

How will the AfCFTA and other African Trade Arrangements co-exist?

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When fully implemented and joined by all African Union (AU) Member States, the African Continental Free Trade Area (AfCFTA) will constitute a continent-wide trade arrangement under one set of rules, legal instruments and institutions. This could become a comprehensive regime for liberalizing trade in goods and services, as well as regulating investment, competition, and intellectual property rights. More legal instruments will apparently be added over time.¹

The impact of this ambitious arrangement will depend on several factors: The nature of the commitments (will they go beyond mere cooperation promises?), the time-frame allowed for implementation, and the monitoring of compliance. Success also depends on whether the AfCFTA regime will be rules-based, with effective remedies for the State Parties as well as for private parties. How easy will it be to derogate from obligations?²

The Regional Economic Communities (RECs) constitute an important feature of the African trade and integration landscape. Some of them have booked important achievements. They also have plans for deeper integration. Overlapping membership of the RECs is, however, a complicating factor. Most African countries belong to more than one REC. The result is that different rules of origin, tariffs, standards, dispute settlement procedures etc apply to the same goods. The REC legal systems are not coordinated. The rules of origin in the Southern African Development Community (SADC) are, for example, stricter than those in other RECs. This state of affairs results in fragmentation and duplication.

How will the AfCFTA address this problem? Article 3 of the AfCFTA Agreement says that the objective is to create “*a single market for goods, services, facilitated by movement of persons in order to deepen the economic integration of the African continent... and to create a liberalised market for goods and services through successive rounds of negotiations*”.

Successive rounds of AfCFTA negotiations (in which decisions will be taken by consensus and where variable geometry will be possible³) will have to be pursued very deliberately and within agreed timeframes for the single African market to become a reality. There should be a formal AfCFTA plan of action to make this objective a reality. The 55 economies of African countries are at different levels of development, posing the danger



that in such a large constellation of states, the lowest common denominator will set the norm. If this happens the gap between the RECs and the AfCFTA regime may grow. REC agendas on deeper integration involve a smaller number of states. They also enjoy a head-start advantage.

Article 19(2) of the AfCFTA Agreement allows for overlapping membership of a particular kind: *State Parties that are members of other regional economic communities, regional trading arrangements and custom unions, which have attained among themselves higher levels of regional integration than under this Agreement, shall maintain such higher levels among themselves.* (Emphasis added.)

The effect of this provision is that intra-African trade in goods (the REC regimes for services are less detailed) will also take place under the rules and conditions already in place. More than 60% of intra-African trade in goods happens in SADC. New players will not find it easy to penetrate these markets.

Article 19 does not have a sunset clause. Since the RECs are more advanced in terms of the scope and depth of their *inter partes* commitments and the quality of their infrastructural support systems, they will offer better deals to investors. They have smaller memberships and will continue to pursue their own integration agendas. Different layers of integration at different speeds are, therefore, likely. The RECs also enjoy a head-start advantage.

Under Article 19 customs unions such as the Southern African Customs Union (SACU) and those planned for in some of the RECS, as well as the Tripartite Free Trade Area (TFTA), once in force, shall be maintained. The TFTA started off with promises to bring all the Member States of SADC, the East African Community (EAC), and the Common Market for Eastern and Southern Africa (COMESA) into one trade arrangement. It did not work out that way. Once the *acquis* (the principle that commitments already accepted shall remain binding for the members of existing Free Trade Areas (FTAs)) got accepted, tariff offers were extended between only those States not yet in the same FTA.

It is unrealistic and politically impossible to do away with the RECs. The very real integration benefits already achieved under their regimes are important for the participating countries. The missing element in the AfCFTA plan for a single African market is the absence of a provision on institutional linkages with the RECs. As presently formulated there will be several African integration initiatives at work simultaneously. They should speak to each other.

The AfCFTA will make a meaningful contribution to intra-African trade by bringing all the Member States closer together. This will take time and effort. A more immediate benefit can be achieved if the AfCFTA can unlock continent-wide **trade in services** liberalization. It will bring about a major new dynamic. That could be the AfCFTA's most important direct contribution to African integration. That will complement the modest results of the RECs in trade in services and will boost an area with the potential to propel Africa into the 21st century. The AfCFTA Agreement states explicitly that it wants to create a single African market for goods **and** services.⁴ It should do so.

¹ Foreseen by Art 8, AfCFTA Agreement.

² Art 15 of the AfCFTA Agreement provides that in exceptional circumstances the Council of Ministers may waive the obligations of the Member States. Such waivers will be for a specific time and qualified by certain conditions. This provision is modelled on Art IX of the Marrakesh Agreement establishing the World Trade Organization.

³ Variable geometry allows integration at different speeds. See art 5 AfCFTA Agreement.

⁴ Art 3 AfCFTA Agreement.