

## AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA)

### INTRODUCTION

The 18<sup>th</sup> ordinary session of the Assembly of Heads of States and Governments of the African Union, held in Addis Ababa, Ethiopia in January 2012, adopted a decision to establish an African Continental Free Trade Area (AFCFTA) with an indicative date of 2018.<sup>1</sup> The free trade area is to include all fifty-four (54) African countries with a population of more than one billion people and a combined gross domestic product (GDP) of more than US \$3.4 trillion.<sup>2</sup> Subsequently in June 2015, at the twenty-fifth summit of the African Union held in South Africa, negotiations towards the establishment of AFCFTA were launched.

The lack of intra-African Trade can however be adduced to the fact that many African countries are poor and can hardly produce anything their neighbouring countries might want to trade. Furthermore, the Historical effect of Africa's geography (with specific reference to River Niger) makes it difficult for countries within the River Niger area to move their goods inside the continent.

These factors put Intra-African trade at about 18% which is relatively below average in comparison to Intra-Asian trade which is about 59% and 69% of intra-Europe trade. In essence, about 82% of exports by African countries are exported to other continents of the World instead of Africa.

### OBJECTIVES AND BENEFITS OF CFTA

The major aim of AfCFTA is to create a single continental market for goods and services, which will ensure free movement of business persons and investments, as well as create an avenue for the establishment of the continental and the African Custom Union.<sup>3</sup> It is a market access mechanism which is expected to deliver several benefits to the African Continent.

AfCFTA will enhance Intra-African trade through trade liberalization. The Action plan on Boosting Intra-African Trade (BIAT) has identified seven priority action clusters namely: trade policy, trade facilitation, procedure capacity, trade related infrastructure, trade finance, trade information and factor market integration.<sup>4</sup> It will lead to a much larger market which will improve competitiveness and encourage manufacturing within the African Borders and also improve the standard of manufactured goods.

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<sup>1</sup><https://www.tralac.org/resources/by-region/cfta.html> 5/11/12 accessed 20:40pm

<sup>2</sup><https://au.int/en/ti/afcfta/about> 3/11/12 accessed 19:00pm

<sup>3</sup> ibid

<sup>4</sup> Ibid at note 1

The emergence of AfCFTA will bring about a boost in trade, welfare gains, foster a vibrant and resilient African economic space, promote economic diversification, structural transformation, technological development and enhancement of human capital. In addition, it will also go a long way in fostering peace, security and also political stability in Africa.

AfCFTA will also serve as a measure to resolve challenges arising from multiple and overlapping memberships and expedite a regional and continental integration process. The promotion of AfCFTA will be fundamental for sustainable industrial development, diversification, employment creation and poverty eradication.<sup>5</sup>

The United Nations Economic Commission for Africa (UNECA) calculates that the AfCFTA could increase intra-African trade by \$35 billion (52%) per year by 2022. Imports from outside of the continent would decrease by \$10 billion per year, and agricultural and industrial exports are expected to increase by \$4 billion (7%) and \$21 billion (5%) respectively.<sup>6</sup>

AfCFTA is divided into two phases, with phase 1 (trade in goods and services) expected to come into force by the end of 2017 and phase 2 with no timeline of negotiation as of yet. It is intended to encompass agreements on the following areas:

### **Phase 1**

#### *Trade in goods*

- Tariff liberalization
- Non-tariff barriers
- Rules of Origin
- Trade facilitation (customs cooperation & harmonization of documents)
- Transit and transit facilities
- Trade remedies
- Technical barriers to trade
- Standards
- Dispute settlement
- Institutional arrangement

#### *Trade in Services*

- Transportation (Air & Maritime)
- Insurance (Tourism & Financial Services)

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<sup>5</sup><https://www.tralac.org/news/article/10145-how-can-the-cfta-facilitate-trade-in-services.html> 5/11/12  
accessed 21:00pm

<sup>6</sup>[http://www.saana.com/wp-content/uploads/2014/09/Saana-Institute-Policy-Brief01\\_CFTA.pdf](http://www.saana.com/wp-content/uploads/2014/09/Saana-Institute-Policy-Brief01_CFTA.pdf) accessed  
14/11/2017 at 9:14

- Banking

## Phase 2

It will focus on the areas of Intellectual property rights, investment competition policy & movement of business persons (across borders).<sup>7</sup>

## LEGAL IMPLICATIONS OF CFTA

*Establishing Cross-Border Economic Balance-* AfCFTA intends to encourage non-tariff barriers, reduce or remove tariffs, as well as deregulate trade and services across African borders. Such tariff liberalization and deregulation of services is likely to produce the kind of market size and economies of scale that will attract the investments needed to stimulate growth, create jobs, and develop Africa's economies.<sup>8</sup> It is important that the negotiations on AfCFTA should correlate with substantive measures and policies to avoid economic imbalances in the different AU countries.

*Implementation-* One of the major challenges foreseen in relation to the AfCFTA is poor implementation which has also affected integrated activities outlined in treaties and protocols in Africa. There has been poor utilization of a number of mechanisms available to ensure implementation of treaties & protocols. Institutional mechanism is one of the strategies put in place to ensure implementation. This mechanism has been put in place by the African Union (AU), the institution saddled with the task of overseeing the integration process.<sup>9</sup>

Hence, the AU has the duty to ensure that measures are taken against any Regional Economic Community (REC) whose policies and programmes are incompatible with its objectives. Where a member state or REC has either deliberately or through omission failed to comply with set targets and timelines and such non-compliance has been brought to the notice of the REC but nothing is done to address it, then the AU should have the authority to impose sanctions on the defaulting state or REC. Importantly, it should be noted that imposition and enforcement of sanctions on a non-complying state will require strong political will from the AU leaders.<sup>10</sup>

*Dispute Settlement-* Another pertinent legal issue is the need for continental trade dispute forum. The effectiveness of the dispute settlement mechanism will play a major role in sustaining regional integration process. It is critical because it provides a conducive and predictable environment for traders, individuals, corporations and

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<sup>7</sup><http://twnafrica.org/RR%20+%20TWN-A%20-%20CFTA%20Primer.pdf> accessed 6/11/2017 at 17:28

<sup>8</sup>ibid note 7

<sup>9</sup>[https://www.afdb.org/uploads/tx\\_lafdbpapers/Towards\\_a\\_continental\\_free\\_trade\\_area\\_in\\_Africa.pdf](https://www.afdb.org/uploads/tx_lafdbpapers/Towards_a_continental_free_trade_area_in_Africa.pdf) accessed 6/11/2017 at 17:58

<sup>10</sup> ibid

investors.<sup>11</sup> Issues of jurisdiction, independence of the court and respect for the rulings/Judgments of the court are important issues that should be looked into. The qualification of Lawyers to practise is another pertinent issue. For instance a Nigerian lawyer can't practise in Ghana, what then happens when a Nigerian businessman takes his goods to Ghana and a dispute arises? Businessmen usually will not be disposed to having different lawyers in every jurisdiction where they carry on business.

According to UNECA any dispute settlement mechanism would need to be based on the principles of cooperation and consultation between concerned members, to reach a mutually satisfactory solution. It would need to provide for a solution that invariably entails removal of the measure not conforming to the provisions of the CFTA; and provide for mediation and then arbitration, if a solution cannot be found after cooperation and consultation.<sup>12</sup>

*Security Concern-* Free movement of business persons can be a major security concern among member states, resulting in states being reluctant to move ahead with protocols on free movement of people. Measures have been taken by some African countries to overcome security-related challenges, primarily on their borders but also inside their territories. Such measures include building common border post, identity card requirements, running joint border patrols, introducing electronic passports.

*Domestication of AfCFTA-* It will be the duty of member states to ensure that the AfCFTA is domesticated into their national laws.

### ADOPTION OF THE AFCFTA BY NIGERIA

Nigeria was a leader in the negotiations to establish the AfCFTA with Ambassador Chiedu Osakwe as Nigeria's Chief Trade Negotiator, chairing the 55-member Negotiating Forum for the AfCFTA (AfCFTA-NF). Nigeria was deeply committed to the process of negotiating the AfCFTA.

The Nigerian Government is taking steps to ensure that the adoption of the AfCFTA is not detrimental to its economy. According to Okelamah, the Nigerian trade team will continue to argue for "flexibility" that allows it to safeguard the economy from a flood of imports, even as it remains an open economy.<sup>13</sup>

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<sup>11</sup> ibid

<sup>12</sup>UNECA (2012) Assessing Regional Integration in Africa Vol. v

<sup>13</sup> ibid

Dr. Enelamah Federal Minister for Trade and Investment said “we will continue to take into cognizance the complexities of our domestic market and ensure appropriate safeguards for the Nigerian Economy.”<sup>14</sup>

The Agreement was launched on the 21<sup>st</sup> day of March 2018. African Countries gathered in Kigali Rwanda for this purpose.

At the Summit (21<sup>st</sup> March, 2018), 44 African countries agreed to form a \$3 trillion Continental Free Trade Zone encompassing 1.2 billion people. Nigeria, South Africa, Botswana, Lesotho, Namibia, Zambia, Burundi, Eritrea, Benin, Sierra Leone and Guinea Bissau are the countries that stayed out of the bloc as at the date.

Jamie Alexander Macleod, a fellow in the African Trade Policy Centre of United Nations Economic Commission for Africa (ECA), analysed at the Summit that by removing tariffs, the AfCFTA can increase intra-African Trade by 52%. Also, by additionally reducing non-tariff barriers, the AfCFTA could double trade. In Macleod’s opinion, Intra-African exports are more diversified and more useful to Africa’s development than Africa’s trade with outside the continent.

Buttressing the importance of AfCFTA, Andrew Mold, the Acting Director for the ECA in Eastern Africa, has stated that the AfCFTA is a “major milestone towards making the Pan-African aspiration a reality.” He further explained that despite the expected losses from tariff revenues for the Continent, which is estimated at about 4 billion USD, the benefits are higher, especially from lower prices for consumer goods.

A major concern has been raised by Macleod which is the challenge of implementation. He is of the opinion that AfCFTA implementation Roadmap, including preparing schedules of commitments in goods and services should be completed first.

The atmosphere is quite different in Nigeria as regards the signing of the Agreement. This is because various private sector stakeholders have raised their concern on the implementation of the AfCFTA. The Manufacturers Association of Nigeria has argued that there is the likelihood that the AfCFTA may open up the nation’s economy to foreign products through the back door. United Labour Union Congress on the other hand is of the view that the AfCFTA will turn Nigeria into a dumping ground for repackaged and re-bagged foreign goods from Europe and other developed Countries.

According to Lagos Chambers of Commerce and Industry (LCCI), “Nigeria is in a weak competitive position regionally, continentally and globally”. LCCI has

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<sup>14</sup> Ibid

therefore on this basis been pleading with the Federal government not to expose the nation's manufacturing sector to further vulnerability.

The Nigerian Government did not join the 54 other African countries to sign the agreement launching the AfCFTA. The Federal Government has given reasons for the delayed signing of the AfCFTA. The Lagos Chamber of Commerce and Industry (LCCI), and some members of the Organised Private Sector (OPS), have insisted on Nigeria not signing the agreement, but the Nigerian Association of Chambers of Commerce, Industry, Mines and Agriculture (NACCIMA), which is actually the umbrella body for all trade organisation in Nigeria, has opined and urged the government to sign the AfCFTA, as the treaty offers the country a \$2.5trillion opportunity in the African market.

However, sources at the Ministry of Industry, Trade and Investment said the government decided to put a hold on the agreement pending the dialogue with relevant stakeholders. The President was reported to have cancelled his trip to Kigali, Rwanda because enough consultation was not made before the Federal Executive Council approved the signing of the Framework Agreement for establishing the AfCFTA.

President Muhammadu Buhari has stated that his administration is not in a hurry to sign any agreement that would make the country a dumping ground and jeopardise the security of the country. The President has therefore, set up a committee to review the AfCFTA framework agreement which has already been signed by 49 African Countries. At the Federal Executive Council meeting presided by the President, reasons given for the hold on the signing of the Agreement are thus: that the agreement has the capacity to affect local entrepreneurship; Nigeria is not willing to encourage the dumping of finished goods; the country is still studying the economic and security implications of the agreement.

As at July 16<sup>th</sup>, 2018, stakeholders are still keen on the fact that it is still too early for Nigeria to sign the AfCFTA. The view was aired during the 8<sup>th</sup> Presidential quarterly business forum held at the old banquet hall of the state house Abuja.

Stakeholders maintained that many things still need to be put in place in the country before Nigeria can sign the agreement e.g power, access to ports, reduction in the cost of production and efficient rail transportation amongst other things.

## CONCLUSION

The drive towards trade integration is based on the need to improve on the Continent's trade performance and consequently its economic development. To achieve significant development amidst African countries, there will be a need to trade more with one another and also globally. AfCFTA will consequently enable the African Continent gain global access.

Protection of businesses against unfair trade practices is also essential. It is therefore practical that the AfCFTA puts in place institutional and implementation mechanism.

Furthermore, there is the need for harmonization of business laws in Africa. Disparity in trade legislation and commercial practices has the potential to distort trade flow. It is therefore expedient to adopt a mechanism for harmonizing trade laws within the continent in order to realise the objectives of AfCFTA and make it more attractive to investors.<sup>15</sup>

The success of the AfCFTA lies with the Individual States displaying strong commitment to implement same.

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<sup>15</sup> Ibid note 12