

CAN THE AFRICAN CONTINENTAL FREE TRADE AREA OFFER A NEW BEGINNING FOR TRADE IN AFRICA?

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ABSTRACT

On 21 March 2018, AU leaders met in Rwanda to finalise the signing of a new trade agreement creating the African Continental Free Trade Area (AfCFTA). The inauguration of the AfCFTA reflects a milestone for future continental unity, regional integration and deeper economic ties. However, questions remain as to whether African leaders will be able to successfully implement the free trade area, especially given that a lack of political will, technical expertise amongst relevant stakeholders and financial constraints have plagued most continental and regional efforts towards deeper intra-African trade thus far. This paper provides a snapshot of the negotiations that preceded the signing of the AfCFTA and examines the status of the AfCFTA as African governments move forward in their goal to establish a continent-wide free trade area. It identifies some of the benefits that should flow from a successfully implemented AfCFTA, while also examining some of the difficulties that might hinder or slow down its implementation. In addition, the paper identifies potential blind spots that could hinder deeper regional integration and trade facilitation efforts across Africa.

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ABBREVIATIONS AND ACRONYMS

AEC	African Economic Community
AfCFTA	African Continental Free Trade Area
AU	African Union
BIAT	Boosting Intra-African Trade
COMESA	Common Market for Eastern and Southern Africa
DSM	dispute settlement mechanism
dti	Department of Trade and Industry (South Africa)
EAC	East African Community
ECOWAS	Economic Community of West African States
EU	European Union
FTA	free trade area
GDP	gross domestic product
LDC	less-developed country
NTB	non-tariff barrier
REC	regional economic community
SACU	Southern African Customs Union
SADC	Southern African Development Community
SDT	special and differential treatment
TFTA	Tripartite Free Trade Area
UN	United Nations
UNECA	United Nations Economic Commission for Africa
WTO	World Trade Organization

INTRODUCTION

On 21 March 2018, AU leaders met in Rwanda to finalise the signing of a new trade agreement creating the African Continental Free Trade Area (AfCFTA). The AfCFTA consists of a framework agreement establishing the AfCFTA, the Protocol on Trade in Goods and Trade in Services, and the Protocol on Rules and Procedures on the Settlement of Disputes. These developments come on the back of 10 rounds of AfCFTA negotiations concluded in December 2017, with the 11th round underway in May 2018 in Addis Ababa, Ethiopia. The AfCFTA signals the beginning of a new chapter for mega-regional trade relations on the African continent and enhanced efforts at regional integration. Despite the [Abuja Treaty of 1991](#), which highlighted regional integration as crucial to Africa's development goals, efforts to date have not been successful, for various political and economic reasons. Therefore, African countries' ability to work towards the 2017 deadline has been a positive new development, with hopes that the AfCFTA will provide renewed impetus and a strong framework for deepening trade and regional integration across the continent.

This paper gives a snapshot of developments building up to the signing of the AfCFTA and examines the status of the AfCFTA as African governments move forward in their attempt to establish a continent-wide free trade area (FTA). It identifies some of the benefits that should flow from a successfully implemented AfCFTA while examining some of the difficulties that hinder its implementation. The paper also looks at future challenges that threaten to slow down implementation, as well as some of the potential blind spots that governments might not address, and what this could mean for deeper regional integration and trade facilitation efforts across Africa.

WHAT IS THE AfCFTA? POTENTIAL GAINS FOR AFRICA

The AfCFTA is the first agreement of its kind to bring together all 55 African countries under a single FTA, with a focus on creating a common market for goods, services and investment and allowing the free movement of persons. African heads of state decided to establish the AfCFTA in 2012 at the [18th ordinary session of the AU](#), and negotiations formally commenced in June 2015. The AfCFTA stems from African leaders' realisation that intra-African trade is critically low and that regional economic communities (RECs) have not prioritised developing and enhancing regional trade.

- Despite attempts to improve intra-African trade, it has averaged at 12%–14% of Africa's total trade basket for the past 20 years, primarily as a result of the continent's continued dependency on raw materials and low levels of industrialisation.¹ Approximately 26% of African countries rely on one or two resource commodities for at least 75% of their exports, while 60% rely on a maximum of five commodities.²

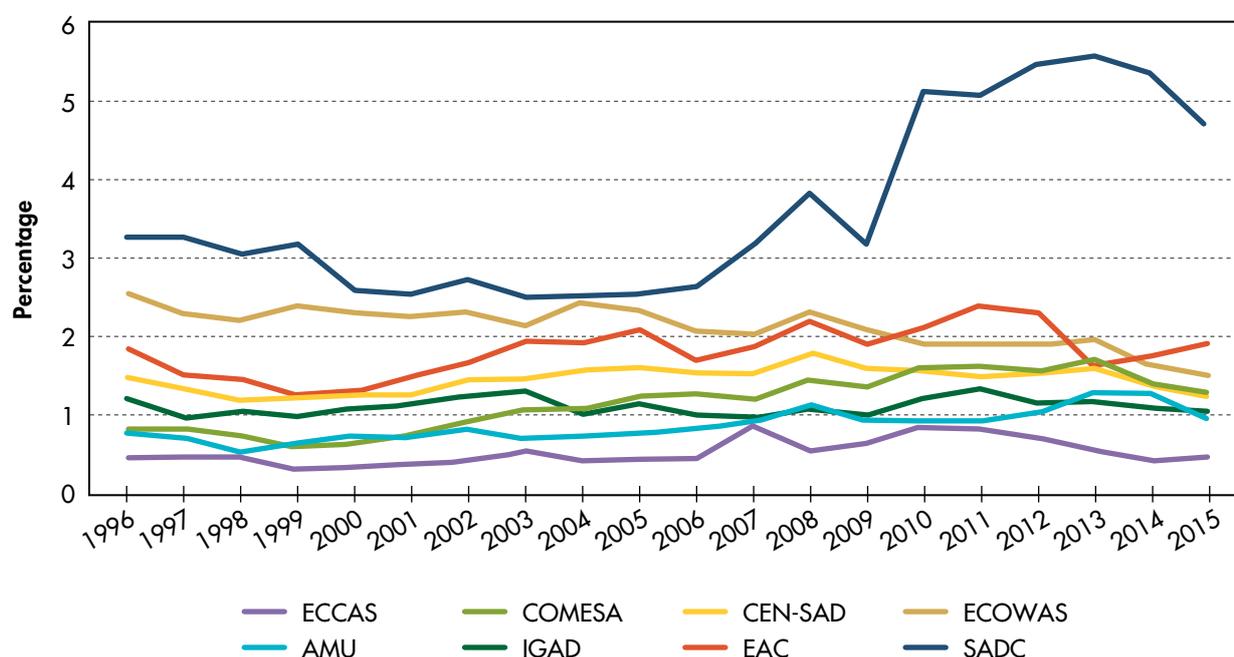
According to 2014 statistics, up to 86% of Africa's trade occurs with external trade partners outside the continent's borders—yet in the EU, for example, at least 61% of all trade is conducted within the union's borders

1 Valensisi G, Lisinge R & S Karingi, 'The trade facilitation agreement and Africa's regional integration', *Canadian Journal of Development Studies*, 37, 2, 2016.

2 AfDB (African Development Bank), OECD (Organisation for Economic Cooperation and Development) & UNDP (UN Development Programme), *African Economic Outlook 2017*,

- According to 2014 statistics, up to 86% of Africa's trade occurs with external trade partners outside the continent's borders— yet in the EU, for example, at least 61% of all trade is conducted within the union's borders.³
- In SADC, intra-regional trade has stagnated at 15–17%. During the early 2000s intra-SADC trade declined from 15% to 11%, while the East African Community (EAC), in comparison, managed to grow intra-regional trade to 20% in 2008 (but has not surpassed this level in the past decade).⁴

FIGURE 1 INTRA-REGIONAL ECONOMIC COMMUNITY EXPORTS AS A SHARE OF GDP, 1996–2015



Source: UNECA (UN Economic Commission for Africa), *Bringing the Continental Free Trade Area About: Assessing Regional Integration in Africa VIII*. UNECA: Addis Ababa, 2017

The AfCFTA is one of several AU frameworks supporting the Abuja Treaty's end goal, the establishment of an African Economic Community (AEC). The vision for the AEC is a continentally based, uniform approach to fiscal, social and sectoral policies, and is part

³ 'Chapter 3: Trade policies and regional integration in Africa'. Abidjan & Paris: UNDP, 2017.

³ ECOSOC (UN Economic and Social Council), UNECA (UN Economic Commission for Africa), *Intra-African Trade and African Regional Integration Index E/ECA/CRCI/9/3*, 9th session, 7–9 December 2015.

⁴ Mold A & R Mukwaya, 'Modelling the economic impact of the tripartite free trade area: Its implications for the economic geography of Southern, Eastern and Western Africa', *Journal of African Trade*, May 2017.

of the AU's broader development frameworks designed to boost intra-African trade and establish a continental customs union. Deeper regional integration brings with it important social welfare benefits by promoting reduced trade barriers, increased competition and larger markets across the continent. This will enable citizens to improve their welfare by obtaining goods and services based on comparative advantage among competing markets.⁵ Other potential gains from a successfully implemented AfCFTA agreement include simplified rules of trade and customs procedures, improved transportation, better linkages to global value chains, and the opportunity to implement common safety standards, rules of origin and the removal of non-trade barriers (NTBs). Although tariff elimination is an important end goal for deeper intra-African trade, some of the greatest benefits would lie in significant export growth and welfare gains accruing from enhanced trade facilitation and eliminating NTBs affecting trade in agricultural products, food safety and sanitary and phytosanitary concerns, and preferential rules of origin.

The AfCFTA follows the establishment of the [Tripartite Free Trade Area \(TFTA\)](#), a free trade area between COMESA, SADC and the EAC. It aims to bridge regional divisions by building on the TFTA's regional industrial development policies and strengthening trade among the various RECs, with the aim of incorporating all African economic blocs under standardised rules and regulations.⁶ Of the 18 preferential trade agreements establishing the various African RECs, eight are recognised by the AU as 'building blocks' for the AEC.⁷ However, the lack of convergence, coupled with an inability to expand trade liberalisation and adhere to internal deadlines for regional convergence, raises questions as to how these RECs can successfully contribute to the AEC's creation.⁸ Nevertheless, the AU aims to establish the AEC over a 34-year period, as depicted in Figure 2.

In bringing together all African countries, with a combined gross domestic product (GDP) of between \$2.2 trillion and \$3.4 trillion,⁹ the AfCFTA goes beyond a traditional FTA by focusing on cross-border movement of goods, people and services, together with investment and increased connectivity among Africa's 1 billion citizens. The AfCFTA also complements the [AU's Agenda 2063](#) and the [UN's Sustainable Development Goals](#), and is an important tool that can advance inclusive growth through industrialisation and increased opportunities for African citizens.¹⁰ The AfCFTA has seven priority areas: policy, infrastructure, finance, information, market integration, increased productivity and trade

The AfCFTA-BIAT complements the TFTA ... It also complements the AfCFTA's goals: the former focuses on supply-side constraints to intra-African trade while the AfCFTA is concerned with addressing market access, demand-side constraints

5 *Ibid.*

6 UNCTAD (UN Conference on Trade and Development), *The Continental Free Trade Area: Making it Work for Africa*, Policy Brief, 44. Geneva: UNCTAD, December 2015a.

7 These eight RECs are CEN-SAD (Community of Sahel-Saharan States), COMESA, EAC, ECCAS (Economic Community of Central African States), ECOWAS, IGAD (Intergovernmental Authority on Development), SADC and UMA (Arab Maghreb Union).

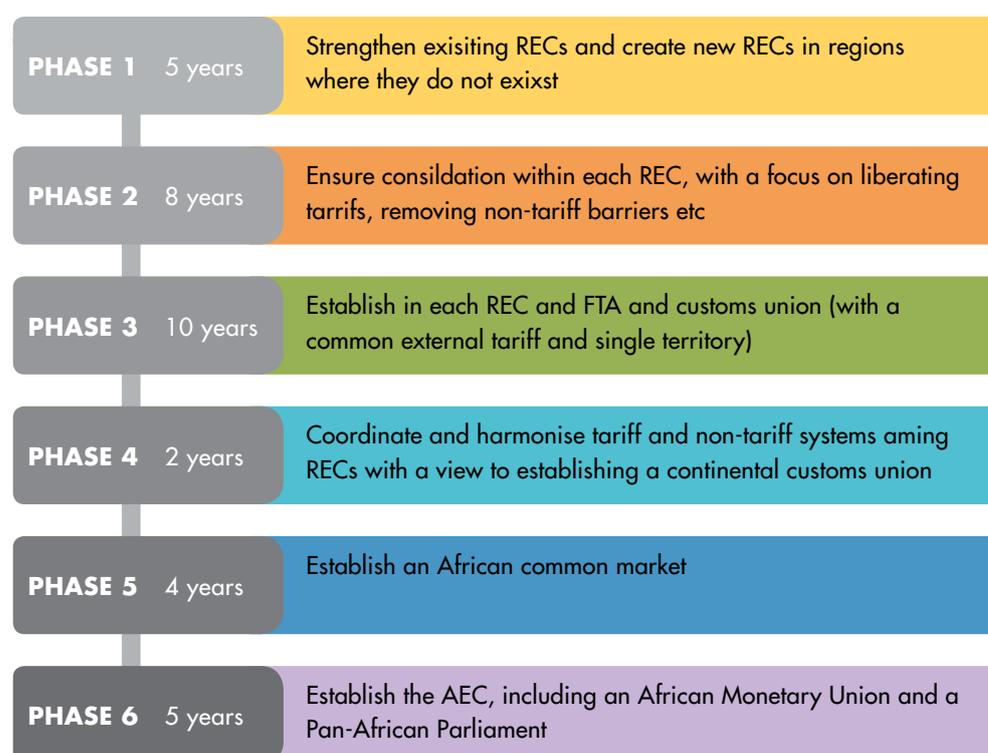
8 UNCTAD, *Building the African Continental Free Trade Area: Some Suggestions on the Way Forward*, Policy Paper, UNCTAD/DITC/2015/1. Geneva: UNCTAD, 2015b.

9 AU statistics suggest the figure may be as high as \$3.4 trillion, while other sources have a more conservative estimate of \$2.2 trillion.

10 Gathii J *et al.*, *The Continental Free Trade Area (CFTA) in Africa: A Human Rights Perspective*. Geneva: Friedrich Ebert Stiftung, 2017. See also UNCTAD, 2015b, *op. cit.*

facilitation, and seeks to consolidate the gains already made by RECs by drawing on best approaches at a regional level to be implemented at a continental level.¹¹

FIGURE 2 THE AU CONTINENTAL INTEGRATION AGENDA



Source: Soininen I, 'The Continental Free Trade Area: What's going on?', *Bridges Africa*, 3, 9, 28 October 2014

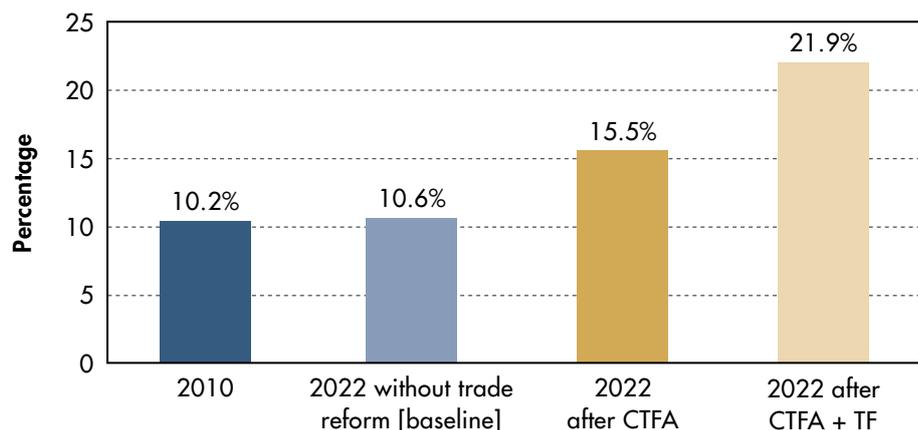
Complementing the AfCFTA is the AU's Action Plan on Boosting Intra-African Trade (BIAT), a framework for regional development focused on doubling intra-African trade between 2012 and 2022, addressing existing constraints and promoting sustainable development.¹² The AfCFTA-BIAT complements the TFTA, in terms of which SADC, the EAC and the Common Market for Eastern and Southern Africa's (COMESA) 26 member states have a combined GDP of \$1.2 trillion, representing 54% of the continent's

11 ICTSD (International Centre for Trade and Sustainable Development), 'Talking CFTA with Albert Muchanga, the AU's Commissioner for Trade and Industry', *Bridges Africa*, 6, 6, 2017.

12 UNECA, 'Action plan for boosting intra-Africa trade', <https://www.uneca.org/pages/action-plan-boosting-intra-africa-trade>, accessed 15 January 2018. See also *ibid.*

entire GDP.¹³ It also complements the AfCFTA's goals: the former focuses on supply-side constraints to intra-African trade while the AfCFTA is concerned with addressing market access, demand-side constraints.¹⁴

FIGURE 3 SHARE OF INTRA-AFRICAN TRADE IN DIFFERENT SIMULATION SCENARIOS



Source: Valensisi G, Lisinge R & S Karingi, 'The Trade Facilitation Agreement and Africa's regional integration', *Canadian Journal of Development Studies*, 37, 2, 2016

Establishing the AfCFTA will stimulate total African exports by 4% (\$25.3 billion) and result in an overall 52% (\$34.6 billion) increase in intra-African trade compared to the baseline figure (no trade reforms in 2022), with expansion covering a wide range of sectors, including agriculture and agro-processing, industry and services.¹⁵ Trade in industrial goods is expected to increase by 53% between 2010 and 2022.¹⁶

13 Mold A & R Mukwaya, *op. cit.*

14 Gathii J *et al.*, *op. cit.*

15 Valensisi G, Lisinge R & S Karingi, *op. cit.* For the purpose of their study the authors measure two key scenarios: the establishment of the AfCFTA with and without complementary trade facilitation measures. For each scenario, the model runs recursively until 2022 to allow enough time for variables to adjust to the implemented trade reforms. Results are then compared with the baseline scenario of no trade reforms in 2022. The modelling used is based on a dynamic version of the MIRAGE (Modeling International Relationships in Applied General Equilibrium).

16 UNECA, 'ECA urges Africa to push ahead with Continental Free Trade Area', <https://www.uneca.org/stories/eca-urges-africa-push-ahead-continental-free-trade-area>, accessed 15 January 2018.

UNECA projections suggest that enhanced regional and continental integration could give rise to dynamic gains across six main areas:¹⁷

- enlarged regional markets that provide incentives for foreign direct investment and private investment, particularly through the development of regional infrastructure projects;
- greater efficiency and competition, making African markets more competitive at a global level;
- increased welfare, including higher levels of investment and employment;
- higher levels of intra-African trade, owing to a convergence in standards, harmonisation efforts and so on at a continental level;
- diversification of products away from commodities and towards higher levels of industrialisation; and
- possibility of sub-regional political stability and peace becoming more widespread as a result of deeper infrastructure, economic and trade arrangements among African countries.

UNDERSTANDING THE AfCFTA: CHALLENGES THAT COULD DERAIL THE CREATION OF AN AFRICAN FTA

African countries face numerous endemic challenges, including poor infrastructure development, NTBs, lengthy customs procedures and poor inland transportation. There are also harmonisation challenges and the need for simplified rules of origin

Although the signing of the AfCFTA umbrella agreement in March 2018 signalled political support and commitment from African leaders to work towards deeper African economic integration, it can only come into effect if a minimum of 22 AU members ratify it.¹⁸ Initially, some AU members wanted ratification from only 15 countries in order to bring the agreement into force and ensure its implementation as soon as possible. However, SADC countries (led by South Africa) wanted the Abuja Treaty's two-thirds requirement to be used as the basis for ratification – meaning 28 countries would have to deposit instruments of ratification with the AU before the AfCFTA would come into force.¹⁹ This is because the SADC bloc was concerned that the AfCFTA agreement would enter into force prior to its domestic ratification processes' being completed, and that it would thus be left out of important decisions at the agreement's inception.²⁰ Eventually, however, this disagreement was resolved in favour of the 22 member state requirement.

However, it will not be easy getting the AfCFTA off the ground. There are a number of political and economic issues that could hinder its successful implementation. African countries face numerous endemic challenges, including poor infrastructure development, NTBs, lengthy customs procedures and poor inland transportation. There are also harmonisation challenges and the need for simplified rules of origin. In addition, the lack of standardisation within RECs has complicated and negatively impacted the creation of

17 UNECA, AU & AfDB, *Assessing Regional Integration in Africa V: Towards an African Continental Free Trade Area*. Addis Ababa: UNECA, 2012.

18 Tigere E, 'What next: The AfCFTA in context', Tutwa Consulting Group, 27 March 2018, <http://www.tutwaconsulting.com/what-next-the-afcfta-in-context/>, accessed 9 April 2018.

19 Interview, public official D, 19 April 2018.

20 Interview, public official B, 11 April 2018.

regional value chains. Moreover, the free movement of persons remains one of the biggest challenges facing the continent. Full transition to mobility of labour and services is a deeply contentious issue for many African countries, owing to high levels of domestic unemployment and the securitisation narrative associated with freer movement of persons – despite the fact that trade in services is becoming increasingly important across the continent given the services sector’s dominance in several African countries.²¹

TABLE 1 THE AfCFTA’s KEY FEATURES

Agreement establishing the African Continental Free Trade Area	Protocol on Trade in Goods	<ul style="list-style-type: none"> • Elimination of duties and quantitative restrictions on imports • Imports shall be treated no less favourably than domestic products • Elimination of non-tariff barriers • Cooperation of customs authorities • Trade facilitation and transit • Trade remedies, protections for infant industries and general exceptions • Cooperation over product standards and regulations • Technical assistance, capacity-building and cooperation
	Protocol on Trade in Services	<ul style="list-style-type: none"> • Transparency of service regulations • Mutual recognition of standards, licensing and certification of services suppliers • Progressive liberalisation of services sectors • Service suppliers shall be treated no less favourably than domestic suppliers in liberalised sectors • Provision for general and security exceptions
	Protocol on Dispute Settlement	<ul style="list-style-type: none"> • To be agreed
	Phase 2 negotiations	<ul style="list-style-type: none"> • Intellectual property rights • Investment • Competition policies

Source: ATPC (African Trade Policy Centre) & UNECA, *Continental Free Trade Area: Questions and Answers*, https://www.uneca.org/sites/default/files/PublicationFiles/qa_cfta_en_230418.pdf, accessed 3 May 2018

21 UNECA, AU & AfDB, *op. cit.*

At a political level, the build-up to the signing ceremony also saw disagreement between the regional country groupings, which has extended to other issues in the negotiations. Generally speaking, Southern African countries have been viewed as more cautious of integration efforts – partially owing to their own region’s struggle with deeper integration. Yet this has not stopped some countries (such as South Africa) from pushing the negotiating group towards a more ambitious approach.

The rest of this paper unpacks some of the challenges facing the AfCFTA negotiations, looks at concerns that have arisen thus far and provides a snapshot of issues as they currently stand.

LESS-DEVELOPED ECONOMIES AND MEASURES FOR DIFFERENTIAL TREATMENT

AU members have vastly different levels of economic development and intra-regional integration. The AfCFTA has to get buy-in from all African countries and the agreement has to take into consideration the needs of smaller and less-developed countries (LDCs).²² A bottom-up approach to trade liberalisation and integration is required, which includes aligning long-term national interests with regional interests, ensuring transparency in negotiations, and addressing the needs of smaller, weaker economies.²³ While African leaders have shown the political will to breathe life into the AfCFTA text, the devil is in the detail: concluding the negotiations and implementing the AfCFTA.

Even within RECs it has been difficult to remove tariffs completely ... Mauritius is the only SADC country that imposes no import tariffs on either SADC or COMESA trade

While some countries are in favour of full liberalisation, others are concerned about their domestic industrialisation development and the loss of policy space.²⁴ The AfCFTA has to find solutions that militate against protectionism and cater for the needs of both LDCs and larger economies such as Kenya, Egypt, Nigeria and South Africa. Therefore, continental efforts have to be balanced with the impact of tariff liberalisation on countries at a domestic level. Even within RECs it has been difficult to remove tariffs completely: while the EAC and ECOWAS have no tariffs on intra-EAC and intra-ECOWAS trade respectively, Mauritius is the only SADC country that imposes no import tariffs on either SADC or COMESA trade.²⁵ ECCAS has duty-free trade on paper, but it is not effectively implemented in practice. This raises questions as to whether the AfCFTA can achieve tariff elimination across the continent when no REC has entirely succeeded at removing tariffs and limiting NTBs in its zone.

22 Soininen I, ‘The Continental Free Trade Area: What’s going on?’, *Bridges Africa*, 3, 9, 2014, <https://www.ictsd.org/bridges-news/bridges-africa/news/the-continental-free-trade-area-whats-going-on>, accessed 15 January 2018.

23 UNCTAD, 2015b, *op. cit.*

24 Interview, independent researcher A, 10 April 2018.

25 ECOSOC, UNECA, *op. cit.*

TABLE 2 STATUS OF RECs' REGIONAL ECONOMIC INTEGRATION					
REC	Free trade area	Customs union	Single market	Countries having implemented Freedom of Movement Protocol	Economic and monetary union
EAC	✓	✓	✓	3 out of 5	✗
COMESA	✓	✗	✗	Only Burundi has ratified; Rwanda's ratification in progress	✗
ECOWAS	✓	✓	✗	All 15	✗
SADC	✓	✗	✗	7 out of 15	✗
ECCAS	✓	✗	✗	4 out of 11	✓
CEN-SAD	✗	✗	✗	Unclear	✗
IGAD	✗	✗	✗	No protocol	✗
AMU	✗	✗	✗	3 out of 5	✗

Source: UNECA, *Bringing the Continental Free Trade Area About: Assessing Regional Integration in Africa VIII*. Addis Ababa: UNECA, 2017

Implementing the AfCFTA could also adversely impact real income, as many smaller African countries are dependent on tariff revenues to supplement their domestic income. However, while larger African economies (which account for 60% of total intra-merchandise exports) could benefit more from a liberalised trade agenda, all countries are expected to gain if tariffs and NTBs are reduced, provided that other gains compensate for potential losses.²⁶ Therefore, to ensure that trade liberalisation efforts do not harm LDCs,²⁷ trade integration must be complemented by regional industrialisation projects that enable LDCs to eventually become full participants in the AfCFTA.²⁸

Discussions around special provisions for LDCs have caused tensions between developing African countries and their less-developed peers.²⁹ Although the AfCFTA preamble recognises countries' differing levels of development, questions have been raised about the levels of support the various implementation mechanisms will offer LDCs.³⁰ During negotiations some countries argued against special and differential treatment (SDT) provisions for LDCs, making the case that there should be no need for internal

26 Mevel S & S Karingi, 'Deepening Regional Integration: A Computable General Equilibrium Assessment of the Establishment of a Continental Free Trade Area followed by a Continental Customs Union', Paper presented at the 7th African Economic Conference, Kigali, Rwanda, 30 October – 2 November 2012.

27 Luke D & J MacLeod, 'Bringing the CFTA about: Key factors for success', *Bridges Africa*, 6, 6, 2017.

28 Ismail F, 'Advancing the Continental Free Trade Area and Agenda 2063 in the Context of the Changing Architecture of Global Trade', Working Paper. Pretoria: TIPS (Trade and Industrial Policy Strategies), 2016.

29 Interview, public official A, 1 March 2018.

30 Interview, public official B, 11 April 2018.

differentiations on the basis of pan-African solidarity.³¹ Arguments favouring financial compensation for LDCs because of tariff liberalisation were strongly rejected, notably by South Africa.³² In the end, however, negotiators seemed to arrive at a compromise where (i) SDT is explicitly built into the agreement and is to be applied on a case-by-case basis depending on the sector/issue, and (ii) LDCs are allowed an extended implementation period of 13 to 15 years.³³ RECs have also implemented longer implementation periods for their LDC members. In the AfCFTA, SDT will also be offered on issues such as developing trade remedy laws and regimes.

Nevertheless, questions remain. It is unclear *how* SDT will be implemented and whether collective resource mobilisation will be an option; if donors' participation will be welcomed on a bilateral basis through the provision of financial, human and technical resources; or if phasing-in some AfCFTA obligations for LDCs (so that they can reach the same commitment levels as their peers) will be a viable 'in-house' solution without the assistance of donors. Another option would be to develop cooperation annexures and skills transfer clauses that could be built into the AfCFTA's annexures. This would also allow countries to share technical expertise and engage in skills development.³⁴

A PROBLEM WITH MEMBERSHIP

Many countries have overlapping memberships and are party to more than one REC. This has traditionally permitted governments to cherry-pick which commitments they uphold. Choices in membership have also fostered low compliance with REC obligations among African countries, as well as poor policy implementation, diverging institutional development, and a lack of regional management.³⁵ In order to address some of these complications, the AfCFTA recognises the eight AU-mandated RECs as the building blocks for the AfCFTA process. In the long term, the AfCFTA should resolve this 'spaghetti bowl' of REC FTAs by ensuring the Minimum Integration Programme of 2009 (supporting the effective implementation of REC-level decisions for economic integration within RECs) is compatible with the AfCFTA's goals and timelines.³⁶

However, past attempts to address overlapping REC membership have not been successful. The TFTA, for example, was supposed to reconcile the challenge of multiple memberships in SADC, COMESA and the EAC. Despite agreeing that the three RECs would work towards merging into a single REC this did not happen; instead, the TFTA evolved into a

31 Interview, independent researcher B, 28 March 2018.

32 Interview, public official C, 13 April 2018.

33 Interview, public official D, 19 April 2018. See also Agreement Establishing the African Continental Free Trade Area, Part II: Non-Discrimination, Article 6. Kigali: African Union, 2018.

34 Interview, private sector representative, 25 April 2018.

35 UNCTAD, 2015b, *op. cit.*

36 *Ibid.*

new FTA encompassing the three existing RECs instead of consolidating them.³⁷ This is because the TFTA was based on preserving the REC acquis, and the AfCFTA is structured similarly – ie, the AfCFTA should not dismantle the RECs.³⁸ Further consideration is warranted regarding the potential for the AfCFTA to eventually subsume one or two of the RECs, or for the AfCFTA to become more ambitious through implementation. This raises questions about the future power balance between the AfCFTA Secretariat and the RECs, which might not be as willing to cede their policy space to a future AfCFTA Secretariat.

IMPLEMENTATION OF THE CFTA AND COMPETING NATIONAL INTERESTS

A related challenge is African countries' ability and willingness to align their respective regional trade agreements with a future AfCFTA. While concluding a continent-wide agreement among all 55 countries is no small accomplishment, the AfCFTA's success rests on its effective implementation, which necessitates support and buy-in from AU members. For example, the BIAT Action Plan has faced numerous implementation challenges, and is constrained by a lack of institutional structure, the absence of monitoring and evaluation mechanisms, and a lack of sufficient resources.³⁹ If not guarded against, the same challenges could also plague the AfCFTA's implementation.

Not all countries have shown the same levels of political commitment. Nigeria has signed neither the Kigali Declaration nor the framework agreement, despite its initial championing of a continental FTA and having chaired important decision-making processes such as the Trade Ministers Meetings and the Negotiating Forum.⁴⁰ Instead, it established a committee to review the AfCFTA text because 'continental aspirations must complement Nigeria's national interests', which include not turning the country into a 'dumping ground' for finished goods.⁴¹ While Nigeria likely succumbed to internal lobbying from its businesses and labour unions fearing damage to the local economy, this decision also comes on the back of its refusal to sign the [West Africa–EU Economic Partnership Agreement](#), reflecting the country's more general hesitation and distrust of

37 UNECA, *Bringing the Continental Free Trade Area About: Assessing Regional Integration in Africa VIII*. Addis Ababa: UNECA, 2017; interview, independent researcher A, 10 April 2018.

38 The REC acquis states 'The CFTA shall build on and improve upon the acquis of the existing REC FTAs and shall not reverse or be inconsistent with the Acquis of the Union including but not limited to the Constitutive Act, the Abuja Treaty and other relevant legal instruments of the Union.' See UNECA, 2017, *op. cit.*; interview, public official B, 11 April 2018; interview, public official D, 19 April 2018.

39 UNECA, 2017, *op. cit.*

40 Interview, public official D, 19 April 2018.

41 Dlodla S, 'AU summit prepared to sign free trade treaty without Nigeria', *iol news*, 20 March 2018, <https://www.iol.co.za/news/africa/au-summit-prepared-to-sign-free-trade-treaty-without-nigeria-13933650>, accessed 26 March 2018. See also Sow M, '44 African nations signed CFTA but Nigeria sits out', Brookings Institute, 23 March 2018, <https://www.brookings.edu/blog/africa-in-focus/2018/03/23/africa-in-the-news-african-countries-sign-cfta-mozambique-conducts-debt-talks-boko-haram-returns-kidnapped-girls/>, accessed 26 April 2018.

free trade agreements. It also illustrates Nigeria's desire to consolidate its economic power in the region – most notably displayed by its opposition to Morocco's application to join ECOWAS at the end of 2017, despite Morocco's growing involvement and investment in West Africa.⁴²

In comparison, South Africa has signed only the Kigali Declaration (a supplementary declaration created by South Africa signalling its commitment to continue to work towards an FTA) while abstaining from the AfCFTA framework agreement owing to domestic parliamentary procedures. Section 231 of South Africa's constitution stipulates that signing and negotiating international agreements is the responsibility of the national executive. President Cyril Ramaphosa has publically attested to South Africa's support for the AfCFTA, pending the completion of these domestic procedures.⁴³ South Africa's actions on the topic were inconsistent in the beginning; however, upon receiving an update on negotiations as at 4 June 2018, the South African government has now signaled that it will commence with the domestic adoption processes following from the 6th AU Ministers of Trade meeting in Dakar, March 2018.⁴⁴ This raises interesting questions as to why South Africa appears to have signalled its political support for the TFTA without doing the same with the AfCFTA, especially when both processes require the same parliamentary process.

Zambia, Namibia, Lesotho and Botswana had also only signed the Kigali Declaration. Interestingly, Swaziland opted to sign both documents, perhaps indicative of its choice to vote along the lines of its COMESA membership. This probably signals a consensus among the Southern African Customs Union (SACU) countries to preserve the integrity of the customs union when negotiating new trade agreements. Alternatively, it could also reflect the long-standing political reality that most SACU countries tend to align themselves with South Africa's decision-making in third-party negotiations and agreements – a trend seen at the WTO, in the TFTA negotiations and in other trade negotiations. However, with South Africa now likely to commence domestic ratification procedures, we can expect that the rest of SACU will follow suit.

Other countries that did not sign were most likely not represented by people with the appropriate seniority mandated to sign the framework agreement. These countries include Eritrea, Burundi (which did not send a delegation to the signing ceremony because of ongoing disagreements over security issues in the region), Benin, Sierra Leone (in transition between governments) and Guinea-Bissau.⁴⁵ In total, 44 of the 55 AU member states signed the AfCFTA's framework agreement.

Lacklustre commitment to enabling cross-continental migration and the freer movement of persons raises important questions about African governments' willingness to work towards open borders, and the ultimately stifling impact that this could soon have on AfCFTA developments and implementation

42 Louw-Vaudran L, 'South Africa and Nigeria are crucial for continental initiatives', *ISS Today*, 4 April 2018, <https://issafrica.org/iss-today/south-africa-and-nigeria-are-crucial-for-continental-initiatives>, accessed 13 April 2018; interview, independent researcher C, 11 April 2018.

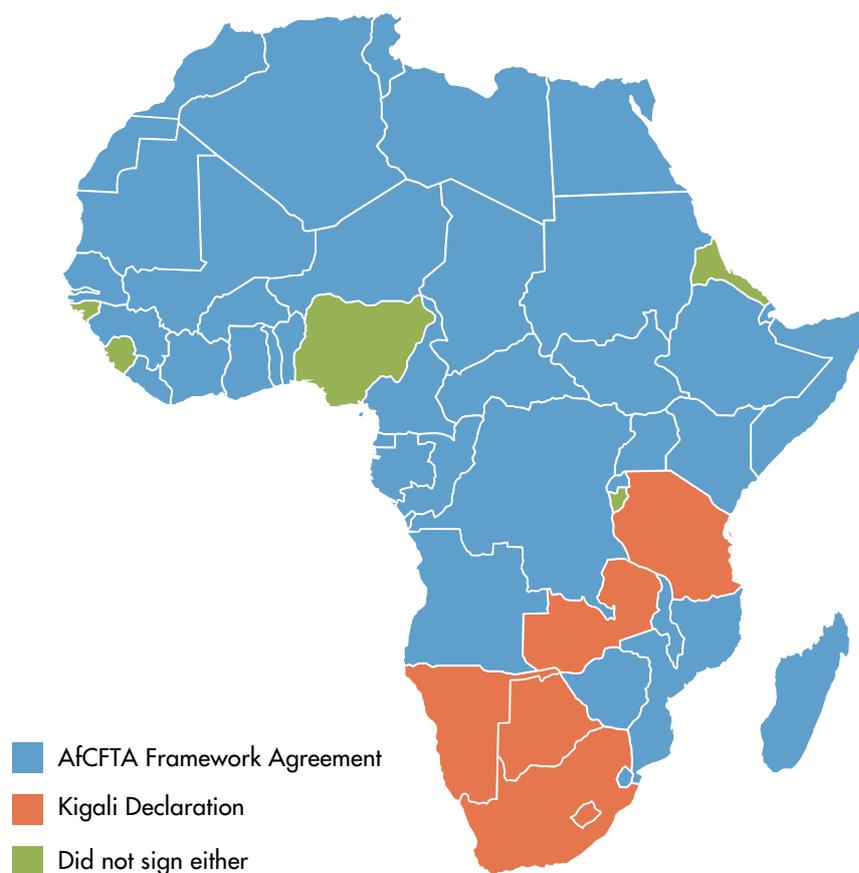
43 Tigere E, *op. cit.*

44 See <https://www.iol.co.za/business-report/economy/ministers-receive-update-on-afcfta-negotiations-15303176>.

45 Interview, public official C, 13 April 2018.

Although separate from the AfCFTA processes, the [Free Movement of Persons, Right to Residence and Right to Establishment](#) was also presented for signature, but only 30 countries signed it. This lacklustre commitment to enabling cross-continental migration and the freer movement of persons raises important questions about African governments' willingness to work towards open borders, and the ultimately stifling impact that this could soon have on AfCFTA developments and implementation.

FIGURE 4 SIGNATORIES TO THE AfCFTA LEGAL INSTRUMENTS



Source: Tutwa Consulting Group, 'What next: The AfCFTA in context', 2018, <http://www.tutwaconsulting.com/what-next-the-afcfta-in-context/>, accessed 28 March 2018

Moreover, successful trade arrangements are usually achieved through championing by regional powers, a role that would arguably be fulfilled by South Africa and Nigeria in their respective regions. Nevertheless, since only 22 countries' ratifications are required for the AfCFTA agreement to come into force, it is likely that the AfCFTA will become enforceable with or without their support, and that other countries could play a strong

leadership role. For example, a financially independent AfCFTA process has the support of Rwandan President Paul Kagame, who has pushed for the AU's institutional financial independence and steered the AfCFTA process: Rwanda was the first country to ratify the AfCFTA agreement;⁴⁶ Kenya and Ghana have deposited instruments of ratification with the AU Commission,⁴⁷ and Ethiopia is reportedly also preparing to ratify the umbrella agreement. Although not yet a guaranteed outcome, one interviewee suggested that South Africa and Nigeria were likely to sign the agreement at the next AU summit in Mauritania in June 2018,⁴⁸ which would go a long way in alleviating some of the concerns regarding political will and support for the AfCFTA.

FINANCING THE AfCFTA'S IMPLEMENTATION AND ITS INSTITUTIONS

Like many other AU initiatives, there are questions about the AfCFTA's future financing structure. While donors can assist with critical studies and provide financial support for LDCs,⁴⁹ there is the risk that their continued financial support for AfCFTA processes will be on a discretionary basis. Nevertheless, donors have already assisted with the establishment and expansion of the AU Trade Department's CFTA Support Unit and there are discussions on the African Development Bank's potentially establishing a CFTA Support Facility.⁵⁰ This indicates the potential for future collaboration and assistance between the various stakeholders involved in the AfCFTA processes. Generally, interviewees noted that donor support (financial, technical and resource-wise) for AfCFTA processes would be most useful in the implementation stage, once the sensitivities accompanying the negotiations had been addressed.⁵¹

The creation of an AfCFTA Secretariat will impose financial costs on AU members, and funding structures will have to be created to ensure the viability of such an institution. Discussions on the creation of an AfCFTA Secretariat are subject to an application and assessment procedure open to all AU members until August 2018. Thus far, only Ghana has officially submitted an application to host the secretariat, but other countries such as Nigeria, Rwanda, Egypt and Swaziland are apparently also interested in hosting it.⁵²

Important questions remain about the financial costs that the public sector and private sector will have to bear in the implementation of the AfCFTA. This is compounded by the

While donors can assist with critical studies and provide financial support for LDCs, there is the risk that their continued financial support for AfCFTA processes will be on a discretionary basis

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- 46 Interview, independent researcher B, 28 March 2018. See also Bishumba N, 'Parliament ratifies AfCFTA protocol', *The New Times*, 24 April 2018, <http://www.newtimes.co.rw/news/parliament-ratifies-afcfta-protocol#.WuA2hcTjsgM.twitter>, accessed 26 April 2018.
- 47 Tralac news *Kenya and Ghana deposit instruments of African Continental Free Trade Area ratification*, 10 May 2018 <https://www.tralac.org/news/article/13033-kenya-and-ghana-ratify-instruments-of-african-continental-free-trade-area.html>, accessed on 15 May 2018
- 48 Interview, public official D, 19 April 2018.
- 49 UNECA, 2017, *op. cit.*
- 50 Interview, public official D, 19 April 2018.
- 51 Interview, independent researcher A, 10 April 2018; interview, public official B, 11 April 2018; *ibid.*
- 52 Interview, public official C, 13 April 2018; interview, public official B, 11 April 2018.

AU's own struggle for financing: in 2016, only 44% of the AU's budget came from member state contributions, with the remainder consisting of contributions from international donors such as the US, EU, China, UK and World Bank.⁵³ Yet Article 14 of the [AfCFTA framework agreement](#)⁵⁴ states that the secretariat is to be an autonomous independent body within AU structures with funding provided from the overall AU budget.

There appears to be some consideration of the financial viability of these operations through the AU's proposal for self-financing through a 0.2% levy on all eligible goods imported to the continent, which will be used to fund, inter alia, the AfCFTA and peace and security operations. The US and Japan oppose the creation of such a levy,⁵⁵ and it remains to be seen whether it will be compatible with WTO rules and successfully implemented. At the very least this shows the AU's commitment to alternative forms of financing and long-term financial stability, which is crucial for the institution's eventual financial independence.

CIVIL SOCIETY CONSULTATIONS AND THE ROLE OF THE PRIVATE SECTOR

Unfortunately, the AfCFTA process has been criticised for its lack of civil society consultation, and for limiting draft text consultations to a narrow group of stakeholders who were already involved.⁵⁶ Regional institutions are supposed to include formal mechanisms for consultation with private sector apex bodies and civil society organisations; however, the evidence suggests that these groups have little impact on agenda-setting and policy formulation in regional institutions.⁵⁷ There are also concerns that the agreement is not sufficiently representative of vulnerable groups, such as informal businesses and cross-border traders. This, coupled with the absence of important gender considerations, ties in with the broader caution that the AfCFTA should be sufficiently inclusive of LDCs, vulnerable groups and civil society.

In South Africa, a private sector representative said that compared to other FTA processes such as the TFTA consultations, the AfCFTA consultations were rushed and not as extensive.⁵⁸ This was partly ascribed to the wide array of issues that the AfCFTA covers. Trade negotiators spend extensive periods outside the country, which means they have insufficient time to consult with the private sector and other civil society representatives.⁵⁹ Countries also approach the incorporation of their private sector in trade negotiations differently: some include their private sector representatives in the formal negotiations, while others, such as South Africa, do not. While the South African Department of

In South Africa, a private sector representative said that compared to other FTA processes such as the TFTA consultations, the AfCFTA consultations were rushed and not as extensive

53 UNECA, 2017, *op. cit.*

54 Agreement establishing the African Continental Free Trade Area, Kigali Draft Text, Part II (Establishment, Objectives, Principles and Scope), Article 14, March 2018.

55 Interview, independent researcher B, 28 March 2018.

56 Dommen C, 'Crafting a robust CFTA: The human rights contribution', *Bridges Africa*, 6, 6, 2017.

57 UNECA, 2017, *op. cit.*

58 Interview, private sector representative, 25 April 2018.

59 *Ibid.*

Trade and Industry's (dti) rationale for this is not known, private sector and government relations have not always been easy, and it is possible that the dti prefers to discuss issues with the private sector behind closed doors instead of creating an opportunity for potential conflict. Nevertheless, it appears that the negotiators are aware of the need for private sector representation in AfCFTA processes, which has been catered for with the creation of an AfCFTA Business Forum and an appeal to AU members to fast-track the establishment of the African Business Council.⁶⁰ Whether these initiatives materialise in the near future remains to be seen.

EXISTING AND FUTURE TECHNICAL CHALLENGES

Phase 1 negotiations focused on trade of goods, trade in services and the dispute settlement mechanism (DSM), although not all annexes related to these protocols were finalised. At the time of signing in March 2018, outstanding annexes for negotiation included customs cooperation, trade facilitation and NTBs to trade. These negotiations were concluded in May 2018. Phase 2 negotiations will address issues around intellectual property, investment and competition policy. Other important issues for consideration during negotiations include the creation of regional value chains, e-commerce and agricultural productivity. However, there does not appear to be much consideration of some 21st century issues such as e-commerce and digitalisation.

This lack of focus on how technology will shape trade relations and industry raises questions about the readiness of the region to engage with the fourth industrial revolution, digitalisation and similar issues going forward. While discussions on e-commerce have been floated in negotiations and could feature in the specific context of trade in services, many AU members still deem such discussions premature in light of their respective development areas and are reluctant to commit to e-commerce issues.⁶¹ This is also the position taken by African countries in the WTO.⁶² Others believe that it would be premature for African countries to discuss 21st century issues (i) without having the institutions and technical resources to implement these commitments, and (ii) without having fully understood and implemented regulatory frameworks for 20th century trade issues such as intellectual property, investment law, and competition law, amongst others.

In its developmental stages the AfCFTA should be leveraged to develop a continent-wide approach to e-commerce that caters for the varying levels of development among African countries and bridges the gendered digital divide.⁶³ However, negotiators' apparent reluctance to do so raises questions as to how the AfCFTA will cater for African countries' 'leapfrogging' their development into the 21st century, and what this will mean for their trade relations with third parties. At a more local level, it could also result in a mismatch

Negotiators' apparent reluctance to develop a continent-wide approach to e-commerce raises questions as to how the AfCFTA will cater for African countries' 'leapfrogging' their development into the 21st century, and what this will mean for their trade relations with third parties

60 AU, Executive Council 18th Extraordinary Session, Ext/EC.CL/Dec.1&2 (XVIII), 19 March 2018.

61 Interview, independent researcher B, 29 March 2018.

62 Interview, public official C, 13 April 2018.

63 Fessehaie J, 'How can the CFTA help Africa respond to its economic transformation?', *Bridges Africa*, 7, 1, February 2018.

of priorities between the private sector and governments, and there is no guarantee that the private sector will wait for governments to catch up. This could result in a long-term disconnect between the regulatory frameworks in place and the way in which the private sector conducts business.

ELEPHANTS IN THE ROOM: OUTSTANDING ISSUES

At the time of writing, there were a number of outstanding issues for negotiation and the agreement signed on 21 March had a built-in agenda to continue negotiations on issues relating to tariff concessions, trade in services, and rules in origin.⁶⁴ In the build-up to the negotiations, the DSM discussions remained closely guarded with little information available in the public domain. However, the annexures to the DSM have since been finalised and the AfCFTA framework agreement's provisions thus far seem to reflect similarities between the AfCFTA's DSM and existing dispute settlement practices, such as those of the WTO.⁶⁵ It is also worth remembering that African countries have not, historically, been in favour of enforcing harsh penalties on each other. Therefore, it is unlikely that discussions on the format of the dispute settlement mechanism (ad-hoc panel or tribunal) will derail or stifle the negotiations in any meaningful way. Discussions on where it should be housed are also open-ended: either in Addis Ababa, along with the other AU institutions, or in Nigeria, which has been open about its desire to host the tribunal, despite its recent objections to the AfCFTA.⁶⁶

Regarding trade in services, a schedule of commitments must be developed for the list of prioritised sectors to be negotiated. This will require an in-depth review of the regulatory framework of the identified sectors to prepare each subsector and mode's initial market access offers, which will be the departure point for negotiations.⁶⁷ The way forward for negotiations on trade in services will therefore depend on the nature and extent of the concessions and commitments AU members offer each other.⁶⁸

Within the context of trade in goods, countries have found it difficult to reach consensus on tariff liberalisation and market access conditions. One of the most contentious issues was the tariff liberalisation discussion. While 90% liberalisation has been accepted by most African countries, Zimbabwe, Madagascar, Malawi, Ethiopia, Djibouti, Sudan and Zambia requested derogations from this.⁶⁹ South Africa was reportedly unhappy with

64 Interview, independent researcher B, 28 March 2018; interview, public official B, 11 April 2018.

65 Agreement Establishing the African Continental Free Trade Area, *op. cit.*, Protocol on Rules and Procedures on the Settlement of Disputes.

66 Interview, independent researcher C, 11 April 2018.

67 ATPC (African Trade Policy Centre) & UNECA, *Continental Free Trade Area Questions and Answers*. Addis Ababa: UNECA/ATPC, 2018.

68 One should also bear in mind that discussions on the liberalisation of trade in services warrant talks on enabling the cross-border movement of persons, a particularly difficult issue given African countries' general tense and securitised viewpoints on this issue.

69 Interview, public official A, 1 March 2018.

the request for 85% liberalisation, and wants to see more ambition from AU members.⁷⁰ This ties in with the South African private sector's desire for increased value addition and industrialisation in trade relations among African countries, which could be stultified by continued requests for flexibility.⁷¹ Interviewees confirmed the 85% tariff liberalisation rate was eventually granted to the seven countries on the basis that they would arrive at a 90% tariff liberalisation rate within the next five years.⁷²

The remaining 10% covers sensitive goods and excluded goods (ie, no phase-down at all). However, there are fears that African countries will use the provision for excluded products to lump together and exclude all valuable intra-African imports, resulting in continued low levels of intra-African trade.⁷³ Owing to the preferential nature of trade agreements afforded to African countries, more than 70% of LDC exports are destined for five export markets: the EU, US, China, India and Japan.⁷⁴ It would therefore not be difficult for African countries to include all intra-African trade in the excluded goods in order to protect domestic interests or infant industries. While Article 23 permits the protection of infant industries, it does so only for a fixed period of time and on a non-discriminatory basis.⁷⁵ One of the ways to prevent this from happening would be to include anti-concentration clauses in the goods modalities.⁷⁶ This would prevent African countries from excluding entire sectors and imports from tariff reductions. As per reports in June 2018, the annexes to the Protocol on Trade in Goods have been concluded, which reflects a significant step forward in implementing the AfCFTA. What this means for the tariff reductions play out in each sector remains to be seen, as implementation in the coming months unfold.

Since the annexures to the Trade in Goods have been finalised, discussions on the trade remedies and rules of origin (the criterion used to determine the national source of a product) have been finalised. In the build up to the negotiations, however, there appeared to be a divide between West Africa (specifically francophone Africa) and Southern and Eastern Africa on the use of TFTA texts and methodologies as a baseline for the AfCFTA equivalent.⁷⁷ While it is a common WTO negotiating tactic not to accept an agreement negotiated in another forum, francophone West Africa seemed particularly hesitant to muster the political momentum necessary for an undertaking the size of the AfCFTA.⁷⁸ Compounding this tension was the push for more restrictive rules of origin (ie, product-specific list of rules) from countries such as Kenya, Egypt and South Africa. South Africa had also lobbied to use the SADC rules of origin model as the basis for the AfCFTA rules

70 Interview, independent researcher C, 11 April 2018.

71 Interview, private sector representative, 25 April 2018.

72 Interview, public official B, 11 April 2018.

73 Interview, independent researcher C, 11 April 2018.

74 UNCTAD, 2015b, *op. cit.*

75 Agreement establishing the African Continental Free Trade Area, *op. cit.*, Part VII (Complementary Policies), Article 23.

76 Interview, public official B, 11 April 2018.

77 Interview, independent researcher C, 11 April 2018.

78 *Ibid.*

of origin. This was not aligned with the desires of West and Central African countries, which preferred more general rules of origin that would enable interim implementation.⁷⁹ In the end, the compromise reached by negotiators includes general rules with exceptions for 843 specific tariff lines.⁸⁰

Lastly, while the envisaged blueprint for African development includes a common monetary union and customs union there is disagreement as to whether this is feasible. Implementing a customs union by 2019 will be in line with the Abuja Treaty's deadline. While some believe that the monetary union is a far-off dream, as member states share little appetite for the AEC beyond the creation of the AfCFTA,⁸¹ others think that the AfCFTA should be viewed as part of a larger, inter-connected package whereby its implementation will enable a common market, and implementation of the Protocol on Free Movement of Persons, Right to Residence and Right to Establishment will enable greater movement of services, capital and people.⁸² The natural progression would be common custom and monetary unions. However, the jury is still out on the future implementation of a common monetary and customs union, which, arguably, can only become a reality if countries are able to implement a common market system first.

CONCLUSION

The AfCFTA processes are set to continue in 2018 with more research, engagement and workshops lined up. AU leaders have indicated their willingness to complete all negotiations by the end of 2020 and commence Phase 2 negotiations by end-2018/January 2019.⁸³ Important issues for further discussion include industrialisation, product diversification and expansion, and the development of regional value chains. While monitoring and evaluation should be the responsibility of individual AU members, this is not to say that their efforts cannot be complemented by overarching efforts from other AfCFTA stakeholders: one envisaged AfCFTA structure is a Trade Observatory, and UNECA has announced the launch of the CFTA Country Index (supported by other multilateral organisations), which will monitor country-level implementation.⁸⁴

This does not mean that it will be smooth sailing going forward. With many vital issues outstanding, problems could arise from protracted negotiations, as was evident in the TFTA negotiations. Implementation is the elephant in the room and much of the AfCFTA's success rests squarely on AU members' ability and willingness to implement the AfCFTA domestically and support AU institutions for this purpose. Like all other trade agreements, capacity challenges will arise, misinterpretations of the agreement will happen and some countries are likely to fail in fulfilling their obligations, owing to national interests or

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Implementation is the elephant in the room and much of the AfCFTA's success rests squarely on AU members' ability and willingness to implement the AfCFTA domestically and support AU institutions for this purpose

79 *Ibid.*; interview, public official B, 11 April 2018.

80 Interview, public official B, 11 April 2018.

81 Interview, public official A, 1 March 2018; *ibid.*

82 Interview, public official C, 13 April 2018.

83 *Ibid.*

84 Interview, public official D, 19 April 2018. See also ATPC & UNECA, *op. cit.*

rising levels of protectionism.⁸⁵ However, the fact that these issues could arise is no reason not to further the AfCFTA cause and continue pursuing deeper levels of trade, integration and development.

At a political level the display of greater political will among most AU members should be sustained, which will help carry through the momentum from 21 March 2018 onwards to implementation of the AfCFTA. Domestic institutions to guide implementation, address capacity constraints and undertake advocacy and sensitisation will be required to ensure inclusivity and buy-in for the AfCFTA vision. There are positive signs on this front, as the AU has embarked on its first roadshow in Ghana, in partnership with the Association of Ghana industries, to raise local entrepreneurs' awareness of the AfCFTA.⁸⁶ NTBs are a real concern for all African countries, and can render the gains made on tariff liberalisation useless if they are not addressed effectively. Similarly, gaining ground on trade in services is going to be difficult if the issue of free movement of persons is not addressed, particularly because migration is a notoriously sensitive topic for many African countries, which often do not wish to engage in discussions on this front.

The AfCFTA has to serve a developmental agenda across the continent, bearing in mind the vastly different socio-economic challenges facing African countries, and cannot afford to be derailed by outside forces or its own leaders' inertia. A development-orientated AfCFTA must address the equitable distribution of benefits, show commitment to widespread infrastructure development and move towards greater participation in global value chains that encompass value-added goods as opposed to raw materials. While the AfCFTA is not the panacea for Africa's woes, it does constitute a single undertaking by African countries to work together for their mutually beneficial development. How negotiations unfold will be telling for the future of Africa's trade and development goals.

85 Interview, public official D, 19 April 2018.

86 <https://au.int/en/pressreleases/20180528/afrochampions-initiative-and-african-union-start-ghana-their-sensitization>, accessed on 1 June 2018

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