# Safeguarding the African Continental Free Trade Area from Externally-Imposed Threats of Fragmentation

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March 14, 2019

**Introduction**

The adoption of the Agreement Establishing the African Continental Free Trade Area (AfCFTA) by African Heads of State and Government at their meeting in Kigali, Rwanda, on 21 March 2018 was greeted with great enthusiasm on an almost global scale. Summit host and then AU Chairperson Paul Kagame spoke about the "promise of free trade and free movement" in terms of "prosperity for all Africans" that provides Africa with a new platform of growing strength and unity with which to secure its "rightful interests in the international arena."

From beyond the Continent, too, in a joint statement released just a day after its adoption, EU High Representative and Commission Vice-President Federica Mogherini, Trade Commissioner Cecilia Malmström, and Development Commissioner Neven Mimica welcomed the AfCFTA as an "historic decision" and an impressive achievement that "represents a significant step towards deepening continental integration" whose implementation the EU was ready to support. Niger President Mahamadou Issoufou and UNECA Executive Secretary Vera Songwe, in an op-ed published in the Financial Times on 20 December 2017, described the then just completed AfCFTA Agreement as an instrument that "will revolutionise the way Africa trades" by diversifying the product mix away from dependence on commodities to manufactures, and attracting inward foreign direct investment through the enlarged regional market it creates. Such plaudits aren't without foundation; UNECA, UNCTAD and independent analysts forecast long-term gains from the AfCFTA to include a more than 50% boost to intra-African trade and as much as $16 billion in welfare gains by the time it is fully implemented.

**Translating Promises to Actions: the Implementation Challenge**

In order for all these promises to materialise, the AfCFTA Agreement needs to be ratified by African countries and, even more importantly, it needs to be implemented in full. As Issoufou and Songwe observed in the conclusion to their op-ed, we need to make special efforts to match "ambition with implementation". There lies the secret to the success of the AfCFTA – implementation! It is well-known that there has been a yawning gap between ambition and implementation in the Continent. President Paul Kagame of Rwanda, who led the AU reform efforts since 2017, spoke about what he called "a crisis of implementation" of AU decisions.

More recently, Moussa Faki Mahamat, Chairperson of the African Union Commission, sympathised with those Africans who feel sceptical about implementation of the AfCFTA itself, saying: they "have seen so many proclamations remain a dead letter, so many commitments without practical execution that they have come to doubt the strength of our commitment." However, all signs are showing that this time it might be different. Not only has the AfCFTA been signed by 52 of the 55 AU member states; it has already been ratified by 19, with several others expected to do so over the coming weeks and months – all but guaranteeing that the Agreement will secure the minimum of 22 ratifications required for it to enter into force and do so a lot faster than even the optimists amongst us may have hoped for. Even more encouraging is that, parallel to the ratification drive at the political level, impressive technical work is being undertaken on a daily basis at all levels, from the national to the regional and the continental.

The recent agreement at the Cairo meeting of the African Ministers of Trade (AMOT) on templates and guidelines to be used for scheduling specific commitments in goods and services as well as the detailed roadmap for the finalization of outstanding work represent examples of concrete progress and promising momentum at the technical level.

**External Threats and What Needs to be Done about Them**

While all this is encouraging, the AfCFTA will continue to face a number of risks that threaten to impede continental integration in favour of fragmentation. Of interest to this post are bilateral trade agreements between African countries, individually or in smaller groups, on the one hand, and non-African countries or regions, on the other.

The Economic Partnership Agreements (EPAs) with the European Union are a typical example of such instruments. Other examples include the Greater Arab Free Trade Area (GAFTA) that brings some Northern African countries together with several non-African countries, the FTAs between the U.S. and Morocco, and between Egypt and MERCOSUR, to name but a few. To these bilateral agreements may be added such unilateral arrangements as the EU's general scheme of preferences, with its LDC-specific scheme "everything but arms" (EBA), and the African Growth and Opportunity Act (AGOA) of the United States of America, which, by granting uneven levels of preferences to different groups of African countries, further complicate Africa's ability to forge continent-level positions on trade issues vis-à-vis third parties. Of these two classes of external challenges, African countries have the power to do something about the strictly bilateral agreements of the sort typified by EPAs and GAFTA.

In an effort to tackle these types of external threats, the AU Assembly recently directed its member states to "abstain from entering into bilateral trading arrangements until the entry into force of the Agreement establishing the AfCFTA" while committing “to engage external partners as one bloc speaking with one voice”. It is worrying to witness, however, that some African countries are already considering engaging in new bilateral negotiations with external partners today. Regrettably, Africa’s trading partners are also encouraging this approach, albeit not necessarily with the intention of fragmenting the continent. For example, the EU has been adamant that trade issues must be left to the EPAs rather than be part of the ongoing negotiations for a Post-Cotonou Partnership Agreement with the ACP Group of countries. Likewise, the U.S. is already approaching individual African countries, urging them to engage in bilateral trade agreements that will take over from AGOA when it expires in 2025. In neither case can it be said that African countries are engaging in negotiations freely; on the contrary, the evidence suggests that they do so often to avert the risk of losing existing market access opportunities to these countries or regions.

To illustrate this with an example from the EU, the Cotonou Agreement on the basis of which the EPA negotiations were launched ruled out the option of a single EPA with all African countries as a bloc. Right from the outset, the European Commission envisaged EPAs with African regions that would become “one of the first-ever region-to-region, North-South, development-oriented trade agreements.” And when the EPA negotiations did not produce the desired inter-regional outcome in Africa within the agreed deadline of 31stDecember 2007, the EU decided to initial interim EPAs with a number individual countries rather than reconsider its position on an all-Africa EPA. Of course, African countries that have the status of being developing[1] decided to join in such EPAs so as to preserve their preferential access to the EU market.

In some cases, these countries did so even where they belonged to intra-African customs unions, whilst other members of the same customs union did not accede to the EPA (e.g. Cote d’Ivoire and Ghana in ECOWAs or Cameroon in CEMAC). The LDCs, on the other hand, resisted the push because the EBA already gives them generous terms of access without demand for reciprocity. When such division happens between African countries in the same region, the effect once again is to further complicate the region’s ability to forge a common position. Cumulated at continental level, these challenges can become almost insurmountable. Likewise, the U.S. has indicated its intention to pursue post-

AGOA negotiations with ‘can do’ African countries as ‘regional leaders’ for individual FTAs. Negotiations with individual African countries will allow the U.S. to leverage its disproportionate economic heft more than it might, for instance, in a “bilateral” agreement with Africa acting as one bloc.[2] The result will be close to a repeat of the fragmentation threat imposed by the EU’s bilateral interim-EPAs. Just as potential loss of preferential market access opportunities contained in the Cotonou Agreement forced a number of African countries to agree to interim EPAs, so also is the fear of losing preferential access to the US market on AGOA terms likely to force some African countries to conclude bilateral agreements with the US.

Needless to say, the most optimal configuration for African countries in both cases would have been to stick together and negotiate as one bloc so as to maximise their negotiating leverage through the force of numbers. Regrettably, that was not the case with EPAs and is unlikely to be the case in relations with the US post-AGOA either. Left unaddressed, this situation is also likely to impede attainment of the objectives of the AfCFTA Agreement, *inter alia*, because:

1. By prying open inlets into Africa’s tariff structure, such external agreements widen the divide between the tariff books of African countries, and prevent the creation of an African Common External Tariff (CET) that is itself a prerequisite for the establishment of the Continental Customs Union envisaged not just in Article 3.(d) of the AfCFTA Agreement, but in the aspirations of the 1991 Abuja Treaty, the 2000 Constitutive Act of the African Union, and the 2012 Boosting Intra-African Trade (BIAT) Action Plan. The problem, simply put, is that a Common External Tariff is no longer *common* if some of the countries party to it have in place FTAs with external countries. This challenge is, furthermore, not without precedent in Africa; both the ECOWAS and CEMAC regional groupings face an existential challenge to their own common external tariff systems because of separate bilateral agreements the EU has concluded with Cameroon, Cote d’Ivoire and Ghana.
2. Secondly, such agreements risk undermining the spirit of the AfCFTA that African countries should “accord each other […] preferences no less favourable than those given to Third Parties”. Article 18 of the AfCFTA Agreement on ‘Continental Preferences’, which invokes this language, is

designed to ensure that the preferences shared among African countries are the deepest they can be. Yet, because Article 18 qualifies such treatment as on a “reciprocal basis” – so as to prevent the notorious free rider problem – it becomes toothless, doing very little to actually prevent third countries from enjoying greater access to parts of the African market than other African countries parties to the AfCFTA.

3. And, thirdly, such agreements risk undermining the long-held vision and ambition, in the language of the AU Agenda 2063, for Africa to “speak with one voice and act collectively to promote our common interests and positions in the international arena”, which has been understood as critical for the continent’s “unity and solidarity in the face of continued external interference”. Speaking as one, Africa can negotiate better trade deals than could be possible for each of the 55 smaller economies acting alone. Acting as one, Africa is an economic giant the size of India; acting individually, most African economies are so small as to fall prey to their trading partners.

The AU Assembly appears to be still searching for the point of equilibrium between the imperative to maintain the integrity of the AfCFTA at continental level, on the one hand, and individual national interests to maintain or pursue preferences with third countries, on the other. To this end, at its latest meeting in February 2019, the Assembly agreed a soft obligation of transparency requiring each Member State wishing to enter into partnerships with third parties to “inform the Assembly with assurance that those efforts will not undermine the African Union vision of creating one African market”, while at the same time instructing the AU Commission to conduct “an assessment of the requirements for the establishment of a future common market including steps to be taken as well as their implications and challenges”. To address these challenges and launch Africa on a sustainable path of economic prosperity, we offer four areas for further exploration and action.

Firstly, the wisdom articulated above about the need to work together and build better negotiating power through the force of numbers is not new; it has been reiterated in some of the most hallowed treaties and declarations of the OAU earlier, and the AU today. The real challenge lies with what Kagame called the “crisis of implementation”. Until all the commitments contained in the Abuja Treaty, the AU Constitutive Act and the AfCFTA Agreement itself are taken for the hard law obligations they are and be enforced, short-term and country-specific calculations will continue to undermine the long-term and Pan-African interests in which everyone would gain.

Secondly, in order for the continental commitment to speak with one voice to bear the desired fruit, the African Union needs to learn from successful experiments in other parts of the world and progressively transfer the mandate to negotiate and enforce trade agreements for the entire continent to the AU Commission. It is inevitable that this idea will cause short term discomfort to several African countries. Yet the benefits are worth it. Such is the model of the EU which, as many African countries might unhappily attest, wields considerable trade negotiating clout today only because the whole bloc speaks in one voice on this subject exclusively through its Commission. We can look, too, to less-developed regional groupings: the ASEAN configuration of south and south-east Asian countries have exercised considerably more power as a consolidated negotiating bloc in the CPTPP and RCEP negotiations than could have any of their constituent countries otherwise. Moreover, the moment we realise that, in fact, no new idea is being proposed here – that this has been at the heart of the Continent's integration agenda since its authoritative articulation in the Abuja Treaty nearly three decades ago – that discomfort should be eased. Finally, such a goal cannot be achieved overnight; all we need to do at this stage is start the process on clear and solid foundations. As The Economist put it recently: *"Africa's leaders need to think more strategically. Africa may be nearly as populous as China, but it comprises 54 countries, not one. African governments could strike better deals if they showed more unity. No one expects a heterogeneous continent that includes both anarchic battle zones and prosperous democracies to be as integrated as Europe. But it can surely do better than letting China negotiate with each country individually, behind closed doors."*

Thirdly, in order for such transfer of competence to the AUC to work, we need to establish functioning mechanisms of political and legal accountability between the Commission and the AU membership. The seeds of such a mechanism are already in place. The African Ministers of Trade (AMOT) have met seven times so far in the course of the AfCFTA negotiations, during which policy towards external trade issues, such as the WTO, has been discussed regularly. The AfCFTA strengthens these institutions, formalising a Council of

Ministers to meet biannually in ordinary session and under express AfCFTA decision-making disciplines to ensure effectiveness.

Finally, Africa needs to rationalize its existing trade arrangements with third parties. To take the example of bilateral agreements with the EU, once again, the AU needs to build into the AfCFTA process an agenda for the progressive phase out of EPAs as well as the Euro-Mediterranean Association Agreements with Northern African countries. As the ECOWAS example mentioned earlier attests, no functioning customs union will be possible in the continent unless all members of that customs union have effectively harmonised their external trade regimes and transferred their powers to negotiate trade agreements to the organs of the customs union.

**Conclusion**

The Pan-African movement started with the political agenda of ridding the continent of colonialism and apartheid as its primary driving force. However, the economic imperative to build a continental market was never far from the surface even then. As two of the contributors to this blog observed recently, an item on the agenda of the OAU inaugural summit of 25 May 1963 was entitled "Areas of Co-Operation in Economic Problems", under which the summit appointed a preparatory economic committee to study such questions as the possibility of establishing a free trade area between the various African countries and the establishment of a common external tariff. It is the pursuit of this same objective that brought the AfCFTA into existence. Through the AfCFTA, that long-cherished goal of an African single market is within reach. Among the remaining threats to the realisation of this goal is the fragmented approach to trade relations that has been established between African countries/regions and third parties. It is encouraging to observe that some of our trading partners are also thinking along these lines. To mention just one important example, the EU, which remains Africa's single biggest trading partner, is itself currently considering a "continent-to-continent agreement [that] would use as a stepping stone the African Continental Free Trade Area". This would, notably, bring together and reconcile not just the divergences between the existing EPAs, but also the Association Agreements between the EU and countries in North Africa, and contribute to a continentally harmonized, coordinated approach to African trade. This is a welcome development that we need to seize. Equally importantly, this is also an approach we should insist on in our trade relations with other trading partners, including the U.S. post-AGOA.

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[1] Only 3 LDCs are currently implementing EPAs: Madagascar in the ESA region, and Lesotho and Mozambique in the SADC region.

[2] This reflects a broader new U.S. negotiating strategy that prioritizes bilateral – over plurilateral – negotiations see President Trump’s Trade Policy Agenda 2017 and 2018

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