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African Continental Free Trade Area: Opportunities and Challenges

Andrea Cofelice

On March 21st, 2018, at the end of the 10th extraordinary session of the Assembly of Heads of State and Government of the African Union, forty-four out of the fifty-five member states of the Union signed the *Treaty establishing the African Continental Free Trade Area* (AfCFTA).

In terms of the number of countries involved (with a combined GDP that is currently worth over two trillion dollars a year) and the population concerned (1.2 billion people), the AfCFTA represents the main free trade agreement since the foundation of the World Trade Organization. Equally important is the timing of the agreement, as it stands in sharp contrast with an international context marked by a persistent and significant increase in trade-restrictive measures, as well as by a growing resistance (or even hostility) towards the development of regional integration systems.

The main objectives of the AfCFTA are certainly ambitious. By removing tariff and non-tariff barriers on goods and services, member states intend to: facilitate intra-African trade; promote regional value chains to foster the integration of the African continent into the global economy; boost industrialization, competitiveness and innovation, ultimately contributing to Africa's economic development and social progress.

Due to the wide scope of the agreement, the negotiation has been divided into two phases. The first one, which culminated in the March treaty, focused on: phasing out tariffs on 90% of goods exchanged between African

countries; the elimination of non-tariff barriers (that is: excessively long customs procedures, costly sanitary and phytosanitary measures, complex and heterogeneous rules on product standards and licensing requirements, etc.); the definition of rules of origin; a deal on customs cooperation and trade remedies. The AfCFTA agreement is also supplemented by the African Union *Protocol on Free Movement*, with which the signatory states (currently twenty-seven) grant visa waiver, the right of residence and the right of establishment for professional or work reasons to their citizens.

Any decision on the elimination of tariffs related to the remaining 10% of goods, represented by "sensitive products", as well as on other issues such as investments, competition policies and intellectual property rights, has been postponed to the second phase of negotiations, which is expected to start in the coming months

Expected benefits

According to the United Nations Economic Commission for Africa, the implementation of the agreement could increase intra-African trade by 52%, compared to 2010 levels, by 2022, thus reducing the gap with intra-regional trade quotas currently characterizing Asia (51%), North America (54%) and Europe (67%). In the short term, the main beneficiaries of the AfCFTA would be small and medium-sized enterprises, that today account for 80% of the continent's companies. However, in the medium to long term, the benefits will extend to all African citizens, who will achieve a welfare gain estimated at 16.1 billion dollars, especially favoring women (who currently

manage 70% of informal cross-border trade) and young people, who could benefit from new job opportunities. The intra-African economic and commercial growth would mainly affect the industrial and manufacturing sectors, thus demonstrating AfCFTA's potential role in guiding the structural transformation of African countries.

Such "internal" progresses could, in turn, contribute to strengthening Africa's position in global trade. With the failure of the Doha Round and the crisis of multilateral trade negotiations (and ultimately of the World Trade Organization's ruling authority), the latest international trade rules have been fixed under preferential agreements negotiated at bilateral, regional (continental) or trans-regional levels, from which Africa has been almost systematically excluded. The consolidation of African regionalism can therefore prove decisive, on the one hand, to develop an adequate negotiating power vis-à-vis relevant commercial partners (such as the European Union and China); on the other, to promote economies of scale and value chains that can boost African companies to compete on international markets.

The realization of these benefits, however, is conditioned by the overcoming of numerous political, legal, economic and functional challenges.

Adopting a *win-win* approach

At the top of political priorities there is the need to bring into the agreement those countries that are still not part of it, such as Benin, Eritrea, Zambia and, above all, Nigeria, which represents, together with South Africa, the main economic driving force of the continent. In particular, there are two issues that currently hamper the accession process: the concern that the elimination of tariffs could put the survival of national productions at risk; and the issue of compensations for those countries that rely on customs duties to consolidate their (fragile) national budgets.

It is therefore necessary to adopt cohesion policies and *ad hoc* measures to support specific needs of different types of countries and national actors, in order to make AfCFTA an inclusive and mutually beneficial agreement for all. These policies could be built upon three pillars: a) the creation of an adjustment and compensation fund for those countries that will be negatively affected by the structural and regulatory changes introduced by the agreement; b) the promotion of capacity building programs, in order to ensure that all African countries and stakeholders are fully aware of AfCFTA objectives, rules and mechanisms, and are able to exploit its benefits and opportunities; c) the organization of systematic consultation with economic and non-state actors.

Setting-up a law-based governance with a multi-level institutional architecture

After obtaining the necessary political support at the highest decision-making levels, the main objective will be to define AfCFTA technically and ensure its effective implementation. Historically, indeed, one of the main obstacles to regional integration in Africa is represented by the lack not so much of farsighted strategies or ambitious policies, but of their actual implementation.

Accordingly, AfCFTA's success will largely depend on the establishment of an appropriate governance system, based on the rule of law and on a solid institutional architecture, in order to promote, as requested by the African Development Bank, harmonization, consistency and predictability goals.

The agreement provides for the establishment of an AfCFTA Secretariat, with a legal personality distinct from that of the African Union, but governed by the political bodies of the Union, namely the Assembly of the African Union (composed of the Heads of State and Government of member states) and the

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Executive council (composed of African trade ministers), supported by a Committee of senior trade officials.

At least two critical remarks can be made in this respect. By largely relying on the institutional umbrella of the African Union, the AfCFTA will also import its main decision-making mechanism, i.e. the rule of consensus among all member states, with foreseeable consequences for the effectiveness of deliberative processes (whose limits are already known in the context of the African Union). Secondly, the agreement does not recognize any institutional role to the Pan-African Parliament within the AfCFTA. Although this body does not have significant legislative powers, it could nevertheless perform important functions of an advisory (acting as a permanent forum for dialogue and confrontation between institutional, economic and civil society actors) and monitoring nature.

AfCFTA's institutional architecture should also adopt a "multi-level" character, and be supported by (sub-)regional and national institutions. In particular, at the (sub-)regional level, the main challenge will be to rationalize and harmonize the different (and sometimes conflicting) regimes of African Economic Communities with the aims and timing set for the establishment of the AfCFTA.

Finally, AfCFTA's institutional framework is completed by a dispute settlement mechanism, which is mandatory and binding for member states, and is clearly based on the World Trade Organization model.

In addition to this mechanism, which is exclusively intergovernmental, it would be appropriate to explicitly recognize the possibility for individuals to assert their rights under the AfCFTA. In this sense, the juridical framework should be developed according to a subsidiarity perspective, consisting in a system of complaints and appeals that should involve national courts, the courts established

by the regional economic communities and, as a last resort, the African Court on Human and Peoples' Rights¹, which should be equipped with an ad hoc "trade chamber", also with a view to creating positive synergies between trade law and human rights law.

Strengthening the interlinkage between human rights and trade liberalization

Assessing the distributional impact of the AfCFTA agreement is crucial to ensure the complementarity between human rights promotion and trade liberalization. Such an assessment is even more relevant in light of a general and growing skepticism towards trade liberalization processes, fueled to a large extent by a widespread perception that the benefits of trade and globalization have not been equally distributed. It is therefore necessary to adopt appropriate policies to ensure that the potential benefits in terms of increased productivity and welfare deriving from the realization of the AfCFTA are equally distributed.

In order to make AfCFTA a socially sustainable and inclusive agreement, in addition to the cohesion and adjustment policies, as well as the mechanisms for consultation and access to remedies already analyzed above, it would also be appropriate to: a) adopt a gradual and targeted approach to liberalization processes, in order to safeguard the most vulnerable groups of the population, especially in vital sectors such as food security; b) monitor the impact of the agreement on the economic and social rights of the populations involved, through a systematic "human rights impact assessment"; c) maintain political control over the implementation of the agreement, by abstaining from adopting, in the technical agreements that will be negotiated in the framework of the AfCFTA, any provision that could undermine the institutional capacity to ensure that human rights are effectively protected and respected.

Diversifying financial sources

The creation of the AfCFTA should be supported through strategic investments and funding. The role of international donors will be crucial: the World Bank and the European Union have already expressed their willingness “in principle” to contribute to the necessary funds for the realization of the agreement. As far as the European Union is concerned, this commitment will represent the test to assess its ability to give substance to its ambitious External Investment Plan, launched by the Commission in September 2016.

Looking ahead, however, the funding of the African free trade area will have to increasingly rely on the mobilization of continental public and private resources. Before postulating a system of own resources of the AfCFTA, African governments should first commit themselves to improve and rationalize national public revenues, by making tax systems more equitable, transparent and effective, and by resolutely facing chronic corruption problems, weak institutional capacities, restricted tax bases and a pervasive tax avoidance and evasion.

Conclusions

From the above analysis it is clear that the main challenges to the realization of an African free trade area have an intrinsic political rather than

an economic nature. The AfCFTA represents a window of opportunity for African countries to promote intra-African trade, diversify and structurally transform the continent’s economy, and pursue important human rights and anti-poverty goals. However, the harmonization of national priorities to achieve regional and global public goods will require firm political will, determination and coordinating efforts by African political leaders.

What are the next steps? The AfCFTA agreement outlines only its legal framework. The text will have to be ratified by African national parliaments and will come into force when the threshold of 22 countries depositing instruments of ratification is reached. Subsequently, the second (delicate) negotiation phase will start, where the following issues, inter alia, will be discussed: sources of funding and investments; compensation mechanisms; the definition of “sensitive products” to be exempted from the abolition of tariffs. In the meantime, it is hoped that the Secretariat can be established in order to manage the implementation phase of the agreement. The above choices and decisions will determine the chance to shape a cohesive regional bloc, which can contribute to Africa’s economic and social development and its integration in the global economy.

¹ In the near future, this Court will be replaced by the African Court of Justice and Human Rights, whose founding Protocol was adopted in July 2008 by the Assembly of the African Union and will come into force after reaching the 15th ratification instrument. To date, six African states have ratified the Protocol: Benin, Burkina Faso, Congo, Libya, Liberia, Mali.