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Africa's Continental Free Trade Area: A Closer Look at the 2012 African Union's Action Plan for Boosting Intra-African Trade

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Announcement: *African Trade Expert*, in collaboration with the *African Students Association* of the University of Iowa is organizing a Forum: *Africa by Africans: The Real problems of Africa – Through African Eyes*. The Keynote speakers are: Prof. George Ayittey, Prof. Muna Ndulo, Prof. Eko Lyombe, Mr. Denford Madenyika, and many others. For more info, visit www.africabyafricansforum.com

1.1.Introduction

The African Union (AU) 18th Summit of January 2012 was, according to me, a politically successful one. African leaders proudly heralded their commitment to establish a Continental Free Trade Area (CFTA) by 2017. Their devotion and political willingness to increase intra-African trade, with the objective of generating employment, reducing poverty, increasing the inflow of foreign direct investment (FDI), developing African industries and better integrating Africa into the global economy so that Africa can have a sustainable economic growth, pushed them to adopt a plan, *Action Plan For Boosting Intra-African Trade*¹ and to agree on

deadlines. In order to successfully establish the FTA, they decided that the current tripartite agreement among East African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA), and the Southern African Development Community (SADC) must be finalized by 2014; that other African trade blocs must follow the experience of the tripartite agreement and reach parallel agreement between 2012 and 2014 and that the tripartite and other regional free trade areas must be consolidated into the CFTA initiative between 2015 and 2016.²

¹ See African Union *Action Plan For Boosting Intra-African Trade*,

<http://www.au.int/en/sites/default/files/Action%20Plan%20for%20boosting%20intra-African%20trade%20F-English.pdf> (last visited 13/02/2012)

² See BuaNews *Africa Targets Free Trade Area by 2017*, (31 Jan 2012)

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However, many scholars are skeptical about this initiative because the vast majority of African leaders are generally characterized by their passivity, slowness and their tendency to depend on foreign aids. Here are some of the questions that they ask: Can African countries really make it? Is it too soon for them to think of a CFTA? Will they need Cooperation with Foreign institutions (including states) and especially the WTO? How can they learn from previous mistakes? What is the sustainable development aspect of their plan? And what is the gender aspect of it considering the increased number of informal cross border trade by women? This Issue will attempt to answer some of those questions. It will submit that African leaders have to transform their political decision into action and that they have to cooperate with their partners, not donors,³ and with the WTO/World Bank/African Development Bank⁴ and the UNCTAD if they want to

<http://www.buanews.gov.za/news/12/12013111051001> (last visited 13/02/2012)

³ Partners here mean foreign institutions (developing and developed countries). African leaders must stop looking at other states as donors but as partners. Most of those developed countries do not have enough moneys to solve their problems and that of Africa and the time of negotiation or renegotiation has come.

⁴ The WTO and the WTO/World Bank/ADB working together to help African countries to develop the trade-related skills and infrastructure that is needed to implement and benefit from WTO agreements and to expand their trade, WTO Aid for Trade http://www.wto.org/english/tratop_e/devel_e/a4t_e/aid4trade_e.htm (last visited 25/02/2012). In the **Aid-for-Trade Work Program 2012-2013**, the WTO aims to deepen coherence and regional trade integration is one of the five key areas of focus. See WTO Committee on Trade and Development, **Aid-for-Trade Work Program 2012-2013: "Deepening Coherence"**, WT/COMTD/AFT/W/30, (15 November 2011).

establish a successful FTA that respects multilateral norms. Further, the Issue critically analyzes the action plan highlighting some previous mistakes and warning African leaders not to fall in the same traps.

1.2.Free Trade Area and Africa: What is a Free Trade Area and why does Africa need to establish one?

In theory, there are five levels of economic integration. The first one is the Free Trade Area/Agreement (FTA). This level of integration means that two or more countries decide to eliminate all internal barriers to trade as among themselves and that each of them is free to decide what tariffs it applies to products imported from or exported to a country which is not party to their agreement. The second level of integration is the Custom Union (CU). It is an arrangement between two or more countries to liberalize trade between or among them and to have common external tariffs (harmonization of foreign economic policy).⁵ The third level of integration is the Common Market (CM). This includes the elements of CU plus the free movement of labor and capital among its members. The fourth level of integration is the Economic and Monetary Union (EMU). This includes the elements of a CU and CM with fixed exchange rates and coordination of fiscal and monetary policies. Finally, the fifth level of integration is the Total Economic Integration (TEI) which is the pursuit of a common economic policy by the political

⁵ See Raj Bhala *Dictionary of International Trade Law*, LexisNexis (2008).

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units involved;⁶ it is 'an economic union with all relevant economic policies conducted at the supranational level, in compliance with the principle of subsidiarity', i.e. EU.⁷ In the world trading system, these levels of integration are an exception to the non-discrimination principle; the most-favored-nation (MFN) treatment. In theory, a WTO member is not allowed to discriminate between its trading partners. In other words, when a member accords a favor to one partner, it has to extend that favor to other members.⁸ But, in these levels of integration, countries are allowed to accord to one another treatments that are different from those applied to non-members. It is a WTO strategy to increase trade between countries of a specific region⁹ and to help African countries (developing countries) use trade to achieve their development and job creation objectives.

Thus, African countries want to increase intra-African trade and to, in the future, have a Continental Economic and Monetary Union (CEMU). Indeed, finding suggests that Africa trades little with itself and that the rates of trade between African countries

or within African economic regions are lower than the rates of trade within other economic integrations around the globe.¹⁰ African leaders believe that a CFTA will help to significantly increase the volume of trade within Africa and that increased intra-African trade will help to address the challenges that Africa faces in the multilateral trading system and in the global economy.¹¹ Further, Africa trading with Africa will help the continent save billions of dollars.¹²

1.3. The AU Action Plan: an Analysis

According to the Action Plan For Boosting Intra-African Trade, Africa does not trade with itself because of the differences in trade regimes; the restrictive customs procedures, the administrative and technical barriers; the limitations of productive capacity; the inadequacies of trade-related infrastructure, trade finance, and trade information; the lack of factor market integration; and the inadequate focus on internal market issues.¹³ In order to address these challenges, African leaders believe that they have to focus on seven factors: Trade policy, Trade Facilitation, Trade related Infrastructures,

⁶ See International labor Office (ILO) Forms of Economic Integrations, <http://www.actrav.iticilo.org/actrav-english/telearn/global/ilo/globe/integrfo.htm> (last visited 16/02/2012)

⁷ See Francesco P. Mongelli *European economic and Monetary Integration, and the Optimum Currency Area Theory*, European Commission, (2008) http://ec.europa.eu/economy_finance/publications/publication12081_en.pdf (last visited 15/02/2012).

⁸ See WTO *Understanding the WTO: Principles of the World Trading System*, http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm (last visited 16/02/2012)

⁹ See Article XXIV of the GATT.

¹⁰ See Paul Brenton and Gözde Isik, Introduction, in World Bank *De Fragmenting Africa: Deepening Regional Trade Integration in Goods and Services*, The World Bank Report, (2012) http://siteresources.worldbank.org/INTAFRICA/Resources/Defrag_Afr_English_web_version.pdf (last visited 16/02/2012)

¹¹ See *African Union Action Plan For Boosting Intra-African Trade*, supra.

¹² See World Bank *De-Fragmenting Africa: Deepening Regional Trade Integration in Goods and Services*, The World Bank (2012)

¹³ See *African Union Action Plan for Boosting Intra-African Trade*, supra.

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Productive Capacity, Trade Finance, Trade Information and Factor Market Integration.

1.3.1. Trade Policy

African leaders realized that in order to help Africa trade with itself, African countries have to adopt and to implement coherent and efficient trade policies at the national, regional and continental level and that those policies have to be geared to the promotion of intra-African trade. They further acknowledged that there still exist substantial differences in trade regimes within and between African Regional Economic Communities (REC) although trade liberalization is a key element of each of those RECs. They then concluded that the trade policies of African countries have to be redesigned in favor of African countries with no non-African country receiving favor more favorable than an African country. In order to meet this objective, they developed a list of policy programs and activities to be implemented in short, medium and long terms.

For instance, they agreed that in the short-term, each African country has to mainstream intra-African trade in its national trade and development strategies and to allocate a budget for that. This is a politically important and encouraging decision taken by African leaders because African countries are often reproached of raising tariffs and taxes to increase their government's revenue and this is illustrated by the fact that an important part of the budget of many African countries comes from taxes and tariffs. Thus, if a country

reduces taxes on import and export and if it reduces the number of road controls, its budget will be reduced. The question, then, is: where are they going to get the money if they are asked to liberalize their trade and to cut tariffs? This is a question that the action plan did not consider and, therefore, did not address. This can be a huge challenge in the future with many countries arguing that they did not have the necessary budget. Further, it can push some leaders to seek foreign aids and, therefore, to sign deals with non-African countries. That is, in the short term, many African countries might conclude that they are losing money by reducing barriers to trade and, pushed by lobbies, they can decide not to follow the timetable decided in Addis Ababa. This is why I would like the AU to follow-up with trade policy-makers in each African country and to help them understand that the benefits of boosting intra-African trade by reducing tariffs will come with time (in the long-term).

In addition, African leaders agreed that in order to boost the trade in food within Africa, all tariffs, non-tariff barriers and quantitative restrictions have to be removed immediately or in the short-term. My questions here are: what is the mechanism put in place to verify if those trade restrictive measures are actually removed? What will happen (accountability) if a government does not remove those barriers to trade? What if a government does not know how to harmonize that removal with its WTO commitments or with its existent commitments with a non-African country? These are, once again, some points that the action plan did not consider. In order to

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successfully achieve their objective, I believe that a peer review mechanism has to be established to constantly assess the implementation of the different programs and activities adopted by African countries; such mechanism has to be used as a tool for African policy dialogue.¹⁴ It will help African improve their policies and comply with laid down standards and principles.¹⁵ However, for the success of this peer review, there needs to be value & experience sharing, mutual learning and trust, analytical credibility of the peer review process, commitment to compliance¹⁶ and the peer review mechanism has to be part of the action plan. The African Peer Review Mechanism (APRM) could play this role if it was not an optional mechanism.

1.3.2. Trade Facilitation

Another important political point made in Addis Ababa was the recognition, by African leaders, of the fact that the removal of tariffs and non-tariff barriers alone will not suffice to boost intra-African trade. Considering that trade facilitation constraints (complex customs and administrative procedures and regulations, inefficient and costly transit systems as evident by numerous informal roadblocks along trade corridors, differences in rules of origin, trade documentation, and standards)

have been a major factor in the low level of trade between African countries, they decided to eliminate those constraints by setting up programs and activities whose implementation will be necessary for boosting intra-regional trade. Among the programs and activities are the reduction of road blocks by 50% or more, the harmonization and simplifying of customs and transit procedures, documentation and regulations, the establishment and operationalization of one-stop border posts and the integrated border management.

While these are important programs and activities, it can be argued, knowing the situation on the ground, that these are incomplete. First, African countries have to consider the problem of corruption more seriously and to work closely with businesses to address it. For instance, goods' transporters have to know the exact documents, the exact number of road blocks, and have an idea of the amount of money that they will need while crossing one border (transparency principle of the WTO). These are important because they will help to identify cases of corruption and to hold the perpetrators accountable. The governments have to create a system of record to verify the transactions between custom officials and transporters. Second, African countries have to facilitate the trade by women, cross-border trade, by mainstreaming gender in their trade facilitation programs and activities and in all their policies and strategies aimed at increasing cross-border trade. This is because women are more involved in cross-border trade than men and because they are often harassed and

¹⁴ For instance, in Asia, they have the ASEAN Surveillance Process (ASP).

¹⁵ See John AA Ayoade African Peer Review: Toward Casa-Rovia Doctrine, African Studies program University of Pennsylvania, http://www.africa.upenn.edu/Articles_Gen/ayoade-casa.html (last visited 20/02/2012)

¹⁶ *Id.*

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physically abused. This gender mainstreaming also entails mixing the custom officials at the borders (men and women working together). I think that women, mostly householders in Africa, would better understand their counterparts and the chances of women harassing other women sexually are lower.¹⁷ Gender mainstreaming can also help reduce corruption at the borders because higher levels of women's participation in public life are associated with lower levels of corruption and women are more trustworthy and less prone to corruption than men.¹⁸ Third, African leaders should implement programs and activities to eradicate conflicts, terrorism and political instabilities on the continent. These are other trade facilitation constraints that they did not consider.¹⁹

1.3.3. Productive Capacity and Trade-Related Infrastructures

African leaders are aware that Africa remains the least-developed manufacturing region of the world and that Africa heavily relies on the outside world to meet its

demand for manufacturing goods. They are also aware that Africa exports more natural resources than it imports and agree that Africa has to upgrade its productivity capacity in the manufacturing sector to have a better structure and balance of trade with the world and to use trade to meet their developmental and job creation objectives. They, therefore, developed some productive capacity building programs and activities that, they think, will be necessary for developing the manufacturing sector and boosting the intra-African trade of manufactured goods. They also understood that the inadequacy of basic infrastructure has, over the years, played a major role in the current lack of diversification and competitiveness of Africa's economy, and of the continent's marginalization in the dynamic sectors of global trade. They further realized that the non-implementation of existing initiatives has also been a challenge and call on each member state to effectively implement those initiatives.

African leaders, therefore, decided to prioritize the implementation of these existing programs; Action Plan for the Accelerated Industrial Development of Africa, (in place since 2007), the Africa's Science and Technology Consolidated Plan of Action (in place since 2005), the African Productive Capacity Initiative (in place since 2004) and the African Agribusiness and Agroindustry Development Initiative (in place since 2010). The most striking remark here is that from the New Partnership for Africa's Development (NEPAD) in 2001 to the Action Plan for Boosting Intra-African Trade in 2012, the AU and its agencies,

¹⁷ See Henri J. Nkuepo *Completing the World Bank Report: De-Fragmenting Africa: Deepening Regional Trade Integration in Goods and Services*, Commenting on the World Bank Report (15th February 2012 at 01:14) <http://ictsd.org/i/news/bridges-africa/124657/> (last visited 20/02/2012)

¹⁸ See Omar Azfar, Steve Knack, Young Lee and Anand Swamy, *Gender and Corruption*, IRIS Centre Working Paper No. 232 (1999)

¹⁹ See Henri J. Nkuepo *Reducing the Non-tariff Obstacles to Intra-African Trade: A Developmental Strategy*, Africa's Trade Law Newsletters, Issue 3 [http://www.africantradexpert.com/The Benefit of Africa.pdf](http://www.africantradexpert.com/The_Benefit_of_Africa.pdf) (last visited 20/02/2012)

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sometimes helped by some international organizations, come up with programs and plans almost every year. And from the NEPAD to the recent action plan, one notes the non-involvement of African businesses and civil societies in the design process of those plans, the continue tradition of power and patronage of African leaders,²⁰ and the tendency to depend on foreign aid for the success of any African initiatives. Developing an action plan is one thing and implementing such plan is another. Having a plan and not implementing it is useless and, a fortiori, a political failure. African leaders have to develop the spirit of accountability. They need a mechanism in place to ensure that the programs and activities that they adopt are actually being implemented or to help them implement their programs. A mechanism like the APRM has to be imposed, not optional.

African leaders have to know one thing; they have to *cooperate* with non-African countries and institutions if they really want to develop the manufacturing sector and if they want to bring new technologies to Africa. This cooperation means negotiation (concessions), liberalization of the service sector and attraction of foreign investors (multinationals). The continent does not only need new technologies; it needs electricity to support them and Africa have the resources not the technologies and

money. Further, African leaders have to share their powers. The era of patronage and government running all businesses is over. A well regulated privatization, important for competition, will help develop important sectors like information and communication technologies (ICT).

1.3.4. Trade Finance, Trade Information and Factor Market Integration

African leaders are conscious that the continent's financing mechanisms are inadequate (multiplicity of inconvertible currencies, underdevelopment of institutions that can provide finance, credit and guarantee) and that the lack of adequate trade information system are a challenge to intra-African trade. They also understand that the obstacles to factors of production's mobility have to be removed. Those factors are labor, enterprises and capitals.

1.4. A Will for Boosting Trade and No Will for Protecting the Environment

One mistake that African trade policy-makers generally make is to believe that trade and environment or trade and human rights are distinct. It is, according to me, inconceivable, at the pace that our environment is degrading and African people starving,²¹ that an African policy-maker adopts program for increasing trade

²⁰ See Vanessa K. Snoddy *The New Partnership for Africa's Development (NEPAD)--Will it Succeed or Fail?* USAWC Strategy Research Project, (2005) <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA431749> (last visited 21/02/2012)

²¹ Climate Change is among the causes of food insecurity in Africa. See Henri J. Nkuepo *The Real Causes of Food Insecurity in Africa: Helping Dr. De Schutter (UN) and Director Pascal Lamy (WTO) Identify the Causes of Hunger in Africa*, Africa's Trade Law Newsletters, Issue 4, <http://www.africantradexpert.com/Blog--Have-Your-Say.html> (last visited 25/02/2012).

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without considering that increased trade affect the environment. In other word, no initiative or program that is adopted for boosting trade should be environmentally blind. Africa might be the least-developed manufacturing region in the world or the continent that trade less with itself but, African leaders, should always remember that climate change affects Africa more than any other region of the world for: 'climate change ... does not affect us all equally. The poorest and most vulnerable –those who have done least to contribute to global warming- are bearing the brunt of the impact today.'²²

That is, for sustainable development and environmental protection purposes, African leaders have to double their efforts, to negotiate and liberalize the trade of environmental goods and services while working toward a CFTA. They need to mainstream environmental protection in all their trade policies and projects. Further, they have to work closely with the WTO in order to know how to benefit from all the advantages that the organization accords them as developing countries.

1.5.WTO: Africa's Number one Priority

Because of the delay in concluding the WTO Doha Round of Multilateral Negotiations, African leaders, who originally expected a lot from that Round, are now disappointed and believe that it is time for them to seek

alternative ways of using trade to meet their developmental objectives. Establishing a CFTA as strategy to boosting intra-African trade will, according to them, help address the challenges that Africa faces in the multilateral trading system and the global economy.²³ It is clear that because of the delay of the Doha Round, the WTO is losing credibility and many of its detractors see it as a failure. African countries should not make that mistake and should understand, in establishing the CFTA, that the WTO is their number one priority. This is because it is only in the WTO negotiations that countries can effectively and possibly deal with issues such as trade distorting subsidies and export subsidies and because concessions made in the WTO negotiations are made available to all WTO members. This makes multilateralism important for small countries like Africans. Further, it is because the WTO permits FTAs as a departure from its fundamental rule of non-discrimination, MFN treatment, between countries so long as they cover "substantially all trade".²⁴

Thus, establishing a CFTA is good for Africa and it is good for the WTO as well because it shows that African countries are working to meet their objectives, those of the organization and to further liberalize trade. They, therefore, have to work in close collaboration with the organization to make

²² Ban Ki-moon *Green Growth: Korea 'S New Strategy : Power Green Growth, Protect The Planet*, Korea Herald (Republic of Korea) 14 April 2009 <http://www.un.org/sg/articles/articleFull.asp?TID=101&Type=Op-Ed> (last visited 25/02/2012)

²³ See the *Action Plan for Boosting Intra-African Trade* supra.

²⁴ See New Zealand Ministry of Foreign Affairs & Trade, *A Basic Guide to Free Trade Agreements: Ten questions and answers about Free Trade Agreements*, <http://mfat.govt.nz/downloads/trade/FTAart.pdf> (last visited 24/02/2012)

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sure that any measure that they implement does not go against their commitments. By adopting WTO consistent policies, they will be respecting the international law of treaties and the principle *Pacta sunt servanda* (agreements and stipulations of the parties to a contract must be observed), 'Every treaty in force is binding upon the parties to it and must be performed by them in good faith', Article 26 of the Vienna Convention on the Law of Treaties 1969.