms. Some RECs members not only disregard their courts' rulings but also ignore the rulings of sub-regional courts. The preceding is usually the case where the national interest is at stake, or where the government clothes parochial interests in the garb of national interest. The transposition of this to trade arena may lead to retaliation which could distort free flow of trade.

Way Forward

1. With regard to divergences that may underline best practices among RECs, it can be contended that on the basis of the MFN rule whatever advantage, favour or privilege applicable to members of any REC is to be extended to all members of AfCFTA based on reciprocity. However, this will not eliminate divergences in trade norms; rather it will only remove discrimination among different RECs. Divergences in best practices among RECs can only be eliminated if best practices are collated and applied in top down manner whereupon obligations flow from continental level to

regional or state levels.

2. There is a need for massive investment in infrastructure such as transport infrastructure, electricity supply, as well as capacity building. Some African countries are resorting to China for infrastructure financing but the terms of this are not always available thereby creating opacity. In any case, some AfCFTA members are significantly endowed enabling them to rely on internal financing except that financial resources generated are not used prudently.Perhaps, the situation can be ameliorated if AfCFTA implementation is pursued simultaneously with the Action Plan for Boosting Intra Africa Trade (BIAT).
3. The success of AfCFTA will be significantly dependent on the level of accountability and transparency of processes and institutions implementing regulations.
4. Finally, respect for the judicial rulings of supranational character is critical for the success of a rule-based trading system like AfCFTA.

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[1]For the pros and cons of AfCFTA, see Collins C. Ajibo, 'African Continental Free Trade Area Agreement: the Euphoria, Pitfalls and Prospects' (2019) 53(5) Journal of World Trade (forthcoming).

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