

The AfCFTA holds more than economic Promises

Gerhard Erasmus and Trudi Hartzenberg

Most commentaries on the African Continental Free Trade Area (AfCFTA) emphasise the massive commercial opportunities which will be unlocked, and more recently how industrialisation on the continent will be advanced. Such outcomes will have huge developmental benefits. Industrialization will contribute to developing and diversifying productive capacity, which will also increase Africa's resilience to future shocks. However, much more needs to be done in terms of developing and adopting new and better national and regional policies and improving trade governance; the AfCFTA is not a self-executing instrument. Private sector initiatives and foreign direct investment will be key.

There are other positive aspects that one should not ignore. Some of them are about a new approach to economic integration. The adoption of the AfCFTA Agreement brings about a new approach to continental integration. The REC Free Trade Areas (FTAs) and the preservation of the *acquis* (which refers to what has already been achieved in terms of regional integration and trade liberalisation) are explicitly recognised as part of the future plan of action.

The AfCFTA Agreement has, by implication, also altered the formula in the Abuja Treaty for how the African Economic Community (AEC) would come about. The implementation of the Abuja Treaty required a process to be completed in six stages and taking place over 34 years. The AEC was supposed to be in place by 2028.¹ The summary presented on the website of the South African Department of International Relations provides a record of the Abuja stages, which were designed to happen as follows:

¹ Department of International Relations and Cooperation (DIRCO). *African Economic Community (AEC)*. <http://www.dirco.gov.za/foreign/Multilateral/africa/aec.htm>

- Stage 1: Strengthening existing RECs and creating new ones where needed (5 years).
- Stage 2: Stabilisation of tariff and other barriers to regional trade and the strengthening of sectoral integration, particularly in the field of trade, agriculture, finance, transport and communication, industry and energy, as well as coordination and harmonisation of the activities of the RECs (8 years).
- Stage 3: Establishment of a free trade area and a Customs Union at the level of each REC (10 years).
- Stage 4: Coordination and harmonisation of tariff and non-tariff systems among RECs, with a view to establishing a Continental Customs Union (2 years).
- Stage 5: Establishment of an African Common Market and the adoption of common policies (4 years).
- Stage 6: Integration of all sectors, establishment of an African Central Bank and a single African currency, setting up of an African Economic and Monetary Union and creating and electing the first Pan-African Parliament (5 years).²

The Abuja formula and timetable was a bridge too far for the 55 AU Member States at their very different levels of economic development. The sacrifice of national policy space was too sudden and restricting. Continental integration on such a dramatic scale and within a relatively short period was ab initio unrealistic.

What African Governments have now adopted through the AfCFTA is a member-driven arrangement in which forward movement will be decided through decisions taken by the State Parties in the Council of Ministers; on the basis of consensus. The AfCFTA still professes that the aim is “integrating Africa’s markets in line with the objectives and principles enunciated in the Abuja Treaty.”³ This will happen in terms of a new approach.

Article 3 of the AfCFTA Agreement lists the AfCFTA’s General Objectives. The ultimate aim is to “create a single market for goods, services, facilitated by movement of persons in order to deepen the

² Ibid.

³ Preamble AfCFTA Agreement.

economic integration of the African continent.” However, this will happen when the State Parties are ready. A “liberalised market for goods and services” will be established “through successive rounds of negotiations”. Further liberalisation will require the explicit acceptance, by the State Parties, of new obligations to reduce tariffs and to remove non-tariff barriers (NTBs) and restrictions on external service providers. The AfCFTA also wants to “lay the foundation for the establishment of a Continental Customs Union at a later stage”. No time frame is specified. Such a far-reaching step can only come about if the State Parties formally so agree and if they are prepared to abandon the trade-related benefits inherent in the REC FTAs.

In the meantime, some tidying up in the RECs will be required. Overlapping membership will have to be addressed; the AfCFTA does not include a plan to achieve this. The only indication is in the general objectives of the AfCFTA to “resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes”.⁴

Individual countries cannot belong to more than one customs union at the same time. According to Article XXIV(8) of the GATT a customs union

“shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that duties and other restrictive regulations of commerce... are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and... substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union.”

The formal adoption of the AfCFTA Agreement is a mile-stone event. It has given birth to a collection of legal instruments constituting one integral pact and a formula for future expansion.⁵ A new dispute settlement mechanism has been adopted and might bring about better trade governance through rules-based trade and the settlement of disputes through adjudication. There are no supra-national institutions, but the Secretariat shall be a “functionally autonomous institutional body within the African Union system with an independent legal personality”.⁶ These are positive signs in their own right.

⁴ Art 3(h) AfCFTA Agreement.

⁵ Art 23 of the AfCFTA Agreement says any other Instrument within the scope of this Agreement deemed necessary

⁶ Art 13(3) AfCFTA Agreement.