C L I F F O R D

C H A N C E

A MAJOR STEP TOWARDS A SINGLE AFRICAN MARKET

44 AFRICAN STATES SIGN HISTORIC AGREEMENT

On March 21, 2018, at an African Union ("**AU**") summit in Kigali, Rwanda (the "**Summit**"), the leaders of 44 African countries signed an agreement (the "**CFTA Agreement**") to establish the African Continental Free Trade Area (the "**CFTA**"). This event marks a significant milestone towards the establishment of a single African market, a vision first conceived by the AU member states in 2012. The CFTA's primary objective is to remove trade barriers such as tariffs and import quotas, allowing for the free flow of goods and services between its member states with the goal of boosting commerce, growth and employment throughout Africa.

WHY IS THIS EVENT SIGNIFICANT?

The African continent has a population of 1.2 billion people and over USD$2.5 trillion in total GDP. The CFTA would therefore be the largest free-trade market since the formation of the World Trade Organization. It is expected that the CFTA will provide intra-African trade with the boost it so badly needs, as well as provide it with competitive advantage and strong bargaining power. The current statistics, outlined below, make a compelling case for economic integration.

- Intra-African trade currently accounts for only 16% of total Africa trade. This is in stark contrast to much higher rates of intra-regional trade in more developed regions of the world: 70% in Europe, 54% in North America, and 51% in ASEAN. It is estimated that the CFTA could increase intra-African trade by 52% ($35 billion) by 2022.
- Africa's share of global trade is only about 3%. It is estimated that the CFTA would aid in increasing Africa's export volumes to the rest of the world by 6%.
- Around 82% of exports from African countries go to other continents and consist mostly of commodities, which are volatile. In contrast, over half of intra-African trade is in manufactured products. Supporters of the CFTA suggest that it would develop Africa's industrialization, creating larger and more competitive markets.

Key issues

- 44 African states have signed an agreement to establish the African Continental Free Trade Area (the "CFTA")
- However, two of the largest African economies, Nigeria and South Africa, did not sign the agreement
- 22 state parties must ratify the agreement to bring it into effect
- If implemented, the CFTA will be the largest free trade market since the formation of the World Trade Organization
- The CFTA could pave the way for the establishment of a customs union, a common market and even a single currency

- The United Nations Conference on Trade and Development has calculated that cutting intra-African tariffs could bring $3.6 billion in welfare gains to the continent through a boost in production and cheaper goods.
- If fully implemented, the CFTA would create a single continental market for goods and services, with free movement of people and investments, and ultimately pave the way for the establishment of a customs union, a common market and a single currency.

BROAD LEGAL FRAMEWORK

The CFTA Agreement sets the broad legal framework for the establishment of the CFTA. It includes:

- a Protocol on Trade in Goods which, *inter alia*, commits the signatory states to removing tariffs on 90% of goods, with the remaining 10% (comprised of "sensitive" products) to be phased out over time; and
- a Protocol on Trade in Services which requires mutual recognition of standards, licensing and certification of services suppliers, progressive liberalization of services sectors and includes a "Most Favoured Nation" requirement in liberalized sectors.

Other features of the CFTA Agreement (see below) are to be agreed in "Phase Two" negotiations.

IMPLEMENTATION - WHAT WE CAN EXPECT

Further Negotiations

- The Missing Eleven: We expect negotiations to take place at the highest political level to encourage the 11 countries that did not sign the CFTA Agreement to do so (44 countries out of the total 55 AU member states signed the CFTA Agreement).
- "Phase Two" Negotiations: Negotiations on a protocol on dispute resolution and provisions on investment, competition, intellectual property rights and, potentially, e-commerce are expected to begin in late 2018.
- Schedules of Concession for Trade in Goods: State parties or, where applicable, their respective regional blocs, must submit schedules of concessions for trade in goods, detailing the products to be liberalized, the sensitive products to be liberalized over time, and any excluded products that are to be temporarily exempted from liberalization. Product-specific rules of origin will also need to be agreed alongside the general rules of origin.
- Regulatory Framework for Trade in Services: State parties will negotiate a detailed regulatory framework outlining initial market access offers on a subsector-by-subsector and mode-by-mode basis.

Ratification

A minimum of 22 state parties must ratify the CFTA Agreement in order to bring it into effect. We would expect state parties to begin the ratification process following successful conclusions of the "Phase Two" negotiations and agreement of the protocol schedules of concessions for trade in goods.

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Establishment of Secretariat

A conference of the state parties will be convened to adopt the organizational structure of a CFTA secretariat (the "**Secretariat**"), staff rules and regulations, and the Secretariat budget. The Secretariat will then be established in a host country approved by the Assembly of the African Union.

Domestication

Full implementation of the CFTA will require domestication of the constituent agreements by each state party.

IMPLEMENTATION - EXPECTED TIMELINE

The state parties to the CFTA Agreement agreed at the Summit to establish the CFTA within eighteen (18) months of the date of the CFTA Agreement. Going by the time it has taken to negotiate and implement multilateral trade agreements of a similar scale, this timing is, at best, ambitious. The agreement to establish the Trans-Pacific Partnership (the "**TPP**"), which was initially signed in 2005, took more than ten years to agree, and the TPP was only finalized in early 2018 as a new agreement (with 11 state parties instead of 12, after the United States withdrew before ratifying) – the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the "**CPTPP**"). The ratification process is still ongoing for some CPTPP member states.

Despite this, Africa has the advantage of having already established regional trade blocs (ECOWAS in West Africa, EAC in East Africa, SADC in Southern Africa, and COMESA in East and Southern Africa). This may facilitate faster continental economic integration since long-standing regional frameworks are already in place.

IMPLEMENTATION – TOP THREE CHALLENGES

Africa's two biggest economies, Nigeria and South Africa, did not sign the CFTA Agreement at the Summit. The other states that did not sign the CFTA Agreement are Botswana, Lesotho, Namibia, Zambia, Burundi, Eritrea, Tanzania, Sierra Leone and Guinea Bissau. Nigeria's President has said that his government did not sign the CFTA Agreement because it needs more time for input from local stakeholders. South Africa's president has emphasized his commitment to sign the CFTA Agreement once all the necessary domestic legal processes have been undertaken. The primary concern of the other abstaining states appears to be that the benefits of the free trade area could be unevenly distributed given the differences in sizes of economies and varying production capabilities. The absence of Africa's two biggest economies from the CFTA would significantly dilute its effectiveness. The concerns raised by the abstaining states would need to be adequately addressed in order to persuade them to sign the CFTA Agreement.

Another salient challenge is that most of Africa's exports consist mostly of raw materials – not manufactured products – most of which they import from other continents. If the implementation of the CFTA is not coupled with the development of the continent's relatively low levels of manufacturing, liberalization could in practice lead to the trading of imported goods across Africa, which is not the intent of the CFTA Agreement.

A major non-tariff barrier constraining intra-African trade is the poor infrastructure networks. Improved roads, railways and air networks, and more affordable means of transportation will better connect the continent and support the goals of the CFTA. The AU member states have long recognized the need for improved and increased infrastructure development to enhance economic integration. Recently, 23 AU member states launched the Single Air Transport Market, an initiative to boost connectivity and reduce the cost of travel and transporting goods between African countries.

OUR AFRICA PRACTICE

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