



The African Continental Free Trade Area Unfolding changes

The agreement establishing the African Continental Free Trade Area (“the Agreement” or “AfCFTA”) is arguably the most discussed economic subject out of Africa. Now the largest free trade agreement (FTA) since creation of the World Trade Organisation (WTO), it is easy to understand the attention.

Considering how long Africa has unsuccessfully attempted to set-up a pan-African economic community, recent steps towards developing a working FTA have surprisingly advanced very quickly.

This progression has moved many businesses to quick thinking, as they look to align their business models with trade patterns that could evolve as a result of the Agreement. However, several businesses have indicated a significant challenge with putting together a robust response to the AfCFTA.

They explain that so much has been said about the Agreement but very little clarity is being disseminated about its workings and its impact on businesses. Whilst some countries have done impact assessments, these assessments have failed to provide the visibility that these businesses need to plan around the Agreement.

This write-up provides some background to the AfCFTA, reviews its current state and

attempts to predict what businesses should expect in the short to long term.

Background

The AfCFTA, which came into force on 30 May 2019, is the culmination of several years of deliberations and negotiations around the economic integration of Africa. It is the outcome of a process that started as a long term African vision.

The founding fathers of the Organization of African Unity (which has now metamorphosed into the African Union (AU)) strongly believed that Africa would only be truly independent with greater economic integration among the member states. That belief still holds true today, with the AU predicting that Africa would be wealthier and less vulnerable to external vicissitudes, if member states traded more with each other.

Against this backdrop, AfCFTA is designed to be a legal instrument which would foster economic integration by creating a single market for goods and services, vide progressive elimination of tariff barriers (TBs) and non-tariff barriers (NTBs) (Eg. permits, national protectionist policies) to trade and investment.

Is removal of TBs and NTBs the single bullet that automatically integrates the African region? Absolutely not! The current regional

infrastructure is not built for intra-Africa trade, visa restrictions still create problems, and Africans still need to move beyond historical biases. So there are still other challenges to overcome and they need time.

However, a platform that removes TBs and NTBs in international trade is always a sweetener, which without doubt has the ability to get businesses in Africa looking inwards for solutions.

Current state of the AfCFTA

Based on its structure, AfCFTA addresses six (6) broad areas, divided in two phases:

Phase 1: What goods are covered and how will they be liberalized? What services are covered and how will they be liberalized? How would disputes be resolved?

Phase 2: How would intellectual property rights be protected? How will intra-Africa investment be increased and/or facilitated? How would competition be promoted?

Whilst work on Phase 2 is still at its infancy, work on Phase 1 is well advanced, with the expectation that final details would be completed ahead of the trading start date of July 2020. For now, the focus of this write-up would be on Phase 1:

i.) What goods are covered and how will they be liberalized?

The most important thing to understand when attempting to use an FTA is the 'Qualification Criteria'. What qualifies any good for preferential treatment within the trading bloc?

Step 1: Are your goods among those being liberalized?

As currently conceptualized, each Regional Economic Community (REC)¹ within the AU is expected to participate in a 'request and offer' negotiation process to designate goods that are subject to liberalization. The outcome of this negotiation process is a listing of tariff lines that would be liberalized and those that would not. This listing will be contained in what the AfCFTA calls the Schedule of Tariff Concessions.

Based on current negotiations, 90% of all tariff lines will be subject to linear liberalization over a period of time. At the moment, it is envisaged that liberalization will occur over five years for developing countries (DCs) and ten years for least developing countries (LDCs).

The remaining 10% will be divided into two: 7% will be designated as sensitive and be subject to a longer liberalization cycle i.e. ten years for DCs and thirteen years for LDCs, while 3% will be designated as excluded from liberalization unless reviewed during the five-year review cycle.

Negotiations are still ongoing on categorization, with RECs expected to finalize and submit the schedule as follows: 90% of non-sensitive tariff lines by September 2019, 7% of sensitive tariff lines by November 2019 and a final schedule of offerings by January 2020.

Step 2: Do your goods originate from the trading bloc?

The AfCFTA has been set up to make this determination based on the Rules of Origin (RoO), which has been divided into the general product RoO and specific product RoO.

As the name goes, the general RoO will apply to all goods classifiable under liberalized tariff lines that do not have specific RoO.

The general rules are binary, and consist of the 'wholly obtained criteria' and 'substan-

tial/sufficient transformation criteria'. Article 6 of the Agreement outlines the products that may be considered as wholly obtained, whilst Article 7 outlines the rules for substantial/sufficient transformation.

At the moment, the substantial/sufficient transformation criteria are incomplete as negotiations on the specific RoO and value addition are still ongoing, with the expectation that final details will be completed before trading starts in July 2020.

ii.) Which services are covered and how will they be liberalized?

Whilst traditional tariffs do not apply to services, NTBs do and are the primary focus of the AfCFTA. The AfCFTA therefore has at its bedrock, the liberalization of restrictions on market access and national regulations that protect local service industries.

Step 1: What services are covered?

AfCFTA attempts to liberalize five of the twelve service sectors categorized by the WTO. These five sectors are business services, communication services, financial services, tourism and travel, as well as transport services. It is understood that liberalization may only happen in specific subsectors.

Step 2: How would the services be liberalized?

At the moment, this aspect is vague. However, in line with WTO's General Agreement on Trade in Services, it is understood that member states would inter-alia, be required to:

- make commitments to grant market access to other member states in these five sectors. Examples of these commitments could be a member state committing to remove quota restrictions on the employment of non-nationals by a service provider. Another could be the removal of restrictions on the ownership structure of service providers.
- make commitments to accord a 'formal identical' or 'formal different' treatment to services and service providers of another member state. In this regard, a formal different treatment would only be acceptable if it does not skew competition in favour of a service provider from the home member state.
- work together to design a framework for

regulatory cooperation. This could potentially cover the alignment of qualification, standard or licensing matters across the trading bloc.

The scope of specific commitments would be determined during negotiation rounds, which are expected to continue through to 2020.

iii.) How would disputes be resolved?

Absence of a robust dispute resolution mechanism has made many African RECs less functional, as aggrieved parties have no medium to ensure participating member states hold-up their end of an FTA. It is for this reason, the AfCFTA puts in place a dispute resolution mechanism that seeks to ensure the rights and obligations provided in the Agreement are enforced.

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¹Arab Maghreb Union (UMA), Common Market for Eastern and Southern Africa (COMESA), Community of Sahel-Saharan States (CEN-SAD), East African Community (EAC), Economic Community of Central African States (ECCAS), Economic Community of West African States (ECOWAS), Intergovernmental Authority on Development (IGAD), Southern African Development Community (SADC).

AfCFTA creates a dispute settlement body (DSB) that will administer all issues relating to disputes. According to AfCFTA, the DSB will have the powers to: establish dispute settlement panels and an appellate body; adopt panel and appellate body reports; maintain surveillance of implementation of rulings and recommendations of the panels and appellate body; and authorize the suspension of concessions and other obligations under the Agreement.

It is important for businesses to note that if they are of the view that a member state has breached an obligation, they should simply appeal to their countries to take up the dispute with the DSB. The DSB would be meeting as often as possible to ensure disputes are quickly settled.

It is understood that the DSB would be up and running as soon as trading starts in July 2020.

Impact on businesses

On the basis that not all goods and services will be liberalized, it goes without saying that the impact of the AfCFTA on any business would depend on the outcome of ongoing negotiations.

For instance, liberalizing certain products could immediately break existing local monopolies or create continental ones. The driver of this outcome may not necessarily be tariff elimination (which would be linear anyways and should not have an immediate impact on trade patterns) but the removal of NTBs.

It is expected that whilst some businesses would not be directly impacted once negotiations are complete and trading starts, all businesses would be impacted in the medium to long term - whether or not their business activities are the subject of liberalization.

For instance, the industry of a specific business may not be liberalized, but the industry of its suppliers may be liberalized. If the competitive landscape of a supplier is fiercer, the business could benefit from lower costs.

Whilst all these structural adjustments are going on, there could be potential job displacements i.e. losses in one market and gains in another, but an overall continental job gain due to the potential

movement of capital and accompanying jobs to Africa.

That being said, it is expected that these adjustments would be slow. This is in part due to the gradual liberalization process being negotiated by member states, but importantly due to the absence of critical regional infrastructure needed to build the regional value chains.

For instance, it may still be quicker and/or cheaper to import from Asia than from a contiguous member state - even after factoring the removal of tariffs.

Many C-Suite executives have asked what the impact of the AfCFTA would be on their business. The response would be - follow the conversation, evaluate the impact of ongoing negotiations, petition your country's negotiators if necessary, and importantly plan to conquer the new market.



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