

Preparedness of the Different AU-recognized Regional Economic Communities (RECs) for the Continental Free Trade Area (CFTA)

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The 1991 Abuja Treaty Establishing the African Economic Community is the blue print for Africa's economic integration. The Treaty provides for the creation of the Community in six stages of varying durations, spread over a period of 34 years and using the Regional Economic Communities (RECs) as the building blocks. The Abuja Treaty Road Map does not include the establishment of a Continental Free Trade Area (CFTA) in any of the six stages. Trade and market integration at the continental level was expected to commence in the fourth stage with the establishment of an African Customs Union, through the consolidation of the Customs Unions of the RECs. The historic CFTA decision of the 18th Session of the Assembly of AU Heads of State and Government was aimed partly at addressing the lacuna in the Abuja Treaty.

The key role of the RECs as the building blocks of Africa's continental integration is fully recognized in the Road Map endorsed by the AU Summit for the establishment of the CFTA, as outlined below:

- The Tripartite FTA of the EAC, COMESA and the SADC to be finalized by 2014.
- FTAs by Non-Tripartite RECs , through parallel arrangements similar to the EAC-COMESA-SADC Tripartite Initiative or reflecting the preferences of their Member States, to be completed by between 2012 and 2014.
- Tripartite and other regional FTAs to be consolidated into a CFTA by 2017, with the option to review the target date according to progress made.

The establishment of the CFTA through the consolidation of the RECs' FTAs is aimed at fast-tracking the process through building on acquis and reservation of achievements of the RECs in trade integration

The objective of the CFTA is to have a deeper market integration of the Member States by encompassing, in addition to the elimination of tariff and non-tariff

barriers to trade in goods and liberalization of trade in services, a range of behind the border issues such as investment, competition policy, and intellectual property rights. The negotiations of the CFTA are planned for two phases. The first phase, expected to be concluded by 2017, is to be conducted in two separate parallel tracks of negotiations that will cover trade in goods and trade in services respectively. The second phase of the negotiations will deal with the issues of investment, intellectual property rights, and competition policy.

The RECs which are to serve as the building blocks of the CFTA are committed to the establishment of FTAs and free movement of goods and services among their Member States. Progress in market integration has however been uneven among them. While some have completed their FTAs and advanced to a higher level of trade integration such as Customs Union, others are yet to have functional FTAs. Thus the RECs differ in degree to which the CFTA can build on their trade liberalization experiences.

Trade in Goods

The EAC-COMESA-SADC Tripartite FTA, which has a membership of 26 countries and is expected to serve as a key pillar of the CFTA, has concluded its first phase negotiations on trade in goods. The 45-Article Agreement on trade in goods which covers tariff liberalization and non-tariff barriers was signed by the Heads of State and Government in June 2015. The Agreement provides for the liberalization of 100 per cent of tariff lines (with general specific and security exceptions). Sixty to eighty five per cent of the lines are to be liberalized upon entry into force of the Agreement while the remaining 15-40 percent will be negotiated over a period of 5-8 years. With regard to Non-tariff barriers, the Tripartite FTA Agreement provides for the harmonization of the COMESA, EAC and SADC NTBs arrangements into a single mechanism-Tripartite NTBs Reporting, Resolving and Monitoring Mechanism- and the establishment of an institutional framework in form of a sub-Committee and national focal on NTBs.

Although the Tripartite FTA Agreement has been signed, three of the accompanying annexes (on Tariff schedules, Rules of Origin (RoO), and Trade Remedies) are yet to be finalized. The experience of the Tripartite FTA in this regard points to the complexity of negotiating a trade agreement involving many

parties with varying interests and at different levels of development. The CFTA negotiations should draw some lessons from the experience. For example, the Tripartite FTA negotiations approach to rules of origin is product specific. Rules of origin have been agreed for only about 25 per cent of the product types. The CFTA may need to adopt a different and simple approach to avoid the type of delay that has characterized the TFTA RoO negotiations. The Tripartite FTA Trade in Goods Agreement will enter into force after the remaining technical steps have been completed and the Agreement has been ratified by at least 14 Member States, hopefully during 2016. The conclusion of the Tripartite FTA constitutes undoubtedly a major milestone in Africa's drive for the establishment of the CFTA and continental trade integration.

The constituent RECs of the TFTA-the EAC, COMESA and SADC- are at different levels of the trade integration of their Member States. With an average of 0.0 per cent applied tariffs, all tariff lines are fully liberalized in respect of intra-EAC trade. Elimination of non-tariff barriers is a key objective of trade liberalization programme of the EAC. The REC has adopted measures to facilitate transport and reduce non-tariff barriers. Under its time- bound NTBs elimination programme, the EAC has removed 78 NTBs and is working towards the elimination of the remaining 42 .The REC has advanced beyond the level of FTA in trade integration, being currently a common market/customs union. While the tariff offers in the TFTA have not yet been finalized for all the countries, the five Member States of the EAC have made tariff offers of 100 per cent liberalization on a reciprocal basis, thus acting as champions in TFTA trade liberalization agenda.

Both the COMESA and SADC-the two other constituent RECs of the TFTA- have free trade areas in operation but have not attained the same level of trade integration as the EAC. Although the COMESA became an FTA in 200, two of the Member States (the DRC and Ethiopia) have only recently committed to join its FTA in the next three years as part of the conclusion of the negotiation of the TFTA. The proportion of tariff lines fully liberalized within COMESA is 55 per cent while average applied tariffs by Member States, using import weighting, is 1.89. In SADC, only 15 per cent of tariff lines are fully liberalized while the average applied tariff amounts to 1.89 per cent. Among the TFTA RECs, the EAC offers the best practice in tariff liberalization that the CFTA can adopt.

In order to facilitate and accelerate the process of the negotiations and establishment of the CFTA, the AU Summit Decision of January 2012 had envisaged the possibility of the non-Tripartite AU-recognized RECs concluding , during the period 2012-2014, parallel arrangements similar to the COMESA-EAC-SADC- FTA initiative. Unfortunately, an arrangement similar to the Tripartite FTA has not materialized, hence the Non-tripartite RECs will be entering the CFTA with the experience of their individual FTAs.

Among the non-Tripartite RECs, ECOWAS FTA has been most developed and operational. Its goods only trade liberalization scheme which has been in operation since 2000 is being applied by all the 15 Member states of the REC and has been duly notified at the WTO. In January 2015 ECOWAS became a Customs Union and by April 2015, eight of its Member States had started to apply the Common External Tariff {CET). ECOWAS has also made significant progress in the elimination of non-tariff barriers and facilitation of trade. However, when compared with other RECs ECOWAS still have a lot of ground to cover in terms of intra-regional trade liberalization. For example while in the EAC (a Customs Union like ECOWAS) all tariff lines have been fully liberalized and average applied tariff on intra-REC imports is zero, only 10 per cent of tariff lines in ECOWAS are fully liberalized and the average applied tariff amounts to 5.6 per cent.

In 2008 the Heads of State and Government of ECCAS agreed to establish an FTA to be launched that same year with a view to advancing to the level of a Customs Union in 2008. Although the REC now has n FTA has a Free Trade Area, it has not become operational and its trade liberalization scheme is yet to be fully implemented. The Member States have reduced average intra-REC tariffs to zero for only 34 per cent of tariff lines. Among the AU-recognized RECs, ECCAS has the lowest level of intra-regional trade. ECCAS average applied tariffs (using import weighting) is 1.86 per cent.

The Member States of the Arab Maghreb Union (AMU) have nearly concluded their negotiations for the establishment of a Free Trade Area. Only the rules of origin remain to be finalized in the negotiations. Roughly half of the tariff lines are fully liberalized in intra-AMU trade and the average tariffs applied by the Member States on imports from the REC is 2.6 per cent. Although the AMU FTA is yet to be fully established, the leaders of the region have started to prepare their Member

States for the CFTA negotiations. In December 2014, the AMU Ministers of Trade created a Working Group on the Boosting of Intra-African Trade initiative and the CFTA negotiations.

The RECs whose FTAs are expected to serve as the building blocks of the CFTA have varying experience and degrees of success in their trade in goods liberalization programmes. The difference in schemes is indicative of the complexity of building the CFTA on acquis of the RECs FTA. However, in applying the principle of reservation of acquis, the CFTA should aim for the adoption of the best practice in intra-regional trade liberalization: the full liberalization of all tariff lines and the elimination of all non-tariff barriers.

Trade in Services

The scope of the CFTA includes trade in services which is expected to be negotiated during the first phase (2016-2017) in separate parallel sessions with the negotiations on the trade in goods. The inclusion of services in the trade development and liberalization agenda of the CFTA stems from the importance of the services sector in the economies of African countries, the critical role that services play as drivers of growth in other sectors, the emergence of trade in services as a dynamic sector of global trade, the marginalization of Africa in the global trade in services, and the huge potentials for intra-Africa trade in services.

Africa, in 2014, had a deficit of \$77billion in its services trade with rest of the world. The development and liberalization of services trade in the context of the CFTA can help to eliminate or significantly reduce this deficit. An agreement on trade in services within the framework of the CFTA is expected to boost services output, enhance the competitiveness of the economies of African countries, increase intra-Africa trade in services, and enhance the shares of Africa in global output and trade of services. As in the case of trade in goods, the liberalization of trade in services in the CFTA is expected to be anchored on the acquis of the RECs FTA.

The Tripartite FTA has no agreement on trade in services which CFTA negotiations can draw upon. Initially scheduled for the first phase which was concluded in 2015, the Tripartite FTA negotiations on trade in services had to be shifted to the second phase to limit scope of the initial negotiations and the pressure on the negotiating capacity of the Member States. The constituent RECs of the Tripartite

and the non-Tripartite RECs have trade in services development and liberalization programmes that can inform the CFTA trade in services negotiations.

The objective of the CFTA in the area of trade in services is to achieve free and unrestricted movement of services among African countries with focus on the four modes of supply. Although the negotiations on trade in services are scheduled to be concluded next year, the modalities for the negotiations are yet to be developed and agreed upon. Nevertheless, certain principles that will guide the negotiations have been agreed. These include the principle of Most Favoured Nation (MFN) treatment which forbids any member from discriminating against other members and the principle of National Treatment that will ensure that service products that are exported by a member state are not subjected to unfair national treatment by the importing member state.

All the eight AU recognized RECs consider the free movement of services as a priority for the market integration of the Member States. From the experience of those RECs that have been addressing intra-regional liberalization of services trade in their integration and development agenda, two approaches have emerged: the establishment of regulatory frameworks; and the scheduling of commitments (in e.g. market access, national treatment, domestic regulations). Although some of its Member States have made commitments in a few service sectors at the WTO, ECOWAS' approach to intra-REC services trade liberalization is mainly regulatory. The REC has established a number of regulatory bodies, including the ECOWAS Electricity Regulatory Authority and the Regional Competition Authority, to facilitate the liberalization of the trade in services. It has cooperation frameworks to address intra-REC differences in the regulation of transportation and ICT services. COMESA which on the other hand adopted a scheduling approach has scheduled commitments in four key service sectors while three other sectors are under negotiations. The CFTA is likely to adopt a hybrid approach for services trade liberalization in order to accommodate the different approaches of the various RECs.

The mode of supply of services which is of a cross-cutting nature and has received great attention in Africa's market integration agenda is the free movement of persons. All the RECs have included free movement of persons as a key objective of their market integration, not only as a goal in its own right but because it

supports trade in services by allowing service providers to deliver services on sight as in the case of business services and for service recipients to travel to providers to travel abroad (e.g. education, medical care, tourism). At the continental level, free movement of persons constitutes a core element of the agenda for the establishment of the African Common Market. Thus Chapter VI of the (Abuja) Treaty Establishing the African Economic Community provides for the free movement of persons, rights of residence and establishment while Agenda 2063 that was adopted by the Summit of the AU in January 2015 has reiterated that “Africa shall be a continent where the free movement of people, capital, goods and services will result in increases in trade and investment among African countries, rising to unprecedented levels, and strengthening Africa’s place in global trade”. An ambitious target date of 2018 has been set for the introduction of an African e-passport with abolishment of visa requirements for all Africans in all African countries.

Although all the AU-recognized RECs are committed to the free movement of persons within their regions and have adopted protocols to foster such movement, the rate of implementation of the protocols has varied among them. ECOWAS has the best practice in this area with all its Member States implementing the Protocol on the free movement of persons and rights of residence and establishment. The REC has also adopted a common passport.

As compared to ECOWAS in which all the 15 Member States are implementing the free movement of persons protocol, only Burundi has ratified the COMESA Protocol while 3 out of 5, 4 out of 11, and 7 out of 15 Member States of AMU, ECCAS and SADC respectively are implementing their RECs Protocols on the free movement of persons. The EAC Treaty has provisions for free movement of persons and establishment that have been ratified by all the Member States. The Heads of State and Government of the REC at a meeting held on 3rd March 2016 have launched a new international East Africa e-passport. To enhance the integration of its labour market for professional services, the REC has also adopted a policy of mutual recognition of academic and professional qualifications.

In AMU, freedom of establishment and investment capital is guaranteed for Member States in accordance with the laws and regulations in place. Also

guaranteed in the REC is the freedom to transfer capital, professional income of foreign employees, and equal treatment of nationals and foreign individuals and legal entities.

If the CFTA Agreement is to serve as a key instrument for the promotion of intra-Africa trade in services, it must improve on the acquis of the RECs FTAs and include provisions that will facilitate the free movement of persons and the right of establishment for all Africans in all Member States.

Trade Related Issues: Competition Policy, Investment, an Intellectual Property Rights

The CFTA seeks to achieve deeper market integration among Member States by including behind the border issues in the scope of its negotiations. Regimes for competition policy, investment, and intellectual property rights are scheduled to be negotiated during the second phase. The RECs and the Member States have some experience in trade regimes on these issues upon which CFTA regime can build.

African countries need significant increase in the level of investment to, inter alia, bridge infrastructure gap and accelerate the pace of industrialization and economic transformation. The CFTA investment agreement or regime is expected to provide a legal or regulatory framework for the enhancement of investment and increased flows of investment between African countries. African countries need significant increase in investment to bridge infrastructure gaps and accelerate the pace of industrialization and economic transformation. The CFTA investment regime on investment is expected to provide a frame work for the enhancement of investment and increased flows of investment between African countries.

Over the years , African countries have subscribed to and participated in several multilateral investment frameworks with a view to overcoming the the perception of the countries as “risky investment destination”, and reducing regulatory barriers to investment as well as improving the climate for inflow of investment. The multilateral frameworks include the WTO Trade Related Investment Measures (TRIMs) Agreement, the Multilateral Investment Guarantee Agency (MIGA), the Convention of the International Center for Settlement of Investment Disputes (ICSID), the OECD Declaration on International Investment and

Multinational Enterprises, and the OECD Code of liberalization of Capital Movements. Since the 1990s, African countries have also entered into as many as 854 Bilateral Investment Treaties (BITs), 157 intra-Africa and 697 with the outside world. Through their participation in these frameworks African countries have acquired experience that will be valuable in the negotiations in the CFTA investment Agreement/ Regime.

There are also a few African regional investment treaties and initiatives upon which the CFTA investment agreement /regime can build. These include the Investment Agreement for the COMESA Common Investment Area, the ECOWAS Supplementary Act adopting Community Rules on Investment and the Modalities for their Implementation, the East African Model Code of the EAC, and the SADC “Model BIT”. The harmonization and improvement of the provisions of these regional frameworks for the enhancement of investment flows should be the primary objective of CFTA regime.

With regard to the CFTA competition policy, the key principles of Most Favoured Nation and National Treatment upon which the CFTA agreements are expected to build will contribute to the development of an appropriate CFTA competition policy. There are also a number of regional competition regulatory frameworks and bodies that can serve as a template for the development of the CFTA competition policy. A good example is the ECOWAS Competition Authority.

In today’s knowledge-driven economy, the generation of intellectual property and the protection of the property rights have become important objectives of economic development policy. The inclusion of intellectual property rights in the CFTA initiative is to ensure that intellectual property (IP) play an important role in Africa’s development.

There are two existing major platforms in Africa for IP administration: the African Intellectual Property Organization (AIPO) for French-speaking African countries and the African Regional Intellectual Property Organization (ARIPO) for English-speaking African countries. In the spirit of African unity and integration, the CFTA intellectual property regime must aim at the establishment of one unified IP administration for Africa and build and improve upon the achievements of AIPO and ARIPO for a more effective and efficient IP administration. CFTA intellectual property administration should be able to play important roles including:

- The harmonization and development of African intellectual property laws
- Promotion of common African positions on intellectual property matters
- Support to Member States in the acquisition and development of technology relating to intellectual property and
- Assistance to African countries for the building of necessary infrastructure and technical knowhow to take advantage of IP rights.

The Roles of the RECs in the CFTA Initiative

The RECs have been designated the building blocks of the CFTA and the AEC. It was in recognition of their important position in Africa's integration agenda that the AU Summit decided at its 18th Ordinary Session that the CFTA should be built on the acquis of the RECs FTAs and adopted a Road Map that requires the RECs to complete their FTAs before the negotiations of the CFTA. As indicated in this paper there are many best practices in RECs FTAs that the CFTA could build upon. The process of CFTA negotiations could have been accelerated if the RECs had been given the mandate by their Member States to negotiate the CFTA on their behalf or if the RECs had been a key role in the Negotiating Forum. To date, no REC has been given the mandate to negotiate the CFTA on behalf of the Member States.

The CFTA Negotiating Forum (CFTA N-F), the key organ in the CFTA architecture that has responsibility for negotiating the technical aspects of the CFTA has the Representatives of the RECs in its composition. However, in the Rules of Procedure for the CFTA N-F which have been agreed at the recent inaugural session of the Forum, while the rules state that "The duly accredited Members of CFTA N-F Member States shall attend and participate in the Sessions of the Negotiating Forum", the "Representatives of the RECs/ Customs territories secretariats can attend Sessions of the Negotiating Institutions and may provide written and/or oral presentations upon the request of the negotiating institution". Thus a clear distinction has been made between the status of Member States and RECs in the CFTAN-F.

The diminished role of the RECs in CFTA N-F notwithstanding, the RECs still have an important role to play in the CFTA negotiating process- that of coordinating their Member States for common positions, based on the acquis of their FTAs and building the capacity of the Member States for effective participation in the

CFTA negotiations. It is in this regard that organization of this ECOWAS Workshop is a move in the right direction.