

THE AFRICAN CONTINENTAL FREE TRADE AGREEMENT: A NEW THRUST WITH ENDLESS POTENTIALS FOR INTRA-AFRICAN AND INTERNATIONAL TRADE

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1. INTRODUCTION

Over the past year, you may have seen on the news a major and celebrated economic breakthrough in Africa. It was the signing of the African Continental Free Trade Agreement (ACFTA)¹ by an overwhelming number of African States with the then notable exception of Nigeria at the time.² It successfully entered into force on May 30, 2019 when the procedural threshold of 22 ratifications by Parliament as envisaged by the Agreement³ was achieved. As of the publication of this paper, it has been ratified by 27 countries⁴ with the numbers projected to sharply increase due to its ambitious nature.

A unified market was launched on July 07, 2019 during the African Union (AU) Summit in Niamey, Niger held specifically to commence the operationalization phase of the Agreement.⁵ A full ratification of the Agreement is anticipated to create the largest single market in the world. According to the International Monetary Fund (IMF),⁶ the continental free trade area will establish a market of 1.2 billion people (estimated by the United Nations to increase to 2.5 billion people by 2050⁷) with a combined GDP of \$2.5 trillion and combined consumer and business spending of more than \$4 trillion across the 54 countries that make up the Continent. With the IMF calling this Agreement an “economic game changer”,⁸ it is intrinsically apt to describe this initiative as an economic tour de force.

With two Protocols already in force, negotiations on the schedule of concessions and defined rules of origin, etc. for the Protocol on Trade in Goods as well as schedules of commitments and the Schedule on MFN Exemptions, etc. for the Protocol on Trade in Services are currently taking place in what has been referred to as phase one of the Agreement. They are projected to be finalized and in force by the next African Union Summit in July 2020⁹. Parties are equally negotiating for an online continental

¹ Agreement Establishing the African Continental Free Trade Area, Adopted on March 21, 2018 and entered into force on May 30, 2019 (hereinafter referred to as “ACFTA”).

² When the Agreement was negotiated and ready for signature, Nigeria expressed pessimism to the Agreement over concerns of threats it posed to its domestic industry. It promised to consult with domestic businesses before making a decision. On July 07, 2019 during the AU Summit in Niamey, Niger, President Muhammadu Buhari signed the Agreement adding Africa’s biggest economy into an historic Agreement and trade area. All that is left now is for Nigeria to deposit their instruments of ratification at the AU Commission.

³ AFCTA, Article 23.

⁴ African Union, Decision and Declaration of the 12th Extraordinary Session of the Assembly, 7 July 2019, Niamey, Niger found at https://au.int/sites/default/files/decisions/37098-ext_assembly_au_dec_1-3_xii_e.pdf accessed on July 15, 2019

⁵ *Ibid.*

⁶ IMF, Sub-Saharan Africa Regional Economic Outlook: Recovery Amid Elevated Uncertainty, Report of April 2019, p. 39

⁷ UN Population Division, World Population Prospects 2017 revision on-line <https://population.un.org/wpp/Download/Standard/Population/> accessed on July 22, 2019

⁸ *Ibid.*

⁹ African Union, Decision and Declaration of the 12th Extraordinary Session of the Assembly, 7 July 2019, Niamey, Niger found at https://au.int/sites/default/files/decisions/37098-ext_assembly_au_dec_1-3_xii_e.pdf accessed on July 15, 2019

non-tariff barriers monitoring and elimination mechanism, a Pan-African digital payments and settlements platform plus an African Trade Observatory as Annexes to the respective Protocols of the Agreement¹⁰ Once these negotiations are done, the Agreement provides for a solid anchor for Parties to enter into further negotiations of other Protocols such as intellectual property, competition policy, and investment in what has been referred to as phase two of the Agreement. All of this shall form part of the single undertaking (meaning virtually every item of the negotiation on the table is a single package). With this level of success achieved thus far, it is fair to anticipate negotiations one day opening for a Protocol on government procurement in what may one day become a new phase of the Agreement, everything being equal.

In this document, we shall summarily examine the main provisions of the Agreement's already successfully negotiated Protocols (Trade in Goods and Trade in Services); showing how it puts in place a legal framework with the much needed elements of predictability and stability for intra-African and international trade, elements which were hitherto absent on a multilateral level in the Continent. We shall likewise demonstrate how investors and businesses (foreign and domestic alike) stand to benefit from the successful operationalisation of this Agreement especially taking into consideration its significance on the globalization of value chains and its potential glorious ripple effect on world trade. We will conclude and then close out by revealing how our cutting edge expertise, global presence and partnerships arms us to advise, assist and pilot international corporations, businesses and investors to benefit from the new legal regime and free trade area that has been established as a result of this Agreement.

2. THE ACFTA IN A NUTSHELL

With provisions analogous to that of most the provisions of the Marrakesh Agreement establishing the World Trade Organization¹¹ (WTO) and most regional trade agreements (RTAs), and with many different objectives, the remarkable bottom line of this Agreement is to undertake a rapid and progressive liberalization of trade amongst Member States through successive negotiations with the ultimate aim of establishing a customs union¹² (akin to the European Union) in a not too distant future. To that end, three Protocols of the Agreement have been successfully negotiated to wit: the Protocol on Trade in Goods; the Protocol on Trade Services; and the Protocol on the Rules and Procedure for Dispute Settlement (which shall not be examined in this document). The Agreement establishes a Secretariat (to be located in Ghana)¹³ and a Dispute Settlement Body (with panels and an Appellate Body) whose role and function is parallel to the WTO Dispute Settlement Body. The Rules and Procedure provided in the third Protocol mentioned above are meant to be used by this Dispute Settlement Body in their adjudication of trade disputes and the establishment of reports thereof.

2.1. PROTOCOL ON TRADE IN GOODS

The aims of the Protocol on Trade in Goods is to progressively eliminate tariffs and non-tariffs barriers to trade; enhance efficiency of customs procedures and trade facilitation; improve cooperation on technical barriers to trade and sanitary and phytosanitary measures; promote and encourage regional and continental value chains; and foster socio-economic development, diversification and

¹⁰ *ibid*

¹¹ Marrakesh Agreement establishing the World Trade Organization of April 15, 1994, 1867 U.N.T.S. 154, 33 I.L.M. 1144 which entered into force on January 01, 1995.

¹² ACFTA, Article 3(d).

¹³ AU Decision and Declaration of the 12th Extraordinary Session of the Assembly, 7 July 2019, Niamey, Niger found at https://au.int/sites/default/files/decisions/37098-ext_assembly_au_dec_1-3_xii_e.pdf accessed on July 15, 2019

industrialization.¹⁴ This Protocol contains 9 Annexes all of which are the subject of ongoing negotiations.¹⁵ Parties to the Agreement have agreed that, they would work in collaboration with the Secretariat and Regional Economic Communities (RECs) to “coordinate and provide technical assistance and capacity building in trade and trade related issues for the implementation of this Protocol [on Trade in Goods]”¹⁶

Inspired by the 1994 General Agreement on Tariffs and Trade (GATT)¹⁷ but with less convoluted language, the Protocol for Trade in Goods contains most of the boilerplate provisions that are found in many if not all international trade agreements.

For a start, there are the non-discrimination provisions of most-favored nation (MFN)¹⁸ and the national treatment.¹⁹ With regards to the MFN principle, State Parties shall, when implementing the Protocol, accord each other, on a reciprocal basis, preferences that are no less favorable than those given to Third Parties. This is without prejudices to arrangements which do not impede the Protocol and are extended *erga omnes* to State Parties; or arrangements between Parties to the Agreement that further the objectives of the Agreement and are extended reciprocally to the other Parties; and those arrangements that were made before this Agreement came into force.²⁰

Still under non-discrimination, there is the national treatment provision which obliges Parties to provide to products from other Parties treatment no less favorable than that it provides to like products from its national origin after such imported products have cleared customs including the sale and conditions for the sale of such products.²¹

Then there are the tariff elimination provisions contained in Article 7 of the Protocol. This provision is very vital to the achievement of the aim of the ACFTA. Parties shall “progressively eliminate import duties or charges having equivalent effect on goods originating from the territory of any other State Party in accordance with their Schedules of Tariff Concessions.” Furthermore, for products subject to liberalization, Parties must not impose any new import duties or charges having equivalent effect on goods originating from the territory of any other Party.

Quantitative restrictions²² are frowned at by the Protocol except as otherwise provided for in the Protocol, one of such cases being a safeguard measure the details of which are the subject of ongoing negotiation.

The Protocol contains the provision of rules of origin.²³ It is one of the most important provisions in this Agreement for obvious reasons that it is a determinant of (1) whether goods should benefit from the preferential treatment contained in the agreement; (2) whether there should be the implementation

¹⁴ Protocol on Trade in Goods, Article 2.

¹⁵ “Annex 1 on Schedules of Tariff Concessions, Annex 2 on Rules of Origin, Annex 3 on Customs Cooperation and Mutual Administrative Assistance, Annex 4 on Trade Facilitation, Annex 5 on Non-Tariff Barriers, Annex 6 on Technical Barriers to Trade, Annex 7 Sanitary and Phytosanitary Measures, Annex 8 on Transit and Annex 9 on Trade Remedies shall, upon adoption form an integral part of this Protocol.”

¹⁶ Protocol on Trade in Goods, Article 29.

¹⁷ GATT 1994:General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994)

¹⁸ Protocol on Trade in Goods, Article 4.

¹⁹ Ibid, Article 5.

²⁰ Protocol on Trade in Goods, Article 4.

²¹ Protocol on Trade in Goods, Article 5.

²² Protocol on Trade in Goods, Article 9.

²³ Protocol on Trade in Goods, Article 13.

of antidumping measures; (3) the application of labeling and marking requirements; (4) where necessary, government procurement; and (5) trade statistics.

Goods shall only be eligible for preferential treatment if they are originating in any of the State Parties to the Agreement in accordance with the criteria that will be set out in the Annex on Rules of Origin that is currently being negotiated by the Parties.²⁴ With differing rules of origin pertaining to the RECs, it is unclear which rules of origin will be in place for the Annex on Rules of Origin. Expectations are that it will be both general rules and product specific rules for sensitive categories.²⁵ Whatever the case, there is hope for some uniformity on rules of origin across the Members to the Agreement.

It is worth mentioning that, multilateral attempts under the auspices of the WTO to agree on universal rules of origin have proven futile over the years. Successful negotiations of the rules of origin by State Parties to this Agreement would be a huge leap forward on this subject because it will aid in WTO multilateral negotiations due to Africa's large representation in the Organization and them presumably coming into WTO negotiations with a unionized stance on this subject.

Negotiations are equally ongoing on customs cooperation and mutual assistance²⁶ not counting trade facilitation²⁷ which shall form Annexes to this agreement. These are meant to create uniform approaches on this subject for later implementation through absorption into domestic law. The results shall be a predictable customs and legal climate for trade across Member States, something that was hitherto not extant.

The Protocol further envisages trade remedies of antidumping²⁸, countervailing duties²⁹ and safeguard measures³⁰ with negotiations similarly ongoing on the Guidelines for the implementations of these remedies. Part VI on its part envisages product standards and regulations like technical barriers to trade (TBT)³¹ and sanitary and phytosanitary (SPS)³² measures which are equally under negotiations as Annexes to the Protocol. Expectations are that the results of these negotiations will not differ from international norms and standards set by States through organizations charged specifically with setting and monitoring of these standards and norms such as the International Organization for Standardization (ISO), Codex Alimentarius Commission (CODEX), World Organization for Animal Health (OIE), International Plant Protection Convention (IPPC), etc.

Nevertheless, the Protocol has some exceptions which are divided broadly into general exception, the balance of payment (BOP) exception and the security exception.

With regards to the general exception,³³ it is also a boilerplate provision contained in most international trade treaties. It provides that nothing shall prevent Parties from adopting measures aimed at (*inter alia*) the following: necessary to protect public morals or to maintain public order; necessary to protect human, animal or plant life or health; necessary to secure compliance with laws or

²⁴ *ibid*

²⁵ See TRALAC, *African Continental Free Trade Area (AfCFTA): FAQs Questions & Answers*, Issue No. 1 (update) 2018, p. 5 found at <https://www.tralac.org/documents/resources/faqs/2019-african-continental-free-trade-area-faqs-june-2018-1/file.html> accessed on July 25, 2019.

²⁶ Protocol on Trade in Goods, Article 14

²⁷ Protocol on Trade in Goods, Article 15.

²⁸ Protocol on Trade in Goods, Article 17

²⁹ *ibid*

³⁰ Protocol on Trade in Goods, Article 18.

³¹ Protocol on Trade in Goods, Article 21.

³² Protocol on Trade in Goods, Article 22.

³³ Protocol on Trade in Goods, Article 26.

regulations which are not inconsistent with the provisions of the Protocol including protection of intellectual property and prevention of deceptive practices; relating to the conservation of exhaustible natural resources; essential to the acquisition or distribution of foodstuffs or any other products in general or local short supply; involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan.³⁴

These measures shall not be applied in a manner that is arbitrary and an unjustifiable discrimination between Parties where the same conditions prevail. They shall not also be used as a disguised restriction to international trade. Based on well-developed WTO Dispute Settlement Body jurisprudence on this provision, this proviso (“chapeau” as it is often referred to) is very important because it ensures free trade.

The BOP exception³⁵ allows States in critical BOP difficulties, or under imminent threat thereof, or in need of safeguarding its external financial position in moments of difficulties to take reasonable steps to overcome those difficulties including adopting appropriate restrictive measures in accordance with the international rights and obligations of that State. This however should follow the Articles of the International Monetary Fund on this subject.

Finally, the security exception³⁶ allows State Parties the right to deviate from the provision of the Protocol for the essential security of their State. This is a very controversial exception especially with the current trade war between the US on the one hand and China, the EU, Canada, Turkey, Switzerland, Russia, Norway, Mexico, and India on the other hand. The US has invoked this exception in order to justify its imposition of tariffs on steel and aluminum above its bound rates claiming it is a measure to protect its essential security interests. After numerous fruitless negotiations and consultations, these countries have requested the WTO to establish Panels in what can only be described as one of the most expected reports in the history of the WTO Dispute Settlement Body.³⁷

2.2. THE PROTOCOL ON TRADE IN SERVICES

The Protocol on Services much like the WTO General Agreement on Trade in Services³⁸ defines trade in services by providing for four modes supply of services: cross-border supply; consumption abroad; establishment or commercial presence; and presence of natural persons³⁹.

Services according to this Protocol include all services provided in every sector with the exception of services supplied in the exercise of governmental authority and government procurement not meant for commercial resale.⁴⁰

The bottom line of the Protocol much like the spirit of the whole Agreement is to create a single progressively liberalized market for trade in services through successive rounds of negotiations with the intention of eliminating measures that have adverse effects on trade in services.⁴¹

³⁴ *ibid*

³⁵ Protocol on Trade in Goods, Article 28.

³⁶ Protocol on Trade in Goods, Article 27.

³⁷ See for example Request for the Establishment of a Panel by Norway, United States—Certain Measures on Steel and Aluminium Products, WT/DS552/10 (Oct. 19, 2018); Request for the Establishment of a Panel by China, United States — Certain Measures on Steel and Aluminum Products, WT/DS544/8 (Oct. 19, 2018); etc.

³⁸ GATS 1994: General Agreement on Trade in Services 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 183 33 I.L.M. 1167 (1994)

³⁹ Protocol on Trade in Services, Article 1(p).

⁴⁰ Protocol on Trade in Services, Article 2(3)(b).

All of these should be done bearing in mind the notable objectives of: enhancing competitiveness of services through economies of scale, reduced business expenses, and advanced continental market access and an improved allocation of resources including the developing of trade-related infrastructure; the promotion of sustainable development in accordance with the SDG; fostering of domestic and foreign investment; acceleration of efforts on industrial development to promote the development of regional value chains; pursuing of in-depth liberalization over and above improving the development and exportation of services while maintaining the right to regulate as envisaged by the GATS in Article V; promoting cooperation on trade in services amongst Parties to increase capacity, common understanding of trade in services; and promote research and technological development.⁴²

The Protocol similarly contains the boilerplate provisions as regards non-discrimination principles of MFN and national treatment. The MFN treatment provisions state that with respect to measures covered by the Protocol, each Party shall, upon entry into force, accord immediately and unconditionally to the services and service suppliers of any other Party treatment no less favorable than that it accords to services and service suppliers of third States.⁴³ An MFN Exemption schedule (one specific exception to this provision)⁴⁴ is one of the subjects of ongoing negotiations where it will contain a list of all sectors and subsectors States will exempt from MFN treatment.

There are on the other hand three notable exceptions to this principle to wit: (1) preferential agreements entered into between a Member and a Third State in accordance with article V of the GATS where such an agreement does not impede or frustrate the objectives of the Protocol and provided that such preferential treatment shall be extended *erga omnes* to all Parties to the Agreement without discrimination; (2) agreements between Parties to the Agreement born out of negotiations to liberalize trade in services under a sector or subsectors in accordance with the objectives of the Protocol, provided that opportunity shall be afforded to other Member States interested to negotiate the preference on a reciprocal basis; (3) preferences existing with any Third State prior to the entry into force of the Protocol; and (4) advantages enjoyed by adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.⁴⁵

It is important to highlight that, negotiations on the schedule of commitments for sectors and subsectors are currently ongoing. And those who are familiar with the talks identify priority sectors to include transport, communications, financial services, tourism services and business services.⁴⁶ All these sectors are very important in the drive for the development, diversification and transformation of African economies as envisaged by ACFTA and the 2063 Agenda.⁴⁷

The schedule of commitments that will birth from these negotiations shall provide market access through the four modes of supply of services in accordance with the terms, limitations and conditions agreed during the negotiation, ensuring that such market access is no less favorable that what was

⁴¹ Protocol on Trade in Services, Article 3.

⁴² *Ibid.*

⁴³ Protocol on Trade in Services, Article 4(1).

⁴⁴ Protocol on Trade in Services, Article 4(6)

⁴⁵ Protocol on Trade in Services, Article 4(2) to (5)

⁴⁶ See TRALAC, *African Continental Free Trade Area (AfCFTA): FAQs Questions & Answers*, Issue No. 1 (update) 2018, p. 4 found at <https://www.tralac.org/documents/resources/faqs/2019-african-continental-free-trade-area-faqs-june-2018-1/file.html> accessed on July 25, 2019.

⁴⁷ See Goals & Priority Areas of Agenda 2063 at the AU website <https://au.int/en/agenda2063/goals> accessed on July 28, 2019

agreed after the negotiations.⁴⁸ And where a State has market access commitments in a particular sector(s), it cannot adopt the following measures whether territorially or regionally (unless otherwise specified in the schedule):

- Limitation of the number of service suppliers whether in the form of numerical quotas, monopolies or exclusive service suppliers or the requirement of economic needs test;
- Limitation on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- Limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
- Limitation on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for and directly related to, the supply of a specific service in the form of numerical quotas or requirement of an economic needs test;
- Limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.⁴⁹

These qualifications which are similar to those in the Article XVI GATS are suitable safeguards of market access to investors and service providers from arbitral actions of State Parties once they have entered commitments on market access.

The schedule of commitments shall also have a column on national treatment. In that column, States may make conditions and qualifications on sectors and modes of services. Once those qualifications and conditions are made, States shall ensure that they provide to all service and service suppliers treatment no less favorable than that they shall accord to their own like services and service suppliers.⁵⁰ This can be met through either through formally identical treatment or formally different treatment to that a State accords to its own like services and service suppliers.⁵¹ Nonetheless, formally identical treatment or formally different treatment can be considered less favorable if it modifies the condition of competition between the national services and service suppliers against the foreign services and service suppliers.⁵²

Some of the well-known obstacles of doing business in Africa are administrative bottlenecks, tardiness of administration and inadequate or absence of transparency. This Protocol sets out to tackle this by putting in place obligations of transparency, reasonableness, objectiveness and impartiality with regards measures affecting committed sectors and subsectors.⁵³ States are obliged to maintain or institute, as soon as practicable, judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services.⁵⁴ An obligation of promptness is imposed with regards to applications for authorization required for the supply of a service liberalized under this Protocol.⁵⁵ From experience, this is usually the hold up to many projects. The Protocol deals with this by obliging Parties to ensure that the competent authorities, within a reasonable period of time after the submission of an application considered complete under domestic

⁴⁸ Protocol on Trade in Services, Article 19(2).

⁴⁹ Protocol on Trade in Services, Article 19(2)

⁵⁰ Protocol on Trade in Services, Article 20.

⁵¹ *ibid*

⁵² *ibid*

⁵³ Protocol on Trade in Services, Article 9

⁵⁴ *ibid*

⁵⁵ *ibid*

laws and regulations, to inform the applicant of the decision concerning the application.⁵⁶ They shall equally, upon request by the applicant, provide without undue delay, information concerning the status of the application. Service providers enjoy the quintessential right to make international transfers and payments for current transactions relating to Parties' specific commitments.⁵⁷ With a Dispute Settlement Body which enjoys supranational authority, this means that investors and businesses can through their countries of origin seize the Body to report and adjudicate State measures which violate the above provision.

Other current negotiations which will form Annexes to the Protocol on Trade in Services are the Air Transport Services; List of Priority Sectors; and a framework document on Regulatory Cooperation.⁵⁸

Notwithstanding, there are exceptions to the above provisions which follow the pattern of most international trade agreements. They take the form of general exceptions, BOP exception and security exception. The general exceptions⁵⁹ clause provides that nothing in this Protocol shall be construed to prevent the adoption or enforcement by any State Party of (*inter alia*) measures: (1) necessary to protect public morals or to maintain public order; (2) necessary to protect human, animal or plant life or health; (3) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Protocol; (4) inconsistent with national treatment obligation, provided that the difference in treatment is aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of services or service suppliers of other States Parties; and (5) inconsistent with the MFN obligation provided that the difference in treatment is the result of an agreement on avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the State Party is bound.⁶⁰

Concerning the BOP exception⁶¹, the Protocol provides that, in event of serious BOP and external financial difficulties or threat thereof, a State may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. This must nevertheless not be discriminatory; it must be consistent with the Articles of the IMF; it must not unnecessarily damage commercial, economic and financial interests of any other Party; and it must be temporal and phased out progressively.⁶²

Finally there is the security exception⁶³ which summarily provides that nothing shall stop a State from taking measures that are necessary for the protection of its essential security interests. What amounts to a State's essential security has not been defined because it has always been argued that, none other but the State concerned can determine its essential security. There is therefore policy room in this regards for State Parties to this Agreement/Protocol. This policy room it should be noted can be subject to dispute and controversy as we are seeing it unfold as regards a similar exception to trade in goods under the WTO multilateral system.

3. SOME KEY BENEFITS OF THE AGREEMENT AND ITS PROTOCOLS TO INVESTORS, BUSINESSES AND TRADERS

Before the entry into force of this Agreement, the intra-African trade policy has differed markedly from one REC to another at best, and at worse from one country to another. It is important underline

⁵⁶ *ibid*

⁵⁷ *ibid*

⁵⁸ Protocol on Trade in Services, Article 28(c), (d) and (e).

⁵⁹ Protocol on Trade in Services, Article 15.

⁶⁰ *ibid*

⁶¹ Protocol on Trade in Services, Article 14.

⁶² *ibid*

⁶³ Protocol on Trade in Services, Article 16.

that RECs were encouraged by the AU as a transition to a harmonized multilateral trade policy and a free trade area in the future. Despite their many advantages in their own rights, they nonetheless resulted in the fragmentation of African trade policy. These differences in policy explains why with a market of over 1.2 billion people, intra-African trade is ironically one of the lowest in the World. According to the WTO 2018 World Trade Statistic Review, intra-African trade stood at 19.6 per cent, a growth from the 15.2 per cent in 2014. This is opposed to the intra-EU trade which grew by 10 per cent in 2017 alone. There is no doubt that the uniformity of EU trade policy partially accounts for it remaining the single strongest Regional Trade Agreement in the world with one-third of the world's trade. This is despite the EU having a population of just over 500 million people and the uncertainties of BREXIT. This aspect of uniformity of trade policy put in place by the ACFTA shall be a major thrust for economic growth and a worthwhile opportunity for foreign and domestic businesses.

The fact that we now live in the peak of globalization need not be overemphasized. In order to minimize cost, corporations use global value and supply chains in their production that sometimes cut across the world. Apple Inc. for example released a list of their suppliers and supply chain information on their website⁶⁴ for all their products and it traverses more than 25 countries in four continents. Apple is just one of the scores of corporations that use global value chains. It is a notorious fact that Africa is the richest continent in the world when it comes to natural resources deposits (most of which remain untapped). Africa besides enjoys the youngest population in the World according to the CIA World Factbook, which acts as a relentless source of labor for businesses interested in setting up industries in the Continent. These put together with the new free trade area means businesses can manufacture in Africa closer to raw material using a skilled and ambitious labor force for their global value chains and for local consumption.

In congruence with the above, this also means a significant cut in cost of production of goods previously manufactured abroad and exported to African markets because these goods wouldn't have to go through characteristically cutthroat tariffs, complex and unpredictable customs procedures and complicated rules of origin all of which contribute to driving up prices and reducing consumption.

Likewise, Africa is an emerging market with growth rates only projected to increase according to the UN World Economic Situation and Prospects 2019. As has been mentioned multiple times in this paper, it has an estimated population of over 1.2 billion projected by the UN to rise to 2.5 billion by 2050. According to the 2017 African Economic Outlook published by the African Development Bank, Africa has an estimated middle class of more than 350 million people and it is the fastest growing middle class in the World. This means there is a high consumer market across numerous sectors and subsectors in this enormously untapped market.

On a different note, this trade Agreement will put in place a legal framework with predictability because States would have to revise their customs and trade policy to conform to the requirements of the Agreement. In addition, the Dispute Settlement Body created by this Agreement with clear cut rules and procedures enables dissatisfied business to complain about discriminatory trade policies and bad trade practices that violate the provisions of the Agreement, giving room for States to enter into consultations to resolve the issue and as the case may be request the establishment of panels.

Furthermore, Africa countries have traditionally not been very open with regards to granting market access for services under WTO multilateral negotiation. This is instigated by their "need" to protect domestic industries from being drowned by service suppliers from stronger economies. This is despite that there are provisions in the GATS according them special and differential treatment as developing countries. The rebuttable presumption is that they may be open this time around to commit more

⁶⁴ See list at <https://www.apple.com/supplier-responsibility/pdf/Apple-Supplier-List.pdf> accessed on July 15, 2019

sectors, grant more market access and reduce national treatment conditions and qualifications since they are negotiating with their peers of arguably equal economic strength. If this is the case, it is possible to see more market access potentially negotiated for sectors like financial, construction and engineering, transport, tourism and travel, health, etc. which remain enormously unexploited.

Lastly, ACFTA provides a solid anchor for parties to enter into phase two negotiations on intellectual property, competition policy and investment. With the level of success registered thus far in phase one negotiations, commencement of phase two negotiations is promisingly reassuring. Investors and traders can count on a legal regime that will protect their intellectual property, investments (through Bilateral Investment Treaty-like clauses) with assurance of just trade practices through multilateral competition policy.

4. CONCLUSION

In conclusion, the ACFTA has undoubtedly come to stay. Its ambitious character and its provision of a stable and predictable legal framework for intra-African trade which was otherwise absent in a continent with enormous resources is a lubricant or thrust for much needed economic development in the Continent. Equally, the glorious ripple effect of this Agreement, which is only at touching distance, is promising for global economic growth, increased global value chains, sustainable development and alleviation of poverty. Lastly, with the operationalization of this Agreement and the dreams of an African customs union in sight, Africa will leap to the forefront of international trade because by trading amongst each other and maximizing their comparative advantage, the Continent would create the single biggest and robust economic bloc with infinite potentials.

ABOUT THE AUTHOR

Jacob Akuo, Esq. is a Cameroonian Attorney specialized in international trade and investment law, international corporate law and commercial law, intellectual property law as well as dispute resolution. He possesses a wealth of experience and a reflective understanding of African Markets acquired by having assisted a host of multinational and transnational corporations in legal transactions and dispute settlement in Africa while working for seven years in the Nico Halle & Co. Law Firm (the biggest law firm in Cameroon). A valedictorian during his LLB studies (University of Buea, Cameroon) as well as during the Bar Exams in Cameroon, Jacob Akuo is a Commonwealth Scholar who holds an LLM from the University of Essex (United Kingdom), an LLM from the Université Catholique de Lyon (France) and a Master 2 from the Université Lumière - Lyon 2 (France).

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