

## How comprehensive will the AfCFTA be?

The expectations about the African Continental Free Trade Area (AfCFTA) are high. As recently observed by one commentator:

*“The AfCFTA couldn’t be timelier. Its expected impact on the region’s manufacturing and intra-trade potentials converge with its rapid digital transformation, providing a real opportunity for African e-Commerce and indigenous brands to compete at the inflexion point of global logistics and supply chains, evidenced by re-onshoring and offshoring strategies being adopted globally, as China’s competitive dynamics as a sourcing destination evolves. Globally, digital transformation is aiding new business models to capture emerging sales channels.”<sup>1</sup>*

However, for these expectations (or some of them) to be realized we should start with an assessment of what the AfCFTA is about. What can it deliver? Does it have institutions with powers to act on behalf of the whole continent and in respect of all the areas that must be addressed, such as those mentioned above and including rapid digital transformation and African e-Commerce?

The first feature of the AfCFTA to be mentioned is that is a Free Trade Area (FTA) for trade in goods and five services sectors. <sup>2</sup> An FTA is an economic integration arrangement in which the State Parties undertake to liberalize substantially all trade in goods among them within a reasonable period of time. They must also remove substantially all restrictive regulations on commerce, such as non-tariff barriers. (NTBs). There must be tariff schedules and rules of origin to ensure that only those goods originating from the State Parties will benefit from the new preferences. These matters are still being negotiated.

<sup>1</sup> Izin Akioya, *Why Logistics Will Power AfCFTA and Africa’s E-Commerce Export Potential*, Vanguard (Lagos) 18 July 2021.

<sup>2</sup> Transport, tourism, communications, financial and business services.

The AfCFTA State Parties must, in addition, liberalize trade in services for the sectors agreed. During Phase II of the negotiations, they must adopt rules on how they will **cooperate** on investment, competition, and intellectual property rights. It has been said that they will also negotiate, in a Phase III, a Protocol on E-Commerce. The modalities for this instrument must still be decided.

Will the State Parties be obliged to act jointly? The answer is that at this stage joint action is not a major feature of the AfCFTA. In an FTA the State Parties retain policy space over the use of the tariff as a policy tool for domestic industrialization. They are free to conclude trade deals with third parties and to pursue their national plans for global integration. There is no common external tariff (CET) as is the case when a **customs union** is established. The AfCFTA confirms that the AfCFTA State Parties will enjoy these freedoms. Article 4(2) of the Protocol on Trade in Goods reads: *Nothing in this Protocol shall prevent a State Party from concluding or maintaining preferential trade arrangements with Third Parties, provided that such trade arrangements do not impede or frustrate the objectives of this Protocol, and that any advantage, concession or privilege granted to a Third Party under such arrangements is extended to other State Parties on a reciprocal basis.*

Another important feature of the AfCFTA is that the Regional Economic Communities (RECs) will continue to exist and will implement their own integration agendas. Article 19(2) of the AfCFTA Agreement contains an important design compromise, repeated in Article 8 (2) of the Protocol on Trade in Goods: *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 big advantage of the AfCFTA is that it holds the potential for preferential trade in goods for all the State Parties. If all African Union (AU) Members become AfCFTA State Parties, there will be different streams of preferential trade regimes for the whole continent. Some will continue to trade with each other under specific REC rules (if the REC in question is an FTA; not all are) while others presently trading under the MFN rates of the World Trade Organization (WTO), will be able to use the new preferences made possible by the AfCFTA. The AfCFTA tariff reductions and rules of origin are still being negotiated.

It will obviously not be the Governments that will be trading. Private firms will have to be convinced that lucrative opportunities, flexible rules of origin and legal certainty about border arrangements and customs procedures will justify new investments. The role of the negotiating Governments is to adopt the required enabling legal frameworks and to follow up with suitable domestic measures. For trade in services this will require regulatory harmonization. Firms interested in pursuing opportunities to provide services in,

for example, banking, tourism or communications in other African markets will want to know under what commercial and legal conditions this might be possible. These aspects are also still to be finalized.

The AfCFTA wants to strive for much more in future. Its general objectives are *“to contribute to the movement of capital and natural persons and facilitate investments building on the initiatives and developments in the State Parties and RECs; lay the foundation for the establishment of a Continental Customs Union at a later stage.... [and] promote and attain sustainable and inclusive socio-economic development, gender equality and structural transformation of the State Parties”*.

The high hopes about the AfCFTA are understandable. However, in order for it to become a turning point and a plan for solving Africa’s many economic problems and competitiveness challenges, a proper and realistic arrangement must be put in place. The Governments involved must be prepared to accept far-reaching commitments. It will also require sacrifices in respect of national sovereignty.

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