AFRICAN TAX ADMINISTRATION FORUM
FORUM SUR L'ADMINISTRATION FISCALE AFRICAINE

POLICY PAPER

THE FUTURE FOR TAX AND CUSTOMS

IN THE CONTEXT OF

THE AFRICAN CONTINENTAL FREE TRADE AGREEMENT (AfCFTA)

A Joint Research Initiative of the African Tax Administration Forum (ATAF) and the WU Global Tax Policy Center, Institute for Austrian and International Tax Law, WU (Vienna University of Economics and Business)

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1. INTRODUCTION

Trading under the African Continental Free Trade Area (AfCFTA) officially began on 1 January 2021, marking the commencement of what is set to be the largest free trade area in the world measured by the number of countries participating.[1] The AfCFTA is a culmination of decades of regional integration efforts that begun in the 1960s with the establishment of the Organization of African Unity (OAU). To this end, the Agreement establishing the AfCFTA commits to oversee the creation of a single market for goods and services facilitated by the free movement of persons, eliminate tariff and non-tariff barriers to trade and establish a continental customs union.[2]

By achieving these ambitious objectives, it is anticipated that the AfCFTA will not only boost trade and real income on the continent but will also have a significant impact on poverty reduction, radically change Africa's position in the global value chain and lead to the development of African based value chains.[3] Indeed, the AfCFTA represents "a unique opportunity to promote inclusive growth and accelerate the achievement of the post-pandemic recovery, the 2030 Agenda for Sustainable Development and Agenda 2063 of the African Union".[4]

Tax and customs government departments are key stakeholders for the successful implementation of trade agreements, as demonstrated by the experience under World Trade Organisation (WTO) Agreements and the European Union (EU). These departments are not only tasked with collection of revenue but are also key in the implementation of trade facilitation measures necessary to increase trade flows. It is important that AfCFTA member states understand the role of tax and customs departments in the implementation of the Agreement, the challenges faced by these departments and adopt international best practices.

Therefore, this policy paper considers the role and future of tax and customs departments in implementing the AfCFTA Agreement and is structured as follows: section 2 provides an overview of the AfCFTA and the current implementation status. Section 3 considers the role of tax and customs departments in the implementation of trade agreements pulling from the experience of implementing WTO Agreements and EU Agreements. Section 4 discusses the African context and future considerations for tax and customs departments. Section 5 discusses the best practices and lessons learned from the EU and the East African Community (EAC). Finally, section 6 gives policy recommendations for tax and customs departments.

1. World Bank, *The African Continental Free Trade Are: Economic and Distributional Effects*, Washington, DC: World Bank. doi:10.1596/978-1-4648-1559-1. License: Creative Commons Attribution CC BY 3.0 IGO, pg. 1. Accessed on 25 February 2022 at https://openknowledge.worldbank.org/bitstream/handle/10986/34139/9781464815591.pdf

2. Article 3, AfCFTA Agreement

3. The World Bank estimates that the AfCFTA has the potential to lift 30 million people from extreme poverty and 68 million people from moderate poverty. Real income gains are estimated to increase by 7% by 2035; intra-African trade is also expected to see a boost with exports projected to increase by almost 29%. Ibid

4. UNCTAD, *Economic Development in Africa Report: Reaping the Potential Benefits of the African Continental Free Trade Area for Inclusive Growth*, UNCTAD, 2021, p.xii

2. OVERVIEW OF THE AFCFTA AND CURRENT STATUS OF IMPLEMENTATION

On 15th June 2015, during the Twenty-Fifth Ordinary Session of the Assembly of Heads of State and Government, the AU Assembly launched negotiations for the establishment of the Continental Free Trade Area.[5] This was "aimed at integrating Africa's markets in line with the objectives and principles enunciated in the Abuja Treaty".[6] These objectives were outlined in Agenda 2063 which committed to an increase in intra-African trade to 50 per cent by 2045 from less than 12 percent in 2013.[7] The Agenda also called for fast-tracking of the establishment of the Continental Free Trade Area by 2017 and doubling of intra-African trade volumes by 2022.[8] In that regard, by 2017, African Ministers of Trade (AMOT) had decided on the modalities for the liberalization of trade in goods and services including the target of 90% tariff liberalization.[9] Following the conclusion of negotiations on the AfCFTA Agreement, the Protocol on Trade in Goods, the Protocol on Trade in Services and the Protocol on Rules and Procedures on the Settlement of Disputes; 44 State Parties signed the AfCFTA Agreement on 21 March 2018. By 2019, 54 States had signed the Agreement and, to date, 47 have ratified the agreement.[10]

It is estimated that the free trade area will bring vast economic benefits to the continent, with some studies finding that the AfCFTA will contribute to boosting the combined consumer and business spending in Africa to over $6.7 trillion by 2030.[11] The Agreement also has the potential to raise Africa's low productivity and promote higher investment, thereby helping increase income levels and reduce poverty.[12] World Bank estimates that by 2035 the AfCFTA could increase real income gains by 7 percent and boost African exports by $560 billion (over 81 percent increase in intra-continental exports, and around 19 percent growth in exports to non-African countries).[13] The greatest beneficiaries from the positive trade gains include Cameroon, Egypt, Ghana, Morocco and Tunisia, whose intra-AfCFTA exports to AfCFTA partners are expected to double or triple with respect to the baseline. In terms of sectors, manufacturing exports lead, followed by agriculture and lastly, services trade.[14] Empirical studies find that the AfCFTA would increase overall income and welfare for the majority of African countries. Virtually all studies find relatively small gains from the elimination of import tariffs and significantly larger gains from reduction of non-tariff barriers (NTBs). The recognised regional economic communities (RECs)[15] are intended to serve as building blocks of the AfCFTA. Therefore, the AfCFTA will build on and complement the trade that is already taking place under the RECs. The existing tariff structure under these RECs will continue to apply.[16] However, where two countries are not in an established REC (for example South Africa and Kenya), new tariffs will apply to trade between them, as appropriately negotiated in tariff lines and Rules of Origin.[17]

In the last two years there has been significant progress made in regards to implementation of the Agreement. First, states have adopted 42 provisional schedules of tariff concession (PSTCs) with only 8 state parties and non-state parties yet to submit their schedules.[18] Rules of origin covering 88.3 per cent of tariff lines have been agreed on with additional work needed for the automotive and textiles sectors.[19] Member states have also concluded negotiations of draft Protocols on Digital Trade and Women and Youth.[20] The AfCFTA Adjustment Fund, intended to offer support to member states as they implement the Agreement, has been officially launched and operationalized in March 2023.[21] In addition, trade under the second phase of the guided trade initiative has 29 interested state parties.[22] This initiative was launched in October 2022 with 7 member states and led to collection of information on readiness and effectiveness of national legal and institutional systems; assisted private sector to participate in trade under the AfCFTA and take advantage of the preferential treatment, by providing information and support to private businesses ; and identified the work needed to improve the effectiveness of the AfCFTA.[23]

Indeed, member states are keen to accelerate the implementation of the Agreement with the 2023 AU theme of the year being "Acceleration of the African Continental Free Trade Area Implementation." This renewed focus on the AfCFTA calls countries to ensure that relevant stakeholders are prepared to take on their role in implementation.

5. Preamble, AfCFTA Agreement
6. Ibid
7. Agenda 2063: The Africa We Want (n 33)
8. Ibid
9. DTI (2018), n.15, p.3
10. Report on the Implementation of the African Continental Free Trade Are (AfCFTA) to the Fifth (5th) Mid-year Coordination meeting of the African Union and the Regional Economic Communities, July 2023.
11. Maliszewska, M., & Ruta, M. (2020). *The African continental free trade area: Economic and distributional effects.* World Bank Group Washington, DC.
12. Abrego, M. L., Amado, M. A., Gursoy, T., Nicholls, G. P., & Perez-Saiz, H. (2019). *The African Continental Free Trade Agreement: Welfare Gains Estimates from a General Equilibrium Mode*l. International Monetary Fund.
13. Ibid.
14. Ibid.
15. The AU Recognizes 8 RECS: 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) and Southern African Development Community (SADC)
16. Tralac. (2020). AfCFTA *Rules of Origin.* https://www.tralac.org/documents/resources/infographics/4328-afcfta-rules-of-origin-fact-sheet-may-2021/file.html
17. Ibid.
18 Report on implementation of AfCFTA, n 11
19. Ibid
20. Ibid
21. Ibid
22. Ibid
23. Ibid. See also Bama C.E. (2023), What have we learned from the AfCFTA Guided Trade Initiative? Tralac Trade Brief No. IDRC23TB01/2023. Stellenbosch: Tralac

3. THE ROLE OF CUSTOMS AND TAX ADMINISTRATIONS IN THE IMPLEMENTATION OF TRADE AGREEMENTS

Tax and customs departments (jointly referred to as Revenue Departments[24] going forward) are not only tasked with revenue collection but are also key in facilitating both domestic and international trade. Through trade facilitation, Revenue Departments provide an environment in which businesses and individuals are able to meet their tax and customs obligations and at the same time enable Revenue Departments meet their revenue collection targets.[25] Indeed, a fundamental tenet to trade facilitation is the easing of trade requirements which includes simplifying import and export procedures, transport formalities, insurance, payments and other financial requirements including taxation.[26] Therefore, while Revenue Departments are not the main drivers of trade policies, they are one of the main implementers of these policies.[27] As such it is important to first consider, what their main roles are in respect to implementing trade agreements.

3.1. REVENUE COLLECTION

Revenue Departments are responsible for ensuring that goods and services entering the country's territory pay the applicable duties and taxes upon clearance at the border, and that exported goods and services actually leave the territory and are not consumed domestically.[28] In addition, Revenue Departments collect domestic taxes from businesses and individuals taxable within their territory. While the AfCFTA will likely reduce tariff revenue from intra-African trade in the short term, Revenue Departments are still required to collect import VAT and import excise duties on imported products. At the domestic level, the revenue needs to be collected while ensuring ease of doing business including the establishment of efficient domestic tax systems to increase the competitiveness of a jurisdiction.

3.2. IMPLEMENTING TRADE POLICIES

i. Tariff concessions

Import tariffs are a key trade policy instrument that not only provides revenue but may also be used to protect domestic industries.[29] According to the African Tax Outlook (2021), the average contribution of international trade taxes to total revenue in the ATO countries in 2020 was about 35% compared to domestic taxes which accounted for 65%.[30] Therefore, the ambition of a 90% target in trade liberalisation being sought after in the AfCFTA is likely to cause a decline in revenue available to some countries in the short run. Furthermore, it is the duty of customs departments to interpret, implement and update tariff concessions that are agreed upon under the RECs and AfCFTA. They ought to be clearly reflected in the customs legislation, and the customs tariffs book which contains columns of the applicable schedule of concessions for each REC in which the country is a member, and this should also be readily available to the traders for certainty. The establishment of the AfCFTA E-Tariff book is an initiative in the right direction and it will be beneficial to both the customs officials and traders.

ii. Rules of origin

Customs departments are tasked with the implementation of the rules of origin (RoO). RoO are a set of legal provisions which establish the "*economic nationality of a product*" i.e. that a particular product originates from within the free trade area (FTA) and can enjoy preferential treatment. The RoO ought to be watertight to avoid non-FTA originating goods from exploiting preferential treatment. In the AfCFTA, the negotiations are even more complex because of both the overlapping memberships in different RECs and the RoO which are framed to account for the parties' policy decisions regarding the FTA.[31]

Customs departments must have the requisite technical skills, comprehension, and experience to apply the relevant regulations and confer origin to a product.[32] They are entrusted with determining the threshold in value addition to a product for it to be conferred preferential treatment. Different RECs may have different criteria for the threshold in value addition. For instance, COMESA requires that 40% of the product should be from local content in its material content, while ECOWAS applies 60% local content in its material content.[33] In some jurisdictions customs departments are also responsible for the issuance of certificates of origin. Furthermore, customs officials in the importing economy are also responsible for verifying the validity of the certificate of origin.

RoO may also be used as NTBs to trade. In that case, customs officials, as the people at the frontline, would identify such misuses and report them through the relevant channels. For exports, customs departments must ensure that the products meet the requirements set out in the FTA, which includes providing advice to domestic producers on their obligations.[34] In addition, customs officers will typically be the primary respondents in cases concerning disputes over RoO. It is therefore necessary to ensure that customs officers are well versed with the legalities of the rules. However, the implementation of RoO is often difficult because of their complexity, differences in rules applicable from one agreement to another, and limited cooperation with the other departments which would be necessary to efficiently enforce the rules.[35]

iii. Promoting competitiveness through special customs procedures

Customs departments provide additional special procedures that are intended to increase the competitiveness of the jurisdiction. These procedures are for "both trade and industry and allow goods to be stored (customs warehousing procedures), assigned to a specific use (temporary admission procedures), or processed (inward processing procedures)."[36] One such program is the Authorised Economic Operators (AEO) program that gives compliant traders AEO status which classifies them as low risk and gives them access to simplified customs controls.[37] The East African Community for example, has established an AEO program which has significantly reduced costs associated with trade for compliant traders.[38] However, despite these benefits, it is important to note that special procedures may be abused and therefore, processes should be implemented to "prevent and detect noncompliance."[39]

24. In many cases the two administrations are integrated into a semi-autonomous agency usually called the Revenue Authority. See Yasui, T (2009), Cooperation between Customs and Tax Administrations: Lessons Learned from Revenue Authorities, WCO Research Paper No. 5

25. Mugwe, M (2022), The Role of Revenue Authorities in International Trade Facilitation in East African Community, Journal of Advanced Research in Economics and Administrative Sciences, Vol. 3 No. 4

26. Ibid. See also Buyonge C and Kireeva I. (2008), Trade Facilitation in Africa: Challenges and Possible Solutions, World Customs Journal, Volume 2 No. 1

27. Ibid

28. Montagnat-Reinter, G and Bremeersch, C Chapter 1: The Multifaceted Role of Customs and its Importance for the Economy and Society in Customs Matters: Strengthening Customs Administration in a Changing World (ed. Augusto Azal Perez ed.), International Monetary Fund (2022)

29 Tralac, AfCFTA Tariff Negotiations, Factsheet, July 2021. Accessed on 28 May 2022, available online at: https://www.tralac.org/documents/resources/factsheets/4398-factsheet-afcfta-tariff-negotiations-july-2021/file.html

30. ATAF, African Tax Outlook, 2021 Edition, Accessed on 28 May 2022, available at: https://events.ataftax.org/index.php?page=documents&func=view&document_id=155&_ga=2.18670522.268697613.1655391367-1126185855.1615806938

31. UNCTAD, African Continental Free Trade Area: Policy and Negotiation Options for Trade in Goods, UNCTAD, 2016, p. 6. Available online at: https://www.tralac.org/images/docs/10980/african-cfta-policy-and-negotiation-options-for-trade-in-goods-unctad-december-2016.pdf

32. Mark Alexander Goodger, An analysis of the needs and challenges of customs authorities in implementation of the AfCFTA, AfCFTA support to the African Union Commission, 2021, p. 30 https://anyflip.com/pwacp/hvdc

33. UNCTAD (2016) n. 3 on p. 7

34.Giles Montagnat-Reinter and Christian Bremeersch (2022), n 29

35. Ibid

36. Ibid. p. 11

37. East African Community, EAC authorized economic Operator. Available at https://www.eac.int/customs/eacaeo

38. Ibid

39. Giles Montagnat-Reinter and Christian Bremeersch (2022), n 29, p. 12.

3.3. TRADE FACILITATION

In the 21st century, the role of customs has evolved from primarily collecting tariff revenue to facilitating the smooth flow of goods and securing the supply chain.[40] Cumbersome customs procedures coupled with other bottlenecks in the supply chain are costly and act as a significant barrier to the smooth flow of trade. At an international level, the WTO's Trade Facilitation Agreement (TFA) entered into force on 22 February 2017 aims to "[expedite] the movement, release and clearance of goods, including goods in transit."[41] The agreement provides for cooperation between customs and departments involved in facilitating trade and ensuring compliance with customs regulations.[42] Taking note of the different capabilities of the member states, the Agreement includes provisions for technical and capacity assistance for the implementation of the measures.[43] As of 8 August 2023, the current rate of implementation of the TFA commitments stood at 76.9 percent of all the WTO membership.[44] An ex-post analysis of the impact of the TFA on trade costs estimates that it has led to a 1 to 4 per cent reduction of trade costs on average.[45] This was largely attributable to self-participation in the TFA, that is, the implementation of the unilateral measures within the TFA.[46] The largest impact was seen in respect to trade between OECD and non-OECD countries.[47] There are currently 42 African countries that have ratified the TFA.[48] The TFA lays down ground work for trade facilitation and therefore systems put in place by participating African states to implement these measures will also be useful within the context of the AfCFTA.

Within the context of the AfCFTA, World Bank estimates that simplification of customs procedures and implementation of trade facilitation measures would drive USD 292 billion of the estimated total USD 450 billion in potential gains.[49] Indeed, trade facilitation is an essential element to the AfCFTA with countries committing to "cooperate on customs matters and in the implementation of trade facilitation."[50] Over and above simplifying customs procedures, trade facilitation will involve elimination of NTBs which include import bans, discriminatory rules of origin, unjustified sanitary and phytosanitary measures, baseless packaging product requirements, transit control methods such as multiple road-blocks, and unwarranted quality requirements, all of which impede smooth flow of trade.[51]

Though trade facilitation measures are largely dependent on the customs arm of Revenue Departments, or in countries where the two departments are split, the customs departments,[52] the tax department also plays a significant role in facilitating trade. This includes, harmonized treatment of tax incentives, exchange of information on VAT which has an import and domestic component, and coordination of domestic tax policy with obligations under the RECs and the AfCFTA. In addition, efficient domestic tax systems will reduce costs for traders and increase trading.

40. WCO, Customs in the 21st Century: Enhancing Growth and Development through Trade Facilitation and Border Security, 2008, p. 3. Available online at: http://www.wcoomd.org/~/media/wco/public/global/pdf/topics/key-issues/customs-in-the-21st-century/annexes/annex_ii_en.pdf?la=en

41. World Trade Organisation, Trade Facilitation. Available at https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm

42. Ibid

43. Ibid

44. World Trade Organisation, Implementation Commitment Dashboard. Available at https://tfadatabase.org/en/implementation

45. Duval, Yann and Utoktham, Chorthip (2022), Has the WTO Trade Facilitation Agreement helped reduce trade costs? An ex-post analysis, UN ESCAP, Working Paper Series No. 2, Bangkok.

46. Ibid p. 9

47. Ibid p. 12

48. WTO, Trade Facilitation Agreement Database: Ratifications. Available at https://tfadatabase.org/en/ratifications

49. World Bank, The African Continental Free Trade Area: Economic and Distributional Effects, 2020, p. 22, Washington, DC: World Bank. doi:10.1596/978-1-4648-1559-1.

50. Article 4(e), the AfCFTA Agreement

51. Abrego L. et al., The African Continental Free Trade Area: Potential Economic Impact and Challenges, IMF Staff Discussion Note, SDN/20/04, 2020, p. 8

52. In many francophone countries, customs and tax departments are separate but under the ministry of finance.

3.4. APPLICATION OF TRADE DEFENSIVE MEASURES

Under WTO Agreements, members are authorized to take specific defensive measures in response to actions taken by other member states. First the Agreement on Safeguards allows member states to implement "duties, tariff measures and/or quotas to protect a domestic industry against an increase in imports" that threaten to cause serious harm to the industry.[53] The Agreement on Anti-Dumping Duties allows member states to apply fair taxation on imported goods that have an export price that is lower than their normal value.[54] Member states may also take action to respond to subsidies offered in the state of production to the supplier of the imported goods under the Agreement on Subsidies and Countervailing Measures.[55] Customs officials have access to relevant trade data that may indicate inconsistencies with trade obligations which would trigger application of permitted defensive measures.[56] Customs officers are therefore required to share trade data with the relevant government ministries in charge of implementing defensive measures, in instances where they detect circumvention of trade obligations or a need to protect domestic markets from an increase in imports. In addition, customs authorities are tasked with collecting any additional taxes enforced as a part of the defensive measures.

3.5. PRODUCTION OF FOREIGN TRADE STATISTICS

Trade statistics are important to governments for policymaking purposes, and monitoring and controlling key sectors of the economy.[57] As such it is important that they have access to reliable data. Though customs may not be responsible for publishing the foreign trade statistics, they have direct access to trade data. Production of accurate foreign trade statistics will be possible where customs collect accurate and reliable data.[58] However, this remains a significant challenge for developing countries especially in the extractives industry.[59] To mitigate this, several countries have employed multiple sector experts and entered into projects that provide technical training which includes information on the different stakeholders in the natural resources value chains to ensure effective duty and tax collection.[60]

3.6. PROTECTION AND SAFETY

Customs officials play a key role in ensuring that domestic and international regulations and standards for imports and exports are adhered to. This includes standards set out for the protection of the environment and health. For instance, customs officials monitor the application of the Basel Convention on the control of transboundary movements of hazardous waste through either physical inspection or document-based inspection.[61] They are also involved in tackling counterfeit goods and ensuring that all products have met the technical quality standards set out. Though customs officials in specific countries may not have the technical skills to inspect certain goods, they ensure that the responsible agencies have inspected and approved the goods prior to entry or exportation.

53. Montagnat-Reinter and Bremeersch (2022), n 29

54. Ibid

55. Ibid

56. Ibid p. 14

57. Montagnat-Reinter and Bremeersch (2022), n 37

58. Ibid

59. Ibid

60. See for instance the Financial Modeling for Extractives Sector (FIMES) project launched in 2020 by the Africa Natural Resources Center and implemented by the African Development Bank, intended to increase domestic resource mobilization form extractives through financial modeling. Available at https://projectsportal.afdb.org/dataportal/VProject/show/P-Z1-KZ0-041

61. Montagnat-Reinter and Bremeersch (2022), n 37 p. 15

3.7. REVENUE GENERATION

Generally, the AfCFTA will impact revenue in the following ways. First, following the phasedown of import tariffs, a direct reduction in revenue is projected. Second, on account of the lower tariffs, trade diversion could also reduce revenues. Third, due to potential increase in production efficiency, a higher GDP would lead to more revenue. Fourth, subsequent to increasing imports and income, higher consumption would raise revenue.[62]

In the short term, the AfCFTA will likely result in revenue loss which will be mitigated in the medium to long term as a result of increased economic activity. However, a more granular domestic level review notes that some countries may face a significantly higher revenue loss due to higher reliance on intra-African trade and resulting import duties and taxes.[63] There will need to be an ongoing analysis of the revenue and economic implications of the AfCFTA to identify, in particular, the countries that are most likely to lose and develop appropriate adjustment proposals and strategies to mitigate the specific challenges faced by individual countries.

A key recommendation in tackling anticipated revenue loss is increasing domestic resource mobilisation through tax policy. This includes expansion of the tax base by taxing hard-to-tax sectors such as the informal sector; introducing simplified tax regimes for small businesses; changing the value-added tax (VAT) threshold to better target high-value businesses; investing in (or expanding) digitalization of Revenue Departments; and pursuing reforms in information and communication technologies. New technologies would also help reduce compliance costs and simplify registration, filing (through e-filing), payment (through e-payment), audit, collection enforcement, and appeals.[64] Countries may also introduce new taxes such as Digital Service Tax, carbon taxes and taxes on betting and gambling. In addition, Revenue Departments may also implement policies to increase compliance by multinational enterprises and high net worth individuals. Lastly, there is need for a review of existing tax incentives to determine whether they are fit for purpose and eliminate incentives that fail to achieve their objectives.

Revenue Departments also have a key role to play in curbing illicit financial flows through trade misinvoicing, corporate tax avoidance and tax evasion practices. Free trade areas may unintentionally facilitate illicit financial flows as result of reduced trade controls and increased movement of goods, capital and people. As such, Revenue Departments need to consider measures to curb these increased risks including strengthening national and regional cooperation between Revenue Departments and with other law enforcement agencies.[65] Technology can also be used to track goods and share information between different departments making it easier to identify any illicit activity.[66]

62. Lisandro Abrego et al. (2020), n. 59

63. See: The Tariff Revenue Implications of the of the African Continental Free Trade Area, A Joint Research Initiative of the African Tax Administration Forum (ATAF) and the WU Global Tax Policy center, Institute for Austrian and International Tax Law, WU (Vienna University of Economics and Business).

64. Abrego, M.L., Amado, M.A., Gursoy, T., Nicholls, G.P. and Perez-Saiz, H. (2019), *The African Continental Free Trade Agreement: welfare gains estimates from a general equilibrium model.* International Monetary Fund

65. See Jean-Pierre Brun et al. (2022), Taxing Crime: A Whole-of-Government Approach to Fighting Corruption, Money laundering and Tax Crimes, World Bank. Jointly authored by the World Bank, UNODC Stolen Asset Recovery Initiative and the WU GTPC at the Institute for Austrian and International Tax Law, WU (Vienna University of Economics and Business)

66. Countries like Mozambique use electronic cargo tracking systems, which involve using e-seals to track the chain of custody. The e-seals also alert authorities of any illegal opening or deviations from assigned transit route or other abnormalities. See Zhiqiang Chen (2021), Mozambique launches electronic cargo tracking system, WCO News, No. 95. Available at https://mag.wcoomd.org/uploads/2021/06/WCONEWS95.pdf

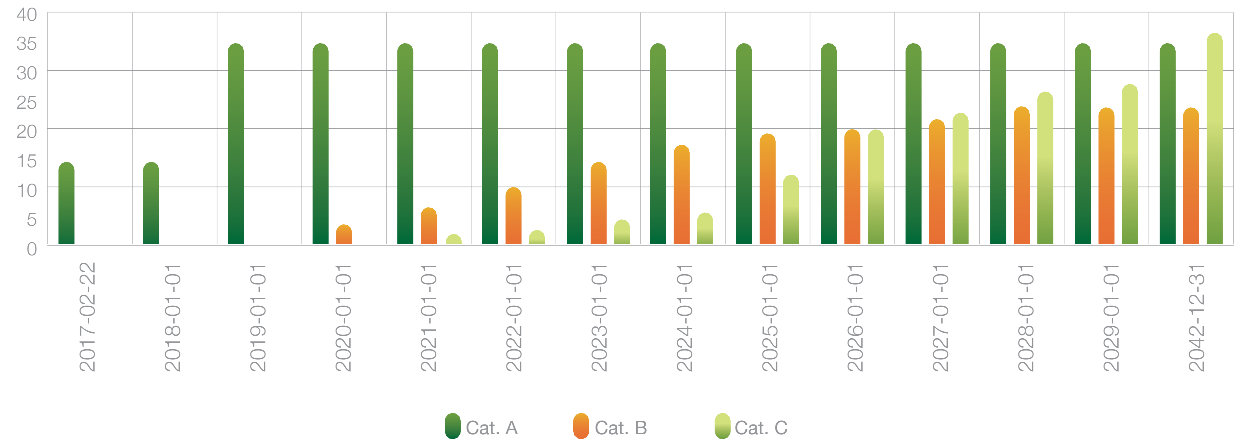
4. BROADER ISSUES WITHIN THE AFRICAN CONTEXT

Given the key role that Revenue Departments play in the implementation of trade agreements, well equipped and efficient Revenue Departments will be necessary for the successful implementation of the AfCFTA. African countries are uniquely placed as they have experience in implementation of regional trade agreements, through the RECs, as well as other international instruments. Currently, 41 African states are members of the WTO TFA, 37 of the WCO Revised Kyoto Convention, 52 of the WCO Harmonized Systems Convention and 53 of the Convention Establishing the Customs Co-operation Council. These instruments promote the multilateral trading system and encourage member states to conform to specific standards such as advance rulings, transit procedures, authorised economic operators, post clearance audits, risk management and disciplines on fees and charges. Implementation of these instruments has forced Revenue Departments to increase their technical capacity in order to meet their obligations which provides a unique opportunity for AfCFTA to build on existing processes and capabilities. On this basis, the progress in the implementation of the WTO FTA and RECs is discussed below.

4.1. REVIEW OF AFRICAN COUNTRIES' PROGRESS IN IMPLEMENTING WTO TFA

Forty-two African states have ratified the agreement and begun implementation of the TFA. This Agreement is particularly unique as it offers flexibility to developing countries and least developed countries (LDCs).[67] These countries are able to select the measures they can implement at the time the agreement enters into force (Category A); measures that require additional time prior to implementation (Category B) and those that require both additional time and capacity (Category C).[68] The TFA includes: measures relating to transparency and non-discrimination; disciplines regarding fees and formalities in relation to importation and exportation including penalties; and obligations of cooperation between agencies at the border.[69] So far, African countries have met 51.8 percent of their commitments (sum of category A, B and C measures), see *figure 1* below.

Figure 1: Timeline of Implementation Commitments: African Region



Source: Adapted by Author based on WTO TFA database, 11 August 2023, available at **https://tfadatabase.org/en/implementation/timeline**

67. Hassan, M. (2020). Africa and the WTO Trade Facilitation Agreement: State of Play, Implementation Challenges, and Policy Recommendations in the Digital Era. In: Odularu, G., Hassan, M., Babatunde, M. (eds) Fostering Trade in Africa. Advances in African Economic, Social and Political Development

68. Ibid

69. Ibid

Customs departments have been key in ensuring implementation of specific measures. For instance, they are often tasked with pre-shipment inspection and implementation of penalties. Lengthy pre-shipment inspection processes are NTBs that can negatively impact cross-border trade. However, the WTO TFA progress indicator notes that there has been progress regarding pre-shipment inspections, indicating that there has been reform within African customs departments to streamline processes (See *figure 2*). At the same time, implementation of Article 8 on border agency cooperation is low which may indicate that there is still significant progress to be made in some of the countries (See *figure 2*). Member states can therefore build on the existing reforms as they implement the AfCFTA.

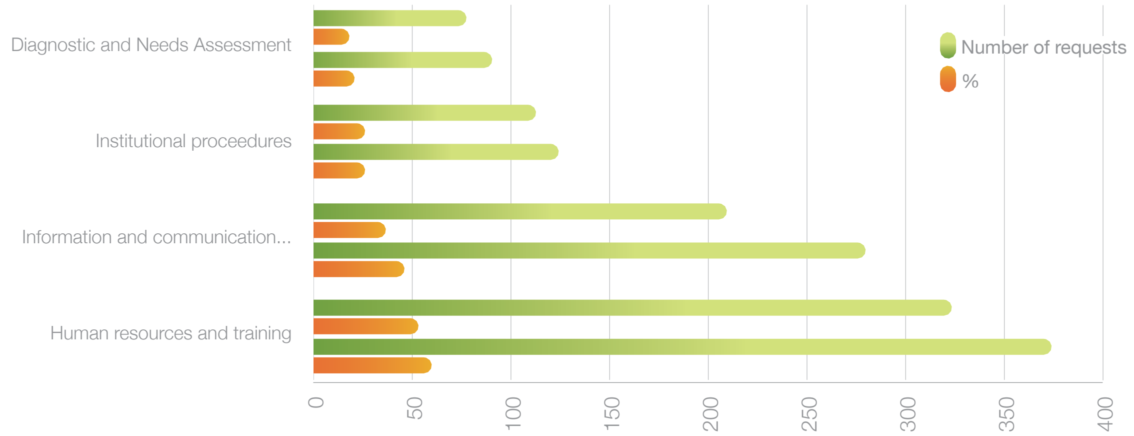
Figure 2: Implementation Progress: Africa

Selected articles of the TFA. **Source:** Adapted by Author based on WTO TFA database, 11 August 2023, available at **https://tfadatabase.org/en/implementation/progress-by-member**

Selected articles of the TFA. Source: Adapted by Author based on WTO TFA database, 11 August 2023, available at https://tfadatabase.org/en/implementation/progress-by-member

To meet these additional requirements, countries have submitted requests for technical assistance and capacity building for their agencies, including customs departments. Assistance with human resources and training, legislative and regulatory framework, information communications and technology and in Revenue Departments' structure and equipment form the majority of the requests for assistance (see *figure 3*).

Figure 3: Share of Technical Assistance required-Africa



Source: Adapted by Author based on WTO TFA database, 11 August 2023, available **https://tfadatabase.org/en/implementation/technical-assistance/type-requested**

4.2. REVIEW OF THE PROGRESS UNDER RECS

There has been significant progress within RECs in building capabilities, and institutional reforms for deeper integration. For instance, SADC developed a trade facilitation programme which includes an initiative for movement from manual acquisition of the certificate of origin to an electronic certificate of origin.[70] In the EAC, the member states moved to a single customs territory. As a result, the region has seen enhanced exchange of information and adoption of processes that facilitate trade and promote efficient movement of persons and goods such as the one stop border posts (OSBP). The OSBPs also reduce costs for traders and speed-up movement of persons and goods.[71] EAC has also established the electronic single window system (ESWS) that significantly reduced the time required to clear goods.[72]

COMESA is scaling up its free trade area (FTA) to a digital free trade area (DFTA) to reduce barriers to trade, boost intra-COMESA exports and empower cross-border traders.[73] The initiative seeks to assist traders and small and medium enterprises (SMEs) to manoeuvre complex regulations and barriers by using ICT tools. It consists of three focus areas: eTrade, eLogistics and eLegislation which will be implemented through tools such as the electronic certificate of origin, COMESA online trade portal and an electronic single window system.[74]

4.3. FUTURE CONSIDERATIONS FOR REVENUE DEPARTMENTS

i. Coordinated assessments.

As an initial step in the implementation of the AfCFTA, member states must undertake national assessments to identify the gaps in their institutional and legislative framework and from there develop tailored approaches to mitigate identified risks.[75] To ensure that this does not hinder but rather facilitate deeper integration, assessments and subsequent strategies should be coordinated at the regional level. In this way, member states would be able to identify the key challenges and capacity needs of the Revenue Departments and ensure that policy recommendations are in line with the needs of the specific jurisdiction and in line with integration objectives. Countries may need support in regard to customs and legislative reforms, NTB reporting mechanisms, training and capacity development of key management and other relevant staff members, and digitalization of processes and administrations.

ii. Increased transparency

A key element to increasing intra-African trade will be transparency. This will require Revenue Departments to provide information to traders on their obligations under the AfCFTA; the duties and taxes applicable, advance rulings; and opportunities to comment and consult on trade laws. This information should be readily available to traders. Customs departments, in particular, will therefore need to set up platforms that can be used to transfer this information to traders.

iii. Strengthening revenue collection

The level of the revenue reduction from the implementation of the AfCFTA will be dependent on the specific country circumstances.[76] In any case, the Revenue Departments will be tasked with increasing domestic resource mobilization to mitigate the loss. First, the Revenue Departments will need to implement policies to increase compliance among taxpayers, especially those that raise unique challenges such as high net-

70. Tralac, SADC embracing electronic Certificate of Origin, 11 May 2020. Available online at: https://www.tralac.org/blog/article/14710-use-of-electronic-certificates-of-origin-now-and-beyond-covid-19-in-intra-african-trade.html

71. EAC, EAC Operationalizes 13 One Stop Border Posts. Available at https://www.eac.int/press-releases/142-customs/1276-eac-operationalizes-13-one-stop-border-posts

72. EAC, Progress of the EAC Integration Process. Available at https://www.eac.int/sgforum/regional-integration-progress

73. Mwangi Gakunga, Building Capacity for Digitally Enabled Trading System, 27 April 2022. Available online at: https://www.comesa.int/building-capacity-for-digitally-enabled-trading-system/

74. Ibid

75. Soumana Sako, Challenges Facing Africa's Regional Economic Communities in Capacity Building, The African Capacity Building Foundation Occasional Paper No. 5 2006, p. 19

76. See n 73 for an analysis of the revenue implications of the AfCFTA.

worth individuals and multinational enterprises. In addition, though on the one hand reducing trade controls will increase trade, this may also create opportunities for fraudulent activities due to the ease of movement in and out of the free trade area.[77] Some of the fraudulent activities include: trade mis-invoicing, falsification of certificates of origin, trade-based money laundering and missing trader intra-community fraud. As such, more controls need to be but in place to prevent this misuse of the single market. This would include cooperation with other customs departments and law enforcement agencies, use of technology to track goods and exchange information and raising awareness among staff to enable them to identify trade-based money laundering.[78]

iv. The use of technology

The increase in trade volumes coupled with the complexity of the trading system in Africa means that customs, and other border agencies may be overwhelmed. Therefore, Revenue Departments and other supporting institutions will have to invest in technology used in revenue collection and trade facilitation such as Automated System for Customs Data (ASYCUDA). ASYCUDA is a “computerized customs management system that covers most foreign trade procedures. It handles manifests and customs declarations, along with accounting, transit and suspense procedures.”[79] Investment in these solutions should be coordinated to ensure interoperability across the region, if not, they might present additional administrative burdens on the traders and limit cooperation between agencies both at the national and regional level.

v. Review of the compatibility of national policy with the AfCFTA

Though 47 countries have ratified the AFCFTA, implementation of the agreement has been slow and limited analysis has been done on compatibility of national tax policies with the AfCFTA. All of which suggests there is an ongoing need for awareness raising within the departments to understand the commitments under the AfCFTA and how they interact with national policies. Revenue Departments will need to ensure that their national tax policies are not inconsistent with the AfCFTA and where they are, amend them to conform. Where departments are required to make changes to national policies to conform to the AfCFTA obligations, clear guidelines should be provided to customs clearing agents and traders, and support offered to navigate these changes.

vi. Need for increased customs co-operation.

It is generally agreed that customs cooperation is a key element for the simplification of customs procedures. At the international level, Article 12 of the WTO TFA, requires member states to exchange information between customs departments to “facilitate smooth and accurate verification of goods declarations.”[80] Guidance is also provided on the occasions where exchange of information is permissible and not permissible. The Kyoto Convention, General Annex (Standard 6.7) also provides that customs should seek to cooperate and “conclude mutual administrative assistance agreements to enhance customs control.”[81] Lastly, WCO SAFE Framework of Standards (FoS) also requires members to “enhance customs-to-customs network arrangements to promote seamless movement of goods through secure international trade supply chains.”[82] Within the African context, Article 4 of the AfCFTA Agreement notes that, for purposes of realising its objectives, parties will need to cooperate on customs matters and implementation of trade facilitation measures. In practice, customs cooperation takes different forms including: exchange of information, mutual assistance

77 FATF (2020), Trade-based Money Laundering: Trends and Developments, FATF, Paris, France. www.fatf-gafi.org/publications/methodandtrends/documents/trade-based-money-laundering-trends-and-developments.html

78. Ibid

79. What is ASYCUDA? Available at https://asycuda.org/en/about/

80. Akhmad Bayhaqi, Satvinderjit Kaur Singh, and Lina Meneses Espinoza (2019), Customs Cooperation in APEC: Strengthening Regional Cooperation, APEC Policy Support Unit, Policy Brief No. 27.

81. WCO, Customs Cooperation. Available at https://www.wcoomd.org/en/topics/wco-implementing-the-wto-atf/atf/customs-cooperation.aspx

82. Ibid

regarding surveillance and investigations.[83] Therefore, for the effective implementation of the AfCFTA, member states will need to strengthen cooperation. This will require member states to: foster trust among the departments; increase legislative protection of information shared between the departments; set up exchange of information procedures; and take advantage of existing procedures for cooperation already set up at the international level. In particular, the WCO continues to provide capacity building for developing countries as they implement the TFA and has provided model bilateral agreement and model memorandum of understanding on mutual administrative assistance in customs matters.

vii. Harmonization of policies

Harmonization of policies ensures that the rules and regulations applicable in a specific region are clear and predictable for the stakeholders. This allows both the states and businesses to reap the full benefits of economic integration.[84] As such, harmonization of policies and regulations in the economic sphere is a key objective of both the Abuja Treaty[85] and Agenda 2063. Similar commitments are made in the AfCFTA Agreement that commits to “harmonization of appropriate policies, strategies and measures for the effective implementation of [the] Agreement.”[86] Under RECs, member states have taken several steps to harmonize certain sectors. For instance, ECOWAS states have implemented the ECOWAS Agricultural policy and ECOWAS strategic plan for the processing and development of the livestock sector.[87]

Though harmonization of these economic areas takes time, it is much easier to do so than to harmonize taxation. Tax harmonization is the process of developing a common policy objective through the removal of tax distortions to promote trade and investment.[88] A lack of harmonization creates uncertainty for traders, increases compliance costs, tax planning and funding distortions and in this way acts as a barrier to economic integration.[89] Indeed, ongoing work notes the increase in cross border VAT/Goods and Services Tax (GST) disputes as a result of differences in rules which not only increases compliance costs but also has negative impact on business decisions.[90] However, the fact that tax is tied to the sovereignty of a state makes it particularly difficult to harmonize.

Though the EU has not been able to harmonize direct taxes, there has been harmonization of indirect taxes. This was based on the notion that differences in tax rates, specifically VAT and excise taxes, hamper economic integration.[91] In addition, the European Court of Justice has indirectly harmonized direct tax by prohibiting direct taxes that are inconsistent with EU laws and principles. Harmonization in this sense has created more certainty for traders therefore promoting economic development.

The French speaking members of ECOWAS, through the West African Economic and Monetary Union (WAEMU), have made some progress in regard to tax harmonization. These countries have implemented policy harmonization directives

83. Bayhaqi, Singh and Espinoza (2019), n 91

84. UNECA, harmonization of Sectoral Policies. Available at https://archive.uneca.org/oria/pages/harmonisation-sectoral-policies

85. Article 6:2 (b)(i-ii), Treaty Establishing the African Economic Community.

86. Article 11(3)(e), AfCFTA Agreement

87. UNECA, ECOWAS-Harmonisation of Sectoral Policies. Available at https://archive.uneca.org/oria/pages/ecowas-harmonisation-sectoral-policies

88. Obazee Uyioghosa1 & Omozuwa, Isaiah Igbinosa (2023), Comparative Analysis of Tax Hamrnization in Economic Community of West African States (ECOWAS) African Union and European Union (EU), African Development Finance Journal, Vol. 5 No. 3 p. 19-41

89. Ibid p. 25

90. The WU GTPC has established the Multi-Stakeholder Group on Improving Cross-border Dispute Resolution project whose goal is to identify the root causes of cross-border VAT/GST disputes and develop a palette of tools and mechanisms for their prevention and resolution which can be used by tax policymakers and dispute resolution experts. For more details see https://www.wu.ac.at/en/taxlaw/institute/gtpc/current-projects/vienna-multi-stakeholder-group-on-improving-cross-border-dispute-resolution/ and Jeffrey Owens and Anastasiya Piakarskaya (2022), Cross-border VAT/GST Disputes Need Stronger Dispute Resolution, Tax Notes International Vol. 106 p. 8-12

91. Obazee Uyioghosa1 & Omozuwa, Isaiah Igbinosa (2023), n 99

that set the tax rates and bases coordination, for example, direction on the ratio of tax revenue to GDP to be at least 17 per cent.[92] Though the ECOWAS countries have a "VAT coordination framework, [they] do not have a common legislation to institutionalize it."[93]

As countries move forward with implementation of the AfCFTA, harmonization will be key. This is more easily done in some sectors than others. However, harmonization of taxes will not only promote trade, but it will also reduce tax competition within the region, consequently increasing revenue.[94] The EU experience shows that countries may first focus on indirect taxes and consider other forms of taxes in the long run. In the meantime, Revenue Departments will need to be at the forefront of promoting harmonization of indirect taxes as a steppingstone to further harmonization.

viii. Tax related disputes

Though tax, trade and investment rules have largely developed in parallel, the broad coverage of the rules of free trade agreements and international investment agreements will likely lead to overlaps with domestic tax measures and tax agreements.[95] These overlaps may lead to a conflict or breach of trade or investment obligations by the state. Consequently, there have been a number of tax related cases raised under the trade and investment dispute settlement systems.[96] These cases, that can either be state-to-state or investor-to-state in the case of investment agreements, are often expensive and lengthy. In addition, the panel may find that domestic tax measures contradict a state's trade or investment obligations, which may then constrain a country's ability to reform its national tax system.[97]

As such member states, led by Revenue Departments, need to carry out research on the potential impact of the AfCFTA on tax policies, revenue and administration.[98] In addition, dialogue should be fostered between trade, investment and tax policymakers to ensure that there is a common understanding of the key principles.[99] States should raise awareness within Revenue Departments to help them understand how their actions could be considered barriers to trade or breach the country's obligations under the AfCFTA.[100] At the government level, technical support should be afforded to help countries prepare for "customs cooperation, broad trade facilitation and review of compatibility of tax policy measures with AfCFTA obligations."[101]

92. Ibid
93. Ibid p. 28
94. Ibid p.38
95. ATAF (2022), Understanding the Overlaps between Trade and Investment Obligations and Tax Measures – Setting a Foundation for Dialogue on the AfCFTA, Policy brief.
96. For further analysis on instances where the conflict may arise see ATAF (2022), n 105.
97. ATAF (2022), n 105
98. Ibid
99. Ibid
100. Ibid
101. Ibid, p. 17

5. BEST PRACTICES AND LESSONS LEARNED

5.1. EU EXPERIENCE

The process of European economic integration began in 1957 with the Treaty of Rome and the establishment of the European Economic Community. In 1993, the single market was launched with the "4 freedoms" of free movement of people, goods, services and capital.[102] It consists of twenty seven member states, more than double the initial six member states. Over the decades, there has been significant integration progress. For instance, the free movement of individuals within the EU region resulted in the coordination of social security systems and cooperation in criminal matters; and the free movement of services and capital had as a consequence the common regulation of the financial sector. Though direct taxation remains under the ambit of the member states, there has been harmonization of indirect taxes specifically, VAT and excise duties. In addition, domestic tax measures are bound by the fundamental freedoms and the EU state aid rules.[103]

In the EU, tax administrations are key in the collection of taxes and dealing with taxpayers and are under the competency of the individual member states. However, they are a key player in ensuring the running of the EU single market.[104] First, tax fraud negatively impacts the level playing field in the single market, tax administrations are therefore tasked with assessing taxpayers and tax policies domestically to ensure that evaders are penalised and any opportunities for evasion are prevented.[105] Second, ease of paying taxes and compliance increases European companies' competitiveness.[106] Therefore tax administrations are tasked with ensuring that there are efficient systems for payment of taxes. Lastly, predictability and certainty in the law and processes encourages investment within the union.[107] Tax administrations are therefore necessary to ensure information is clear and readily available to taxpayers, this includes information on the obligations of each taxpayer and the audit and appeal processes.

To ensure that tax administrations are fit to perform all the tasks required of them, the tax administration diagnostic assessment tool (TADAT), provides an "objective assessment of the health of the key components of a country's system of tax administration."[108] The EU Commission also offers support to tax administrations as they work to meet their objectives. Cooperation is important to ensure that departments can meet these objectives. As such directive 2011/16/EU (directive on administrative cooperation – DAC) sets up the system for secure administrative cooperation between national tax departments and the procedures for exchange of information.[109]

The Fiscalis programme offers opportunities for cooperation among the member states' tax administration in the fight against tax fraud, evasion and avoidance through: more connected IT systems; sharing good practices and training; developing joint actions in risk management and audits; and fostering union competitiveness.[110] The programme also aims to support the administrative capacity of tax administrations "including through modernising reporting and auditing techniques; as well as supporting training the staff of the [departments] in that regard."[111] To further cooperation, the Tax

102. European Union, History of the European Union. Available at https://european-union.europa.eu/principles-countries-history/history-eu/1990-99_en
103. For a discussion on how the EU fundamental freedoms and state aid rules interact with domestic tax measures see ATAF (2022), n 105.
104. European Commission, Tax Administration. Available at https://taxation-customs.ec.europa.eu/taxation-1/tax-co-operation-and-control/general-overview/tax-administration_en
105. Ibid
106. Ibid
107. Ibid
108. Ibid
109. Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC
110. EU Commission, 2014-2020 Fiscalis Programme. Avalable at https://taxation-customs.ec.europa.eu/eu-funding-customs-and-tax/fiscalis-2020_en

Administration EU Summit (TADEUS) is a forum that originated in 2018 and was intended to boost cooperation between tax administrations as a result of reports on deficiencies within the tax administrations of some members.[112] The forum brings together the heads and deputy heads of tax administrations from all of EU to deepen cooperation.[113] The initial areas of focus for the forum are: digitalisation; tax compliance; and implementation of EU legislation.[114]

Instruments such as the technical support instrument (TSI) of the EU, provide technical support to member states to "design and implement reforms."[115] Member states have also approved the compliance risk management (CRM) guide for EU tax administrations, to understand CRM strategies, the process and the role of digitalisation, data and technology.[116] The capability maturity model assists countries determine their maturity level while the outcome measurement tool provides a 'standard' for outcome measurement. The strategic guidelines on trust building in tax administrations (2020) offer recommendations on steps tax administrations can take to enhance trust in the tax system.[118]

The EU experience provides valuable lessons for the AfCFTA member states. Most significantly, the emphasis on cooperation between tax administrations. Increased mobility of taxpayers and of number of cross-border transactions makes it difficult to assess tax properly and affects function of tax systems, increases instances of double taxation, tax evasion and fraud, which all negatively impact economic integration.[119] As such, cooperation is essential as one member state cannot manage the tax system on its own without information from other states.[120] Therefore, AfCFTA member states will need to increase cooperation efforts to ensure that tax systems are efficient and prevent any opportunities for evasion or fraud. In addition, efforts to offer technical assistance to tax administrations to assist them meet their objectives would also be useful within the African context especially because of the disparity in levels of development. Lastly, at the regional level, AfCFTA member states should prepare tools and guidelines for tax administrations that will standardize both the working of tax administrations and measurement of the effectiveness of tax systems.

5.2. EAST AFRICA COMMUNITY (EAC) EXPERIENCE

Revenue Departments have played a significant role in the implementation of the EAC. This section provides a summary of the key initiatives noted at both the domestic and regional level. Similar to the experience at the EU, EAC member states recognise the need for cooperation between tax departments. The community has developed a regional trade information portal that is linked to the trade portals in Burundi, Kenya, Rwanda, Tanzania, and Uganda. These portals provide a step-by-step guide on "licenses, pre-clearance permits and clearance formalities for the most traded goods within, to and from the EAC."[121] This provides an invaluable benefit to traders that can gain any necessary information more easily.

In addition, to further cooperation in tackling illicit trade, the EAC has launched integrated customs programs such as the regional electronic cargo and drivers tracking system. This system allows agencies to share "truck driver's information leveraging on [information] managed and operated by Revenue Departments in the region, and the existing health information systems in partner states."[122] This system has significantly reduced (i) incidences of diversion of goods and turn-around times; (ii) multiple use of documentation; (ii) transport costs due to increased turnaround time.[123] Revenue Departments in the RECs work together to ensure that the tracking systems work, which in turn eliminates NTBs and increases trade within the member states.

To reduce delays and costs on traders, a single regional bond was established. Therefore, instead of taking out a bond for each country that the goods transit through, a unified bond will be acceptable and applicable in all member countries.[124] In addition, a single insurance cover, from a registered insurance company of a member country, can be used across the region.

At the domestic level, Revenue Departments facilitate trade through easing of customs policies and procedures. In Kenya for example, this has been done through automation of the customs clearance processes.[125] The Kenya Revenue Authority (KRA) has set up the Community Based System (CBS), which is a single window concept that integrates all agencies that issue licenses and carry out trade facilitation processes.[126] The Integrated Customs Management System also allows traders to clear goods prior to arrival at the port of entry.[127] Over and above these systems, KRA carries out training and sensitization of SMEs on "the rules, requirements and procedures of cross-border trade."[128]

Uganda Revenue Authority (URA) has also embraced automation for example, through automating the process of obtaining the Tax Identification Number (TIN).[129] In addition, the URA has introduced a bonded warehouse management information system to easily manage goods in bonded warehouses and introduced the Uganda electronic single window that provides a platform for traders to submit necessary documents to the approving agencies.[130] Tanzania Revenue Authority (TRA) has embraced the use of technology through the introduction of the Tanzania Customs Integrated System (TANCIS) which administers customs processes without the need for clearing agents to move from one office to another.[131] The system has reduced costs for traders, led to the collection of more revenue and increased the efficiency of the customs clearance process.[132]

The EAC member states provide key examples of the uses of technology in facilitating trade. Within the AfCFTA context, states should prioritise the use of technology to ease customs processes and mitigate NTBs. Regional technology solutions in EAC also form a basis for regional approaches to curbing illicit trade.

111. Regulation (EU) 2021/847 of the European Parliament and of the Council of 20 May 2021 establishing the 'Fiscalis' Programme for cooperation in the field of taxation and repealing regulation (EU) No 1286/2013

112. EU Commission, Tax Administration EU Summit- TADEUS. Available at https://taxation-customs.ec.europa.eu/taxation-1/tax-co-operation-and-control/tax-administration-eu-summit-tadeus_en

113. Ibid

114. EU Commission, TADEUS: Tax Administration European Union Summit-Multi Annual Plan. Available at https://taxation-customs.ec.europa.eu/system/files/2022-04/Multi-Annual%20Plan%20of%20TADEUS.pdf

115. European Commission, Tax Administration, n 114

116. Ibid

117. Ibid

118. Ibid

119. Council Directive on Administrative Cooperation, n 119

120. Ibid

121. East Africa Community, Regional Trade Information Portal. Available at https://tradehelpdesk.eac.int/

122. East African Community, EAC Partner States adopt the EAS Regional Electronic Cargo and Drivers Tracking System. Available at https://www.eac.int/press-releases/147-health/1736-eac-partner-states-adopt-the-eac-regional-electronic-cargo-and-drivers-tracking-system

123. Mugwe Moses (2022), n 32, p. 55

124. Ibid

125. Ibid p. 56

126. Ibid p. 57

127. Ibid

128. Ibid

129. Ibid

130. Ibid

131. Ibid p. 58

132. Ibid. p. 59

6. POLICY RECOMMENDATIONS

In this section, the paper draws some policy recommendations for African countries to improve tax and customs administration with regard to their participation in AfCFTA:

i. Broadening tax bases to offset any potential short-term revenue loss

It is anticipated that participation in the AfCFTA will result in a decrease in tariff revenue. Hence, in order to compensate for the short-term revenue losses, African economies must resort to other revenue boosting measures.[133] These include initiatives to reach hard-to-tax sectors such as the informal sector, by introducing a simplified tax regime for small businesses; changing the value-added tax (VAT) threshold to better target high-value businesses, as well as introducing new taxes such as Digital Service Tax (DST),[134] taxes on betting and gambling and carbon taxes.

ii. Tackling the increased risk of illicit financial flows

As it stands, the AfCFTA does not make any reference to IFFs which is a serious omission. However, reduced trade controls and increased movement of capital and people open up new opportunities for illicit activities. As such, measures to curb these increased risks are necessary. At the EU level, member states have noted that cooperation is necessary to curb tax evasion and fraud and have therefore established systems to facilitate this. Therefore, a key initiative for AfCFTA member states should be increasing cooperation between Revenue Departments and between Revenue Departments and other law enforcement agencies.[135] This form of cooperation will avail key information to relevant departments and take advantage of specialized skills of each agency. There is also need to immediately address the lack of harmonization in regulatory frameworks and practices between countries in order to prevent misuse of any mismatches. This includes implementing a common strategy and policy regarding illicit financial flows, which member states will be required to implement domestically.

iii. Investment in technology

Technology has the potential to transform the working of revenue departments. This would not only increase efficiencies within the administration, but also ease the process of paying taxes for traders which increases a country's competitive advantage. In addition, using tracking technology allows Revenue Departments to trace the movement of goods and mitigate instances of illicit trade. Therefore, as seen in the EAC example in section 5.2 above, Revenue Departments should invest in technology at both the regional and domestic level.[136] This would help reduce compliance costs and simplify registration, filing (through e-filing), payment (through e-payment), audit, collection enforcement, and appeals.[137]

iv. Good Governance, political will, and support

At the centre of the above stated recommendations is the issue of good governance, political will and support. A well-functioning Revenue Department is not only important for collection of revenue but for the economy as a whole.[138] This would ensure that there is certainty for traders and would positively impact the perception of the fairness and effectiveness of the Revenue Department, factors that both lead to increased trade and investment in a country.[140] Therefore, AfCFTA member states will need to ensure that they set good governance frameworks that provide authority to the Revenue Departments, ensures predictability and consistency in applying tax and customs rules, and sets in place the necessary 'checks and balances' which include transparency, accountability and public participation.[141] Generally these frameworks should provide ways in which Revenue Departments can ensure more certainty to taxpayers and encourage voluntary compliance. Lastly, this would involve putting measures to reduce instances of corruption such as carrying out lifestyle audits and requiring declarations of assets by senior Revenue Department officials. This form of governance reform will require political will and support which includes providing additional funding to Revenue Departments to increase tax and sharpen their skills.

v. Increased regional cooperation

The AfCFTA presents new opportunities for continental wide cooperation. First, complex and expensive customs procedures would be a barrier to trade. As such, customs departments will need to cooperate to ease customs procedures and allow for ease of movement of people, goods, and capital. An example of this is the establishment of one stop border posts. Second, to effectively tax cross-border transactions in individual states, it is necessary for regional organisations to take part in cross-border exchange of information. As an example, the EU has a directive that provides for exchange of information between tax administrations. Therefore, AfCFTA member states will need to set up systems for efficient and timely exchange of information to allow for ease in taxation of cross-border transactions and to prevent instances of tax fraud or evasion. Third Revenue Departments may offer technical assistances to departments that have limited capacity and skill, which opens opportunities for peer-to-peer learning. Lastly, given that Revenue Departments have access to key information regarding taxpayers, they should also cooperate with law enforcement agencies tackling money laundering and terrorist financing such as financial intelligence units and the police. Channels for interagency exchange of information should therefore be established.

The AfCFTA is a great economic opportunity for Africa. It also presents an opportunity for governments to reconsider their tax structures to ensure that they are compatible with their trade and investment obligations under the AfCFTA. In addition, Revenue Departments are an integral part of the process of implementation therefore requiring member states to consider the capabilities of these departments and consider reform where necessary. Lastly, the effective implementation of the AfCFTA Agreement will require unprecedented cooperation between regional organisations, member states will therefore need to put in place systems to facilitate this. This policy paper is aimed to facilitate/promote dialogue between the tax, trade and investment communities going forward.

vi. Elimination of Non-Tariff Barriers

Though some NTBs are beyond the scope of Revenue Departments, certain aspects directly relate to the activities undertaken by these departments. For instance, lengthy customs procedures and complex document requirements can act as barriers to the smooth flow of trade. As such, Revenue Departments will be required to streamline their operations to reduce the amount of time and costs incurred to export and import goods. AfCFTA member countries can build on existing programs such as the AEO that has been implemented in several countries and regions such as the EAC. In addition, and as mentioned above, the use of technology will also streamline processes and improve the efficiencies of customs departments ultimately ensuring that there is a smooth flow of goods. Increased cooperation will also allow for easier exchange and verification of information that will reduce the customs processing time. Moreover, countries will need to invest in building the capacity of customs departments to enable them to handle the increase in trade flows and avoid delays as result of limited capacity. Training of customs officers, traders and all other relevant stakeholders will be required to give them the necessary information on the new procedures.

It is clear that revenue departments are key in the successful and effective implementation of the AfCFTA. Therefore, these departments need to engage regionally and allow for peer learning between countries. In addition, ATAF plays an instrumental role in this process through publication of thought-provoking research, development of best practices and guidance for its members, providing a platform for debate and building the capacity of its members.

133. As part of a joint research initiative between ATAF and WU GTPC, a policy brief on the tariff revenue implications of the AfCFTA was published which considers the approaches available to African countries for the expansion of the tax base. Available at https://events.ataftax.org/index.php?page=documents&func=view&document_id=205
134. Important to note that the OECD Inclusive Framework two pillar solution requires members to repeal any existing digital services tax or put on hold the implementation of such taxes. Several African countries have committed to this agreement and would therefore be required to conform to this condition.
135. On the importance of a whole of government approach in tackling illicit financial flows, see the joint publication by the World Bank, UNODC and WU GTPC: Brun, Jean-Pierre et al. 2022. Taxing Crime: A Whole-of- Government Approach to Fighting Corruption, Money Laundering, and Tax Crimes. Stolen Asset Recovery Initiative Series. Washington, DC: World Bank
136. In this regard, ATAF and WU GTPC have initiated a joint project evaluating the uses and implementation of technology in improving tax administration.
137. Abrego, M.L., Amado, M.A., Gursoy, T., Nicholls, G.P. and Perez-Saiz, H., 2019. *The African Continental Free Trade Agreement: welfare gains estimates from a general equilibrium model.* International Monetary Fund
138. Gribnau, H. (2018), Tax Administration Good Governance, EC Tax Review 2018/1
139. Ibid
140. Gribnau (2018), n 204

141. For an analysis, case studies, examples of legal and operational frameworks, and recommendations that policy makers can use to enhance cooperation between tax authorities and law enforcement agencies at the national and international levels see Jean-Pierre Brun et al. (2022), Taxing Crime: A Whole-of-Government Approach to Fighting Corruption, Money Laundering, and Tax Crimes.

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