

The CFTA as a new Pathway for the African Economic Community?

The Member States of the African Union (AU) have just launched their negotiations to form the Continental FTA (CFTA); the first meeting of the CFTA Trade Negotiating Forum (TNF) took place at the end of February 2016. The objective is to “*achieve a comprehensive and mutually beneficial trade agreement among the Member States of the African Union*” but this has to be done “*within the broader framework of the Abuja Treaty Establishing the African Economic Community (AEC)*.”¹

The CFTA introduces a new focus for African trade negotiations. These negotiations “*shall cover Trade in Goods, Trade in Services, Investment, Intellectual Property Rights and Competition Policy*”.¹ The Abuja Treaty targets only trade in goods. The Abuja Treaty was adopted before the launch of the WTO in 1995, when global disciplines for trade in services and the trade related aspects of intellectual property rights entered into force on the basis of a single undertaking. Dispute settlement became compulsory. The WTO consolidated a rules-based approach for all the disciplines related to trade in goods.¹ Practically all African states are WTO members.

There seems to be a belief that the CFTA must advance the establishment of the AEC. This Note points out that the CFTA has its roots in a different context; how to boost intra-African and global trade under contemporary conditions and challenges. The CFTA Objectives are to be met through a comprehensive approach and include “*industrial development to promote the development of regional value chains. Industrial development is pursued through, among others, the Action Plan for Accelerated Industrial Development for Africa (AIDA), the Action Plan for Boosting Intra-African Trade (BIAT), the Program for Infrastructure development in Africa (PIDA) and the CAMI Workplan, which address the supply side constraints to ensure that market integration, is beneficial to all countries*”.¹



As the debate unfolds and the negotiations proceed certain essential aspects about the way forward for continental trade and integration will hopefully become clearer. The Constitutive Act of the African Union already adds refinements to the original Abuja plan. Perhaps it is a stronger indication of AU thinking about continental integration schemes. This is important from a legal point of view, as the Constitutive Act wants to provide a sound legal basis for the AU and its economic development aims. It also wants to ensure that respect for the Rule of Law is maintained.

African leaders have, from the 1960s, pushed for cooperation and integration in the economic, social and cultural fields and for sustainable development. Those were the days of the Cold War when African nations favoured non-alignment and continental solidarity. The struggle against the remaining remnants of colonialism and against apartheid in South Africa united them. In 1980 the Organization of African Unity (OAU)¹ adopted the Lagos Plan of Action as a step towards continental integration.¹

In June 1991 this Plan was translated into the Abuja Treaty,¹ when the OAU launched the AEC. The aims of the AEC are broad. It wants to promote economic, social and cultural development, as well as African economic integration. The implementation of the Abuja Treaty involves 6 stages over 34 years, originally planned to be completed by 2028. South Africa, till recently the continent's biggest economy, did not form part of that process. When it joined the OAU after 1994 new approaches became apparent which focussed more directly on market access goals.

The Abuja Treaty sets out a detailed plan (with time frames) to achieve the AEC. This includes the establishment of RECs (the AU recognises 8¹) and their progress from FTAs to CU's. Once they have achieved CU level, they must form a continental CU. The African Common Market will then follow, succeeded by the Economic and Monetary Union (with a single central bank), and a Pan-African Parliament. Where does the Abuja process stand? A generous assessment may hold that stage 3 (a free trade area and a Customs Union at REC level) is underway. It means that the CFTA cannot, in terms of the integration scheme of the AEC, be an immediate building block thereof. It can, however, fulfil an urgent need; boosting intra-African trade in the comprehensive manner mentioned in the CFTA Framework. This may advance incrementalism and good trade governance in vital areas; and benefit sound regional integration. It is not expressly mentioned in the Abuja Treaty but good governance and effective institutions are, by necessary implication, central to the attainment of the AEC goals.

The current reality is that not all RECs (perhaps only the EAC and ECOWAS with their CET's) have achieved customs union status. (SACU is not recognized as a separate REC.) Most RECs are still consolidating their FTAs. SADC has apparently shelved its plan for becoming a CU. The decision to establish a CFTA therefore maps a different pathway for continental "integration" – given that the RECs are still work in progress. Why is the CFTA a new pathway to achieve the AEC? The low levels of intra-African trade is one reason; the demise of the *Africa rising* prospect is another. This is closely linked to low levels of growth; and one can include inequality and poverty here. The CFTA offers the potential of a specific pathway for addressing, if correctly designed, some of the urgent needs around the removal of obstacles to African trade, integration and development. It could also advance certainty and predictability with respect to trade related procedures and the availability of remedies; including remedies for private sector stakeholders. These concerns highlight the value of incorporating and pursuing a proper rules-based CFTA. It will constitute a firmer undertaking for advancing to the AEC.