

# The AfCFTA and Trade Facilitation: Re-Arranging Continental Economic Integration

Mbakiso MAGWAPE <sup>\*</sup>

*The African Continental Free Trade Agreement (AfCFTA) was launched on the 21 March 2018 with overwhelming support by African States. The FTA emerges against the backdrop of unsuccessful continental economic integration attempts, characterized by failed target-deadlines, multiplication of RTAs (the ‘spaghetti-bowl effect’) and political and governance issues. The AfCFTA re-arranges the African continental integration construct by employing a ‘top-down’ approach. This is a drastic departure from the ‘bottom-up’ structure championed by the African Economic Community (AEC) through Regional Economic Communities (RECs). This article examines the change in institutional framework adopted by the AfCFTA, the role that existing RECs have under the said Continental FTA, and aligns international instruments with legal provisions binding on Member States.*

*The Article focuses on trade facilitation which took centre stage during the Doha Development Round. African States have embraced trade facilitation, the AfCFTA has followed suit and has cemented provisions in its Protocol on Trade in Goods. An overwhelming majority of AfCFTA Signatory States are WTO Members, and have also ratified the WTO Trade Facilitation Agreement (WTO TFA). The Article reconciles legal trade facilitation obligations of African Member States under the AfCFTA and the WTO TFA, and establishes the legal relationship between the AfCFTA and the WTO.*

## 1 INTRODUCTION & BACKGROUND

The Agreement establishing the African Continental Free Trade Area<sup>1</sup> (AfCFTA) marks a significant milestone in the African Unions’ (AU) history, and its aspirations of realizing a continental FTA and customs union. The AfCFTA was created to bolster intra-African trade, which has notoriously been the lowest in the world compared to other continents.<sup>2</sup> The AfCFTA emerged on the backdrop of

---

<sup>\*</sup> Doctoral Candidate at the University of Pretoria, specializing in International Trade Law.  
Email: mbakisomagwape@gmail.com

<sup>1</sup> Agreement Establishing the African Continental Free Trade Area (21 Mar. 2018).

<sup>2</sup> United Nations Conference on Trade and Development, From Regional Economic Communities to a Continental Free Trade Area: Strategic tools to assist negotiators and agricultural policy design in Africa, UNCTAD/WEB/DITC/2017/1, 4 (2017). It has been well established that intra-African trade is the lowest in the world, compared to other continents. UNCTAD in its 2017 report indicates that in 2015, intra-African trade stands at around 18% compared to 60%, 40%,

numerous unsuccessful continental economic regional integration attempts.<sup>3</sup> The AU and its predecessor the Organization of African Unity (OAU) have championed continental and regional integration efforts for over three decades, primarily through the African Economic Community (AEC).<sup>4</sup> The AfCFTA was formulated from the conference of the Assembly of the African Union held in June 2015, which provided for negotiations to establish the FTA.<sup>5</sup> The AfCFTA was devised to fast-track the integration of African markets with the AEC.<sup>6</sup> The AU therefore re-galvanized efforts of continental economic integration under and through the AfCFTA, which now stands as the focal point of intra-Africa trade.

The AfCFTA was established to attain increased intra-African trade by developing a Continental market for goods and services,<sup>7</sup> laying the foundation for a continental customs union,<sup>8</sup> and resolving the spaghetti-bowl challenge within the continent.<sup>9</sup> Increased Intra-African trade is to be attained by liberalizing goods and services within the African Continent, and through tariff reduction.<sup>10</sup> The Continental Customs Union is to be established through improved trade facilitation and customs cooperation throughout Africa.<sup>11</sup> Further the multiple and overlapping

---

30% intra-regional trade that has been achieved by Europe, North America and Association of Southeast Asian Nations (ASEAN) respectively.

<sup>3</sup> Missed targets in terms of the achievement of the successive steps in the continental and regional integration are common among RECs, particularly in AU's AEC which has been at the forefront of continental integration. The Abuja Treaty established six (6) stages, of which stage 3 is to establish a Free Trade Area and Customs Union in each regional block by 2017, which has not been attained. Further, delays in the ratification and domestic incorporation of regional legal instruments by Member States are common across RECs, as are failures to implement specific provisions of the agreements such as negotiated tariff reductions.

<sup>4</sup> The AEC was created by the AU's predecessor, the Organization of African Unity, through the Abuja Treaty (which established the AU) on 3 June 1991. It was conceived and drafted in the Lagos Plan of Action in 1980 by the AU's predecessor, the OAU which sought to establish an African social and economic order primarily based on utilizing to the fullest extent the region's resources in building a self-reliant economy.

<sup>5</sup> African Union, Assembly Decision on the Launch of the Free Trade Area Negotiations, Assembly/AU/Dec. 569-587(XXV).

<sup>6</sup> *Ibid.*, at 2, para. 1.

<sup>7</sup> AfCFTA, *supra* n. 1, Art. 3(a). The provision provides for the creation of 'a single Market for Goods, Services, and Movement of Persons in order to deepen the economic integration of the African Continent and in accordance with the Pan African Vision of "An integrated, prosperous and peaceful Africa" enshrined in Agenda 2063.'

<sup>8</sup> *Ibid.*, Art. 3(c).

<sup>9</sup> *Ibid.*, Art. 3(g). J. Bhagwati, D. Greenaway & P. Arvind, *Trading preferentially: Theory and Policy*, 108 (449) *Econ. J.* 1128-1148 (1998). The Spaghetti Bowl refers to challenges of multiple and overlapping memberships at a Regional Level. Much has been written about the effect of the Spaghetti Bowl, and its adverse effects, as set out by Jagdish Bhagwati, who coined the term. Bhagwati discussed that PTA proliferation makes trade procedures more complicated by increasing the number of tariffs and rules of origin.

<sup>10</sup> AfCFTA, *supra* n. 1, Art. 4(a) and (b).

<sup>11</sup> *Ibid.*, Art. 4(e).

membership issues are to be addressed through structural reforms that the AfCFTA undertakes through its 'top down' approach, which will be further expounded upon in this article.

African efforts at creating integrated programs and strategies for self-reliant development and cooperation among African Countries have been in existence for decades. African continental integration efforts have disreputably been unsuccessful. Failure to meet target-deadlines,<sup>12</sup> the spaghetti-bowl challenges, political and governance issues, which have been addressed by numerous scholars, have all compromised efforts.<sup>13</sup> The above notwithstanding, the AfCFTA has retained the AEC's structure of establishing and strengthening Regional Economic Communities (RECs) within the continent and establishing harmonized policies and joint trade-liberalization programs within the African continent.<sup>14</sup>

Economic integration has been envisaged by African States for decades; progressive attempts gained traction in the early 1960s during the birth of decolonialism.<sup>15</sup> The Pan-African movement and Nkwame Nkrumah, one of the founding fathers of the OAU, centralized the unification of Africa in different disciplines, particularly economically, as vital for the growth and self-reliance of the continent.<sup>16</sup> The AfCFTA therefore has its roots entrenched in a half century of integration efforts of continental integration efforts.

The AfCFTA is part of the milestone established in the implementation of Agenda 2063.<sup>17</sup> Agenda 2063 is an AU led strategic framework for the socio-

---

<sup>12</sup> The AEC has not met targets, such as the stabilization of existing tariffs, and integration and harmonization of economic sectors (1999–2007); establishment of a free trade area and customs union (2007–2017); harmonization of tariff systems across various regional economic communities (RECs) (2017–2019) in accordance with its mandate.

<sup>13</sup> F. Mangeni, *Obstacles to Economic Integration in Africa*, Working Paper, Actionaid International, 6 (2010). Mangeni F. noted the challenge of both political will, and that 'Political organs should participate at the level of ministerial meetings or committees, and not at that of Heads of State and Government, and further effective power should be shifted downwards from political to technical organs.'

<sup>14</sup> AfCFTA, *supra* n. 1, Art. 4(2)(a, b and d).

<sup>15</sup> The Organization of African Unity (OAU), established on 25 May 1963 with the primary objective of promoting unity and solidarity among the states, eradicate all forms of colonialism, and furthering cooperation on several fields such as economy, education and security. Organisation of African Unity, Document prepared by Heads of African States and Governments assembled in the City of Addis Ababa, Ethiopia, 25 May 1963, Art. 2(1).

<sup>16</sup> K. Nkrumah, *Africa Must Unite*, Frederick A Praeger, Inc New York, 170 (1963). Nkrumah advanced that; '... there is absolutely no doubt that the key to significant industrialization of this continent of ours lies in a union of African states, planning its development centrally and scientifically through a pattern of economic integration.'

<sup>17</sup> *Ibid.*, at 1.

economic transformation of the continent over the next 50 years. The Agenda builds on, and seeks to accelerate the implementation of past and existing continental initiatives for growth and sustainable development.<sup>18</sup> It is constructed on a number of policy instruments, declarations and Acts, which include inter alia The Constitutive Act of the African Union, the African Aspirations for 2063 and Regional and Continental Frameworks.<sup>19</sup> Agenda 2063 is worded in general, aspirational language with strong references to unity and romanticized Pan-Africanist initiatives.<sup>20</sup> This is primarily due to the integration of the African Aspiration for 2063 into Agenda 2063, which contains seven general aspirational objectives which relate to growth, sustainable development, security, shared values and an integrated continent ‘based on the ideals of Pan-Africanism and the vision of Africa’s Renaissance.’<sup>21</sup>

In adopting Agenda 2063, Member States undertook to fast-track the establishment of the Continental Free Trade Area by 2017, and set out to establish a programme to double intra-Africa trade by 2022. At the 2012 AU Summit, African Heads of State adopted a Decision to establish a Continental Free Trade Area (CFTA) by the indicative date of 2017.<sup>22</sup> Negotiations for the AfCFTA were successfully launched in June 2015, in February 2016 the first negotiating forum was held, and in July 2017 an Agreement to liberalize 90% of all products was negotiated. The Agreement was finally launched on the 21 March 2018 by adopting the Agreement Establishing the AfCFTA, the

---

<sup>18</sup> Agenda 2063, African Union <https://au.int/agenda2063/about> (accessed 7 July 2017). Agenda 2063 is built on previous initiatives such as the Lagos Plan of Action, the Abuja Treaty, the Minimum Integration Programme, the Programme for Infrastructural Development in Africa (PIDA), the Comprehensive Africa Agricultural Development Programme (CAADP), the New partnership for Africa’s Development (NEPAD), Regional Plans and Programmes and National Plans. It is also built on national, regional and continental best practices in its formulation.

<sup>19</sup> Other key documents considered are the African Union Vision, the eight Priority Areas of AU 50th Anniversary Solemn Declaration and Member States National Plans.

<sup>20</sup> Agenda 2063, *supra* n. 18, para. 74(f). This provision makes reference to a Pan-African perspective, through solidarity, integration, implementation of our programmes and pooled sovereignty on critical issues of continental and global dimensions, and on Continental Economic and Political unity.

<sup>21</sup> *Ibid.* The African Aspirations for 2063 are the following: (1) A prosperous Africa based on inclusive growth and sustainable development; (2) an integrated continent, politically united and based on the ideals of Pan-Africanism and the vision of Africa’s Renaissance; (3) an Africa of good governance, democracy, respect for human rights, justice and the rule of law; (4) a peaceful and secure Africa; (5) an Africa with a strong cultural identity, common heritage, shared values and ethics; (6) an Africa whose development is people-driven, relying on the potential of African people, especially its women and youth, and caring for children; (7) Africa as a strong, united and influential global player and partner.

<sup>22</sup> African Union, Assembly Decision Assembly/AU/Dec. 394, XVIII African Union Summit (2012).

Protocol on Trade in Goods (PTG), the Protocol on Trade in Services (PTS) and the Protocol on Rules and Procedures on the Settlement of Disputes (PSD). The instruments were signed by 44 of 54 African States. At the time of signing of the Agreement, notable absentees were African economic power-houses South-Africa, and Nigeria. South Africa eventually signed the Agreement on the 1 July 2018 at the 31st Ordinary Session of the African Union Assembly. Nigeria however has delayed signing the Agreement, with President Muhammadu Buhari citing the need to ensure that national interests as well as regional and international obligations are balanced. President Buhari at a joint press-conference however confirmed that he would soon sign the Agreement.<sup>23</sup>

## 2 THE STRUCTURE OF THE AfCFTA

Despite the numerous signatures of African States to the AfCFTA, as is customary in international law, the instruments only become operational upon ratification by the said signatories. The AfCFTA, together with the Protocols on Trade in Goods, Services and the Protocol on Rules and Procedures on the Settlement of Disputes will only enter into force upon twenty-two Member States ratifying the Agreement.<sup>24</sup> The same applies to other envisaged Protocols on Investment, Intellectual Property Rights and Competition Policy which are to be negotiated.<sup>25</sup>

The AfCFTA is a framework Agreement, consisting of the Agreement establishing the continental FTA, the Protocol on Trade in Goods and Trade in Services, and the Protocol on Rules and Procedures on the Settlement of Disputes. The AfCFTA also envisages Protocols on Investment, Intellectual Property Rights, Competition Policy (and any other Instrument within the scope of the Agreement deemed necessary), which will only enter into force after the second round of negotiations (Figure 1).

---

<sup>23</sup> The Guardian Nigeria, <https://guardian.ng/news/finally-buhari-ready-to-sign-africa-free-trade-agreement/> (accessed 23 July 2017).

<sup>24</sup> AfCFTA, *supra* n. 1, Art. 24(1).

<sup>25</sup> *Ibid.*, Art. 24(2).

Figure 1 Diagram displaying AfCFTA, its instruments and Key features.<sup>26</sup>

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

The objectives of the AfCFTA are established in part II of the Agreement, which have been stated above in this article. The substantive administration and organizational structure are set out in Part III of the Continental Agreement. At the summit of the structure lies the Assembly of Heads of State and Government, which provides oversight and strategic guidance on the AfCFTA, including the Action Plan for Boosting Intra Africa Trade (hereinafter ‘BIAT’).<sup>27</sup> The Assembly is responsible for establishing the Council of African Ministers responsible for Trade, and for also adopting interpretation of the AfCFTA recommended by the Council.<sup>28</sup>

<sup>26</sup> African Trade Policy Centre of the Economic Commission for Africa and African Union, African Continental Free Trade Area: Question and Answers, [https://au.int/sites/default/files/documents/33984-doc-qa\\_cfta\\_en\\_rev15march.pdf](https://au.int/sites/default/files/documents/33984-doc-qa_cfta_en_rev15march.pdf) (accessed 23 July 2017).

<sup>27</sup> AfCFTA, *supra* n. 1, Art. 10. The Assembly is also to establish the Council of African Ministers responsible for Trade.

<sup>28</sup> AfCFTA, *supra* n. 1, Art. 11.

The Council of African Ministers responsible for Trade, which reports to the Assembly, is established under the AfCFTA primarily to implement and enforce the Agreement.<sup>29</sup> Implementation and enforcement powers provided for are through delegating responsibilities to committees, working groups and/or expert groups, making regulations, issuing directives, taking decisions, and making recommendations in accordance with the provisions of this Agreement.<sup>30</sup> This is consistent with the present mandate that the Executive Council undertakes, under Article 13 of the AU Constitutive Act, which accords the Council of Ministers with decision-making on policies in areas of common interest to Member States, and monitors the implementation of Assembly policies. Decisions taken by the Council are binding on the State Parties, and those that have structural or financial implications have binding effect upon being adopted by the Assembly.<sup>31</sup> A criticism of this form of structure, advanced by Francis Mangeni in identifying general obstacles to economic integration in Africa is that ‘Political organs should participate at the level of ministerial meetings or committees, and not at that of Heads of State and Government, and further effective power should be shifted downwards from political to technical organs.’<sup>32</sup> This argument is predicated on the fact that economic integration is a technical matter, and therefore technical bodies should be elevated to policy making and represented at this level. In the same vein, technocrats should steer the direction of such integration at high-levels such as the AfCFTA Ministerial Council, as opposed to concentrating power on political bodies, which implement technical recommendations. This would provide for increased operational efficiency in attaining objectives under the Agreement, and strengthened policymaking at a high-level.

The Committee of Senior Trade Officials which sits below the Council is established by the AfCFTA to implement decisions made by the Committee, and develops programmes and action plans for the implementation of the Agreement.<sup>33</sup> It also periodically reports to the Council and makes recommendations.<sup>34</sup> The AfCFTA also vaguely establishes a Secretariat which is set out to be an autonomous independent body.<sup>35</sup> Its duties and functions are unspecified, save for stating that its roles and responsibilities shall be determined by the Council.<sup>36</sup>

The AfCFTA Agreement also establishes a Dispute Settlement Mechanism (DSM), which is administered with the Protocol on Rules and Procedures for

---

<sup>29</sup> AfCFTA, *supra* n. 1, Art. 12(3)(b).

<sup>30</sup> *Ibid.*, Art. 12(3)(f) & (j).

<sup>31</sup> *Ibid.*, Art. 12(4).

<sup>32</sup> F. Mangeni, *supra* n. 13.

<sup>33</sup> AfCFTA, *supra* n. 1, Art. 13.

<sup>34</sup> *Ibid.*, Art. 13(4).

<sup>35</sup> *Ibid.*, Art. 14 (2).

<sup>36</sup> *Ibid.*, Art. 14 (5).

Settlement of Disputes.<sup>37</sup> The Protocol establishes a Dispute Settlement Body (DSB) which is mandated to establish Dispute Settlement Panels and an Appellate Body, adopt reports from said Panels and Appellate Body, and maintain surveillance of the implementation of rulings and recommendations.<sup>38</sup> It hears appeals for AfCFTA Member States through attempted consultation (through conciliation and mediation),<sup>39</sup> failing that, a Panel is convened in accordance with Article 9 of the Protocol through the requesting of the said Panel by a Complaining Party. The Protocol does not guard against blocking panels, save for Article 10 (7) which provides for a party to apply to the Director General (in consultation with the chairperson) to appoint the Panel. This provision attempts to resolve deadlocks in proceedings through the Director General stepping in to resolve the block; however, the provision states that the suggested panel be established with the ‘consent’ of the State Parties. This pre-supposes that if a party withholds consent, then a further deadlock may ensue. The legal effect of this provision will become more apparent as the DSM becomes operational. Despite this issue, the Protocol appears transparent, accountable, fair and predictable dispute settlement under the AfCFTA.

In establishing the structure of the AfCFTA, it is important to understand the positioning of the Continental Agreement under International Law, particularly Trade Law. A majority of Member States of the AU are World Trade Organization (WTO) Member States.<sup>40</sup> The AfCFTA, like all Regional Trade Agreements (RTAs) concluded by WTO Member States, requires notification under Article XXVI paragraph 7 of the WTO General Agreement on Tariffs and Trade (GATT) and under the Enabling Clause (for developing countries).<sup>41</sup> The WTO’s primary mandate is the liberalization of global trade; the Multilateral Trading System (MTS) also has the developmental objective of growing international trade in Developing Countries and LDC’s,<sup>42</sup> under which Member States of the AfCFTA are respectively categorized. The MTS attains these objectives through establishing multilateral trade rules, and enforcement mechanisms that parties may utilize in

---

<sup>37</sup> *Ibid.*, Art. 21 (2).

<sup>38</sup> *Ibid.*, Protocol on Rules and Procedures for Settlement of Disputes, Art. 5(3).

<sup>39</sup> *Ibid.*, Art. 6(1).

<sup>40</sup> The following states are WTO observer states; Algeria, Equatorial Guinea, Ethiopia, Comoros, Liberia, Libya, Sudan, South Sudan, Sao Tome and Principe. Eritrea, Western Sahara, Somalia and South Sudan are neither WTO members nor observer.

<sup>41</sup> World Trade Organization, General Agreement on Tariffs and Trade (1994).Art. XXVI, para. 7(a) provides that contracting parties entering into a customs union or free-trade area, or an interim agreement leading to the formation of such a union or area; ‘shall promptly notify the CONTRACTING PARTIES and shall make available to them such information regarding the proposed union or area as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate.’

<sup>42</sup> World Trade Organization, Marrakesh Agreement Establishing the World Trade Organization (15 Apr. 1994). The Preamble provides that the WTO is to ‘ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade.’



global trade. Despite the Multilateral structure, WTO rules have been flexible enough to accommodate RTAs.

RTAs have emerged as vehicles that developing countries have successfully utilized to advance trade and development agendas, and attain preferential treatment. They play an essential role in promoting the liberalization and expansion of trade and in fostering development, as recognized in the Doha Ministerial Declaration.<sup>43</sup> The WTO and its Member States therefore have affirmed RTAs under the MTS, and have further affirmed the benefits of plurilateral agreements such as the AfCFTA, particularly in relation to reducing the spaghetti bowl of RTAs ‘especially if they supersede existing bilateral agreements and develop common rules (such as for rules of origin) to be applied by all parties to the agreement.’<sup>44</sup>

The AfCFTA is signed at a time where numerous overlapping RECs, tariff and non-tariff based programs and international obligations are in operation. The AfCFTA has been hailed as the solution to this challenge, operating as an umbrella FTA to most of Africa. The AfCFTA employs a ‘top-down’ approach, creating harmonization by placing obligations on all signatory Member States, as opposed to the bottom-up approach from the Lagos Plan of Action which bound States to RECs, and RECs eventually to a larger continental FTA.

Coherence among RECs was a challenge in establishing the Continental FTA,<sup>45</sup> predominantly caused by the numerous overlapping RECs. The AfCFTA only recognizes eight (8) RECs.<sup>46</sup> The decision flows from the AU’s examination of RECs and decision taken, established in the Protocol on Relations between the African Union and the Regional Economic Communities which harmonization of policies and ensure compliance with the Abuja Treaty<sup>47</sup> and Lagos Plan of Action time frames. AfCFTA acknowledges the RECs as ‘building blocks,’<sup>48</sup> which is an

---

<sup>43</sup> World Trade Organization, Doha Ministerial Declaration, WT/MIN(01)/DEC/1, para. 4 (20 Nov. 2001).

<sup>44</sup> World Trade Organization Website, [https://www.wto.org/english/tratop\\_e/region\\_e/region\\_e.htm](https://www.wto.org/english/tratop_e/region_e/region_e.htm) (accessed 20 July 2018).

<sup>45</sup> United Nations Conference on Trade and Development, Building the African Continental Free Trade Area: Some Suggestions on the Way Forward, UNCTAD/DITC/2015/1 (2015) (accessed 20 July 2018).

<sup>46</sup> AfCFTA, *supra* n. 1, Preamble. The eight RECs are; Arab Maghreb Union (UMA); Common Market for Eastern and Southern Africa (COMESA); Community of Sahel–Saharan States (CEN–SAD); East African Community (EAC); Economic Community of Central African States (ECCAS); Economic Community of West African States (ECOWAS); Intergovernmental Authority on Development (IGAD); Southern African Development Community (SADC).

<sup>47</sup> Treaty Establishing the African Economic Community, 3 June 1991. The Abuja treaty was a treaty signed by members of the Organization of African Unity (now AU) establish and promote economic, social and cultural development among others between African states.

<sup>48</sup> AfCFTA, *supra* n. 1, Art. 5(i) and (l). The Agreement provides that RECs are building blocks of the Continental FTA, further that the AfCFTA is to be guided by REC best practices (alongside international conventions binding to the AU). This, however, is vague as the agreement fails to specifically establish the extent of specificity of the role of RECs in establishing the AfCFTA.

indication of the top-down approach, however the AfCFTA, in operation, directly binds Member States without binding or directly addressing RECs.<sup>49</sup> RECs under the AfCFTA are relegated to playing an advisory role, with the said RECs being positioned in AfCFTA organs, such as the Committee of Senior Trade Officials,<sup>50</sup> the Secretariat,<sup>51</sup> and Coordination Units.<sup>52</sup> They also play a role in the provision of technical assistance and capacity building in implementing the Protocols in Goods and Services.<sup>53</sup> Overall, the structure of the AfCFTA is designed to overhaul the roles of RECs in operating as the main drivers of regional integration in Africa. The guidance and supporting role in implementation of the AfCFTA by RECs is however acknowledged in the Continental Agreement. The AfCFTA charters its own course in order to attain its objectives of the continental liberalization of goods and services, and to lay a foundation for a Continental Customs Union through harmonization and standardization across Africa.

### 3 THE WTO TRADE FACILITATION AGREEMENT AND AFRICA

Global trade has experienced a significant growth and a considerable reduction in tariff levels in the past few decades. The decrease of tariffs was and is still the primary focus of the WTO, which is the multilateral body spearheading the effort against global trade impediments; however focus has also shifted since the Doha Round to non-tariff barriers, and in particular trade facilitation. WTO trade negotiation, EPAs, and eventually the Trade Facilitation Agreement (TFA) are testament to the drive to improve trade facilitation globally.

There is no universal definition of trade facilitation, nor an adopted WTO definition. The 2015 WTO World Trade Report acknowledges various definitions by academics, international organizations and contributors, eleven (11) to be exact.<sup>54</sup> Despite the listing of the definitions, the report does not adopt nor propose a definition; however a broad definition that address key factors is the United Nations Conference on Trade and Development (UNCTAD) definition:

Trade facilitation seeks to establish a transparent and predictable environment for cross-border trade transactions based on simple, standardized customs procedures and practices, documentation requirements, cargo and transit operations, and trade and transport arrangements.<sup>55</sup>

---

<sup>49</sup> *Ibid.*, Art. 12(4). All binding clauses in the AfCFTA apply to State Parties only.

<sup>50</sup> *Ibid.*, Art. 13(5).

<sup>51</sup> *Ibid.*, Art. 13(7).

<sup>52</sup> *Ibid.*, The Protocol on Trade in Goods, Annex 5 on Non-Tariff Barriers, Art. 6 and 9.

<sup>53</sup> *Ibid.*, Arts 27(3) and 28(1).

<sup>54</sup> World Trade Organization, World Trade Report, 35 (2015).

<sup>55</sup> United Nations Conference on Trade and Development, Technical Notes on Trade Facilitation Measures, 1 (2006).

This definition highlights central areas which are of interest in this article, which are legislated for in the AfCFTA and WTO Agreement. It is noteworthy to mention that it excludes other elements, as other trade facilitation definitions include investments in hard infrastructure such as ports, transportation links within the country (roads, railways, etc.) and information and communications technology as well.

Trade facilitation is geared towards improving administrative procedures at the border or more broadly to also encompass behind-the-border measures and regulations.<sup>56</sup> The provisions in international texts generally address, or target barriers impeding trade, such as lack of transparency, duplication of documentation requirements, and the absence of automatic data submission procedures.

The TFA is the first multilateral trade agreement to be concluded since the inception of the World Trade Organization.<sup>57</sup> Trade Facilitation is not novel to WTO Agreements,<sup>58</sup> and has been central to the WTO objectives of the elimination of non-tariff barriers, together with the primary objective of global tariff reduction. Negotiations on Trade Facilitation, launched in 2004, were restricted to various items under the GATT, namely: Article V which deals with goods in transit, Article VIII which addresses border fees and formalities, and Article X, on the administration and transparency of government procedures, rules and regulations.<sup>59</sup>

The TFA is the latest and most progressive Agreement concluded by the WTO to date.<sup>60</sup> The objective of the Agreement is to expedite the movement, release and clearance of goods, including goods in transit.<sup>61</sup> It further contains numerous provisions of good governance to ease the movement of goods.<sup>62</sup> The TFA provides for the simplification and harmonization of international trade procedures including import and export procedures, can and will assist LDC's and Developing Countries in cutting trade costs, and boosting trade within Africa. WTO anticipated a 14.5%

---

<sup>56</sup> World Trade Report, *supra* n. 54.

<sup>57</sup> World Trade Organization, Agreement on Trade Facilitation (27 Nov. 2014). The World Trade Organization was established on the 1 Jan. 1995 through the Uruguay round of negotiations. The Trade Facilitation Agreement was adopted on the 24 Nov. 2014, negotiations on trade facilitation started in July 2004 and on 7 Dec. 2013, at the Ninth WTO Ministerial Conference in Bali.

<sup>58</sup> There are numerous provisions which relate to trade facilitation in WTO Agreements and texts, such as the Customs Valuation Agreement, Import Licensing Procedures, Pre-shipment Inspection, Rules of Origin, Technical Barriers to Trade (TBT), Sanitary and Phytosanitary Measures (SPS).

<sup>59</sup> World Trade Organization, Decision adopted by the General Council (1 Aug. 2004). Para. 1, Annex D provides that the Trade Facilitation negotiations 'aim to clarify and improve relevant aspects of Arts V, VIII, and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit.'

<sup>60</sup> The TFA contains a progressive approach in structure, as it is the first WTO Agreement to link commitments of developing and least-developed countries to their capacity to implement the TFA. Further, it contains relatively more liberal forms of S&DT than other WTO texts.

<sup>61</sup> Agreement on Trade Facilitation, *supra* n. 54, Preamble.

<sup>62</sup> H. Wang, *The Agreement on Trade Facilitation and its Implications: An Interpretative Perspective* (SSRN), 9(2) Asian J. WTO & Int'l Health L. & Pol'y 453 (2014). Professor Wang notes that the TFA imposes requirements for good governance which includes WTO transparency requirements and impartiality.

reduction in total trade costs for low income countries, and up to 13% for upper middle income countries upon the TFA entering in force.<sup>63</sup> The TFA contains approximately thirty-five (35) technical measures to expedite the movement, release and clearance of goods, which require Member States to increase transparency, improve governance through disciplines on rule and decision-making processes, implement streamlined and modernized border procedures and control techniques, and enhance the movement of goods in transit. Implementation of the Agreement has been touted to potentially increase global merchandise exports by up to USD 1 Trillion per annum.<sup>64</sup>

African States have embraced trade facilitation and acknowledged its potential benefit of bolstering trade for decades. Prior to the TFA most African RECs had trade facilitation Agreements and programs aimed at enhancing intra-regional trade. SADC's Protocol on Trade had already set to simplify and harmonize customs laws and procedures in the region.<sup>65</sup> The East African Common Market Protocol required Member States to change national laws to allow full implementation of immigration and customs reforms to be harmonized.<sup>66</sup> The ECOWAS Treaty provides for the removal of TBT's, and the harmonization of trade policies in order to establish a FTA, Customs Union, Common Market and eventually a Monetary and Economic Union in West Africa.<sup>67</sup> Article 70 of the COMESA Treaty is dedicated to Trade Facilitation initiatives.<sup>68</sup> The WTO's Trade Facilitation Agreement therefore entered into force at a time when trade facilitation is well embraced in Africa in the context of deepening regional integration.

These Regional blocks, and trade facilitation initiatives undertaken prior to the TFA and the AfCFTA are instrumental as they have/had taken vital steps towards attaining targets established in the said WTO Agreement and Continental FTA. It was established above that the AfCFTA aims to build on these blocks for deeper

---

<sup>63</sup> World Trade Report, *supra* n. 54. The WTO's flagship report gave the first detailed study of the potential impacts of the TFA based on a full analysis of the final agreement text.

<sup>64</sup> *Ibid.*

<sup>65</sup> Southern African Development Community, Protocol on Trade (1996). Annex II Concerning Customs Co-Operation within the REC. The Annex sets out to simplify and harmonize customs laws and procedures by: Providing for common measures through which Member States shall undertake to comply in the formulation of their Customs laws and procedures; and Establishing appropriate institutional arrangements at regional and national levels.

<sup>66</sup> Protocol on the Establishment of the East African Common Market Protocol (1 July 2010). Art. 2; it provides, *inter alia* for the harmonizing and simplifying customs and trade formalities and documentation and dissemination of information.

<sup>67</sup> The Economic Community of West African States Treaty (July 1993).

<sup>68</sup> Treaty Establishing the Common Market for Eastern and Southern Africa (8 Dec. 1994). Members States undertake to *inter alia* reduce cost of documents and the volume of paper work required, ensure that the nature and volume of information required in respect of trade within the Common Market does not adversely affect the economic development or trade, adopt common standards of trade procedures within the Common Market, and ensure adequate co-ordination between trade and transport facilitation within the Common Market.

integration, which have achieved various levels of progress at trade facilitation over recent years. Dhunraj Kasse in the World Customs Journal evaluated efforts made by SADC customs bodies regarding trade facilitation in 2015, and reported that ‘Southern African Customs have already established a solid base to implement or are already implementing the WTO Agreement on Trade Facilitation.’<sup>69</sup> There has been further harmonizing of customs and clearance in RECs and Africa. UNCTAD’s automated system for customs data (ASYCUDA) which is emerging as a global standard for automated customs clearance, is increasingly being used by African States. Approximately 41 African countries already have adopted and are applying the system.<sup>70</sup> These are progressive steps that the AfCFTA can use to build on in harmonization of customs procedures.

Uganda has introduced facilities for authorized economic operators,<sup>71</sup> which are in line with Article 7 of the TFA which provides for the release and clearance of goods. Further, the Common Market for Eastern and Southern Africa (COMESA) introduced the Regional Payment and Settlement System (REPSS) in 2012, resulting in a faster and cost-effective transfer of funds.<sup>72</sup> There has also been increased border agency cooperation, which is in line with Article 8 of the TFA. A number of one-stop border posts are operational in Africa, namely the Chirundu Border (between Zambia and Zimbabwe), and Cinkase Border (between Burkina Faso and Ghana). East Africa is setting the pace with fifteen One Stop Border Posts (OSBPs) constructed. In Southern-Africa, Botswana and Zambia are currently constructing an OSBP at the Kazungula Border. The benefits of the OSBP are the boosting of trade by cutting the time taken to clear goods between the two nations, thus contributing to a reduction in transport costs, whilst increasing volumes of trans-shipment cargo. This is indicative of governmental and regional will to apply and comply with trade-facilitation agreements which bind the said African Member States.

Developing Countries during TFA negotiations, in particular African States, were concerned at the costs and resource constraints of implementation,

<sup>69</sup> D. Kesse, *Germany – Unlocking Trade and Customs Potential in Africa*, Volume 9, Number 2, World Cust. J. (2015).

<sup>70</sup> United Nations Conference on Trade and Development, *African Continental Free Trade Area, Policy and Negotiation Options for Trade in Goods* (2016).

<sup>71</sup> Uganda Revenue Authority, Website Publication, <https://www.ura.go.ug/readMore.do?contentId=99900000000188&type=readMorePageDwnldAsPDF> (accessed 26 July 2018); The short term benefits of the granting of the status of authorized economic operators allows clients to enjoy a range of immediate benefits when transacting business with Customs which include (1) Pre-arrival clearance; (2) Priority treatment at all times while transacting business with Customs; (3) choice of place of physical examination; (4) automatic renewal of licenses once all necessary fees have been paid; (5) operator managed Customs bonded warehouse; (6) withholding tax exemption status Long term benefits in the long run. This reduces the cost of doing business, saves costs related to customs controls, increases turnover time.

<sup>72</sup> International Centre for Trade and Sustainable Development, *Bridges Africa*, 6(3), <https://www.ictsd.org/bridges-news/bridges-africa/news/a-look-at-the-interplay-between-the-wto%E2%80%99s-trade-facilitation> (accessed 27 July 2018).

as Trade Facilitation by nature is an inter-governmental issue which involves importation, exportation and transit among countries, as well as the fact that it goes beyond customs issues and involves other authorities. Cooperation between customs and relevant authorities on trade facilitation and customs compliance issues are central to effecting the Agreement, therefore it was imperative that technical assistance and support for capacity building in the area be included. African Groups were particularly concerned with Special and Differential Treatment (S&DT) related issues, particularly binding commitments on technical assistance, and S&DT that is 'precise, effective and operational'.<sup>73</sup> Their concerns were partially addressed when the TFA final text was signed. The Agreement contains numerous S&DT provisions which are the most progressive provisions to date, with African countries categorized as Developing or LDC's benefiting under the structure of Article 14(1), which links requirement to implement the Agreement with the capacity/ability of Developing Countries and LDC to do so. Technical assistance is also provided for Developing Countries and LDC under Article 21; however specific and binding commitments from Developed Countries were not made with regards to same, with soft law provisions which 'endeavor' to provide such assistance.<sup>74</sup>

The second section (section II) of the TFA contains S&DT and provisions for Development cooperation. These provisions allow developing and LDC Members to determine when they will implement individual provisions of the TFA,<sup>75</sup> and to identify provisions that they will only be able to implement upon the receipt of technical assistance and support for capacity building.<sup>76</sup>

African Member States have taken a pro-active position in ratifying and implementing the TFA since inception. The AU Heads of State, following negotiations at the 2013 Bali Ministerial Conference, entered into a Decision where they called upon African Member States of the WTO to 'implement the Trade Facilitation Agreement'.<sup>77</sup> To date 29 out of 42 African WTO Member States have ratified the TFA, with continued support and encouragement from RECs.<sup>78</sup>

---

<sup>73</sup> World Trade Organization, Negotiating Group on Trade Facilitation, TN/TF/W/95, Communication from the African Group, para. 1 (accessed 20 July 2018).

<sup>74</sup> Agreement on Trade Facilitation, *supra* n. 57, Art. 21(3).

<sup>75</sup> *Ibid.*, Art. 13:2. The TFA provision provides that the extent and the timing of implementation of the provisions of this Agreement shall be related to the implementation capacities of developing and least-developed Country Members.

<sup>76</sup> *Ibid.*, Art. 13(2). The provision further states that Assistance and support for capacity building 16 should be provided to help developing and least-developed country Members implement the provisions of the TFA in accordance with their nature and scope.

<sup>77</sup> African Union, Decisions of the Executive Council, 25th Ordinary Session of the AU Heads of State (June 2014).

<sup>78</sup> World Trade Organization, Ratification Database, <https://www.tfadatabase.org/ratifications> (accessed 24 July 2018).

#### 4 THE AFCFTA AND TRADE FACILITATION

Trade facilitation has been the focus of reform in Sub-Saharan Africa for the past two decades, in efforts to boost inter-trade within the continent.<sup>79</sup> Africa has been challenged with numerous trade impediments, such as documentation, strenuous customs procedures, inefficient port operations, and inadequate infrastructure, which all lead to additional costs and delays for exporters and importers. Trade facilitation is an integral part of the AfCFTA, etched into the framework agreement itself, and the Protocol for trade on Goods. The AfCFTA is to be implemented by the AU Assembly parallel the Action Plan for Boosting Intra Africa Trade,<sup>80</sup> which identified seven (7) priority program Clusters of which two are on Trade facilitation and Trade Information. These include the elimination of trade barriers through improved trade facilitation so as to reduce the cost of doing business in Africa is an important and emerging opportunity to explore.<sup>81</sup> The AfCFTA strives to resolve overly burdensome customs procedures and excessive paperwork, establish cooperation between customs authorities over product standards and regulations and set-up trade transit and facilitation to ensure easier for goods to flow between Africa's borders.

The preamble of the AfCFTA establishes the importance of trade facilitation expanding markets for the goods and services, particularly through 'adequate infrastructure and the reduction or progressive elimination of tariffs and elimination of non-tariff barriers to trade and investment.' The Agreement also sets out that one of the specific objectives of the Agreement is for Member States to 'cooperate on customs matters and the implementation of trade facilitation measures.'<sup>82</sup> This is ultimately to establish a Continental Customs Union as set out in Article 3(c), which lays out the General Objectives of the Agreement.

---

<sup>79</sup> C. Buyonge & I. Kireeva, *Trade Facilitation in Africa: Challenges and Possible Solutions*, Volume 2, Number 2, World Cust. J. 51 (2008). The Authors established that customs administrations in Africa are going through a period of rapid change, ongoing positive developments by Customs to reform and modernize procedures and processes. World Bank, *Doing Business* (2011). Making a difference for entrepreneurs. Washington, DC: World Bank Group; The Report noted that about half of all trade facilitation reforms made during 2009/10 took place in sub-Saharan Africa.

<sup>80</sup> AfCFTA, *supra* n. 6, Art. 10(1).

<sup>81</sup> In this context, the Trade Facilitation Cluster has several proposed interventions: (1) Harmonization and simplification of customs procedures, documentation and regulations, including reduction in the number of customs documents, harmonized documents within RECs, and border operation hours. (2) Creation of inter-connected centres of trade information exchange. (3) Establishment of One stop Border Posts (OSBPs) at all key border posts and the reduction of times taken for goods crossing by 50% as well as coordinated border management through harmonized and simplified customs procedures, standards and regulations. (4) Strengthen collaboration between customs administrations with other tax departments and other related governments agencies through establishment of National Single Windows where they do not exist. (5) Improving the State of African infrastructure.

<sup>82</sup> *Ibid.*, Art. 4(e).

The Protocol on Trade in Goods contains the roadmap to trade facilitation under the AfCFTA. The meat of the trade facilitation provisions, which bear specific undertakings by Member States, are contained primarily under three annexes to the PTG. Annex 3, on Customs Cooperation and Mutual Administrative Assistance, Annex 4 on Trade Facilitation and Annex 8 on Transit. These are instruments attached to the Protocol which are to be read in accordance with the Protocol, which form an integral part of the AfCFTA.<sup>83</sup> The AfCFTA however entered into force without Annexes. The Assembly Decision of the African Union dated 21 March 2018 held in Rwanda, which launched the AfCFTA, provided that the annexes to the Protocols on Trade in Goods and Services, and Rules and Procedures on the Settlement of Disputes were to be adopted in July 2018;<sup>84</sup> however, the said Protocols missed the adoption date. The Draft Annexes were released at the time of the launch of the AfCFTA, which was near completion, and will be used in this article as a guide to establishing what is envisaged regarding trade facilitation in the AfCFTA.

The main body of the instrument outlines its aspirations, which are in line with trade facilitation. They are to attain deepened elimination of trade barriers and harmonization and implementation of trade facilitation instruments across Africa. The general objectives of the PTG are stated under Article 3 of the instrument, which include inter alia enhanced efficiency of customs procedures, trade facilitation and transit and enhanced cooperation in the areas of technical barriers to trade and sanitary and phytosanitary measures. This is indicative of the AU's economic and integration focus, which is not only restricted to the reduction of tariffs in Africa. It is notable though, that harmonization of customs procedures is not included in the objectives. The justification of this is that the AU conceived that the AfCFTA would 'lay the foundations for the establishment, at a later stage, a Continental Customs Union.'<sup>85</sup> Despite this omission, there is a dedicated Annex to the PTG (Annex 3) which addresses continental harmonization of tariff nomenclature, valuation laws and practices simplification and harmonization of customs procedures.

As stated above the AfCFTA applies a top-down approach, and the same applies regarding trade facilitation. The Continental FTA requires 'State Parties' to apply international instruments, standards and practices to attain such trade facilitation objectives, particularly in the area of customs cooperation. Emphasis is placed on compliance with international instruments, as it is provided in the Protocol that 'customs laws and procedures shall be based on internationally accepted instruments and standards, practices and guidelines applicable in the field of customs and trade.'<sup>86</sup>

---

<sup>83</sup> *Ibid.*, Art. 1. Also see Art. 3 of the Protocol on Trade in Goods.

<sup>84</sup> African Union, Assembly Decision of the African Union (21 Mar. 2018), para. 12(i).

<sup>85</sup> AfCFTA, *supra* n. 1, Art. 3.

<sup>86</sup> *Ibid.*, Protocol on Trade in Goods, Annex 3, Art. 5(1)(a).



It proceeds to specifically make mention of the Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures and the World Trade Organization(WTO) Trade Facilitation Agreement. State Parties are also required to follow World Customs Organization standards in facilitating customs operations, particularly in the automation of customs procedures.<sup>87</sup> These provisions speak of the AU's efforts to ensure compliance with international laws on trade facilitation.

Trade facilitation in customs in the AfCFTA is addressed under Annex 3, in the chapter on Customs Co-operation and mutual Assistance. The customs objectives under the Act are to provide for common measures in compliance and formulating Customs laws and procedures.<sup>88</sup> This includes harmonizing customs tariffs and statistical nomenclature,<sup>89</sup> harmonizing valuation laws and practices,<sup>90</sup> simplifying and harmonizing customs procedures,<sup>91</sup> atomizing customs operations<sup>92</sup> and establishing information requests and exchange measures.<sup>93</sup> It is significant to point out that the AfCFTA shares similar provisions on issues raised by the WTO TFA . This is consistent with the above-mentioned Article 5(1)(a) under Annex 3 of the PTG, which as stated above requires State Parties to ensure customs laws are in line with international laws. Customs Cooperation under Article 12 of the WTO FTA addresses request and exchange of information, similar to Articles 6 and 9 of the PTG under Annex 3. The WTO TFA provides for border agency cooperation to ensure inter alia alignment of procedures and formalities, in line with Article 5 of the PTG under Annex 3 on harmonization of customs procedures.

Trade facilitation is primarily provided for under the AfCFTA under Annex 4 of the PTG. The objective of the Annex is to expedite the movement, clearance and release of goods including goods in transit across borders within States Parties,<sup>94</sup> which it does through the simplification and harmonization of international trade procedures and logistics.<sup>95</sup> It provides for the Publication of information on the internet,<sup>96</sup> which is in line with Article 1 of the WTO FTA. The Annex provides for advanced rulings under Article 6 on trade related matters, such as preferential treatment, rules of origin and tariff rates. Article 6 of the WTO TFA also applies for advanced rulings on a very similar list of issues.

---

<sup>87</sup> *Ibid.*, Art. 6(2)(a).

<sup>88</sup> *Ibid.*, Art. 2(1)(a).

<sup>89</sup> *Ibid.*, Art. 3.

<sup>90</sup> *Ibid.*, Art. 4.

<sup>91</sup> *Ibid.*, Art. 5.

<sup>92</sup> *Ibid.*, Art. 6.

<sup>93</sup> *Ibid.*, Arts 6 & 9.

<sup>94</sup> *Ibid.*, Annex 4, Art. 2(b).

<sup>95</sup> *Ibid.*, Art. 2(b). This is the scope of the Annex.

<sup>96</sup> *Ibid.*, Art. 4.

Annex 4 of the AfCFTA provides for critical elements on the clearance of goods. State Parties are required to adopt and maintain procedures for Pre-arrival processing,<sup>97</sup> electronic payments of taxes, duties and charges,<sup>98</sup> and risk management systems for customs controls.<sup>99</sup> Further, Member States are required to be conduct post-clearance audits to ensure compliance with customs and other related laws,<sup>100</sup> average release time of goods are to be published,<sup>101</sup> additional trade facilitation measures are to be provided to authorized operators,<sup>102</sup> expedited shipment of goods for air cargo facilities are to be accorded,<sup>103</sup> and preventive measures are to be applied on perishable goods. The WTO TFA's Article on the release and clearance of goods uses very similar wording, and follows the same sequencing of provisions in Articles 7 to 15.<sup>104</sup> Provisions on documentation, freedom of transit and the adoption of a single window under the Protocol on Goods are similarly contained in the WTO TFA. The same applies with border agency cooperation under Article 8 of the WTO TFA and Article 25 of Annex 4, which provide for the five areas of cooperation, which include alignment of working days and hours, alignment of procedures and formalities, development and sharing of common facilities, joint controls, establishment of one stop border post control which have already been implemented as stated above.

These similarities indicate the deliberate insertion and adoption of the Trade Facilitation Agreement into the African Continental FTA as the target measure of trade facilitation standards. The Annex on trade facilitation in the AfCFTA concludes by legislating that notification and timing of implementation shall be done as notified to the AfCFTA Sub-Committee for Trade Facilitation, or under the WTO TFA. This provision also indicates that the AfCFTA recognizes the WTO TFA as the primary instrument for global trade facilitation, and the binding obligations it imposes on African Member States. This is evident in the AfCFTA, which is crafted in congruence with the WTO TFA, and confirms the position that the AfCFTA was crafted to set a similar standard on all African states who are signatory to it, even if they are not WTO TFA members.

## 5 CONCLUSION

Trade Facilitation has come a long way in Africa over the past two decades. Despite RECs, the AU and the AEC's lagging behind in attaining deadlines, structural

---

<sup>97</sup> *Ibid.*, Art. 7.

<sup>98</sup> *Ibid.*, Art. 8.

<sup>99</sup> *Ibid.*, Art. 8.

<sup>100</sup> *Ibid.*, Art. 11.

<sup>101</sup> *Ibid.*, Art. 12.

<sup>102</sup> *Ibid.*, Art. 13.

<sup>103</sup> *Ibid.*, Art. 14.

<sup>104</sup> WTO Agreement on Trade Facilitation, *supra* n. 70, Art. 7.

challenges of multiple RTAs (spaghetti bowl), lack of financial resources, technical deficiencies and corruption, African states have been resilient in their increased quest for regional and continental economic integration. It was established how trade facilitation took global centre stage from the Doha Development Round, with African states participating in negotiations with the recognition of gains improved facilitation. The implementation of border measures, changes in African customs legislation to conform to international standards, and the entry into force of the WTO TFA from African ratifications are testament to Africa's appreciation of its impact in increasing global trade.

The Continental FTA sparks new hope for continental integration by being the first instrument and body responsible for 'top-down' continental integration. This is a complete re-arrangement from the previous 'bottom-up' approach. The AfCFTA requires all Member States to conform to its standards, as opposed to the previous dispensation under the AEC where RECs operated as regional bodies, which did not run in congruence with the agenda set under the Lagos Plan of Action. Trade facilitation and continental integration efforts suffered under a structure which had Countries operating under numerous RECs. The result was failure to meet target dates set by the AEC and disjointed initiatives which jeopardize continental integration. The top-down approach and the support of RECs, coupled with strong institutional structures to assist with implementation and adjudication of disputes is central to untangling the web created and unlocking economic potential through trade facilitation.

Trade facilitation under the PTG enhances the efficiency of customs procedures, trade facilitation and transit and enhanced cooperation in the areas of technical barriers to trade and sanitary and phytosanitary measures. This galvanizes integration efforts and lays the foundation for a Continental Customs Union. The AfCFTA uses International instruments, in particular the WTO TFA, as the target measure of trade facilitation on key issues such as release and clearance of goods, border cooperation, and publication of information. It incorporates key trade facilitation provisions from the WTO TFA with similar wording, and even allows for notification under WTO TFA without going through the AfCFTA structures. This is also an acknowledgment of the cognition of obligations of African States under international law on trade and customs.

Trade facilitation goes beyond aligning Africa with international trade instruments, the structure of the AfCFTA offers support to Member States, and also carries the enforcement stick. Financial and technical cooperation has been woven in the text; however, only time will tell the extent of its impact in addressing the high resource needs which go with the systems, infrastructure and technical costs attributed to the facilitation. The Structures' places appear streamlined, with the Assembly at the pinnacle, the Council below it, and the Committee below. Concerns

identified in the structure however were in the power vested in political bodies in the AfCFTA, and that effective power should be shifted downwards from political to technical organs. Further, that lack of mandate of the secretariat, despite its establishment as an independent body with administrative powers. These issues will nevertheless unfold later on as the agreement enters into operation.

African states have shown political will and unity in signing and implementing both the WTO TFA and the AfCFTA. The AfCFTA together with its Protocols, upon successful implementation by Member States, will have a significant impact on barriers; markets are readily accessible, thereby significantly increasing trade flows between countries. The potential of a unified, truly economically integrated Africa may be a practical objective, and not just a dream. The AfCFTA has the ability to unlock intra-African trade by 52.3%<sup>105</sup> primarily through tariff reduction and trade facilitation. The world's largest free trade area (by measure of number of Member States) with its new approach, championed by the AU, carries Africa's hope of creating a genuinely economically united and integrated continent.

---

<sup>105</sup> African Union, Estimates from the Economic Community for Africa, AU Website, [https://au.int/sites/default/files/documents/33984-doc-qa\\_cfta\\_en\\_rev15march.pdf](https://au.int/sites/default/files/documents/33984-doc-qa_cfta_en_rev15march.pdf) (accessed 27 July 2018).