

# CONSIDERATIONS FOR THE IMPLEMENTATION OF THE AFRICAN CONTINENTAL FREE TRADE AREA AGREEMENT

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## 1. INTRODUCTION

The African Continental Free Trade Area Agreement (**AfCFTA Agreement**) was signed by African countries in Kigali, Rwanda, on 21 March 2018. It became effective on 30 May 2019. Ratification by 22 countries was required for the AfCFTA Agreement to enter into force. As of July 2019, 54 states have signed the AfCFTA Agreement and only Eritrea is yet to append its signature to the trade document. The start date of trading under the AfCFTA Agreement has been slated for 1 July 2020.

However, there still exists a number of challenges to implementation across Africa, from issues of ratification versus signing and the implications of persisting protectionist policies on the continent to the success of the agreement. These issues are further compounded by the impact of the recent outbreak of the novel coronavirus (**COVID 19**) on global trade and business. Presently, the World Health Organisation (**WHO**) has

stated that countries should be in a state of preparedness for a possible COVID 19 pandemic<sup>2</sup> and the United States Centre for Disease Control (**CDC**) has advised American businesses, hospitals and communities to prepare for the possible spread of the virus.<sup>3</sup> Africa currently has only one recorded case of COVID 19, in Egypt.

These issues make it pertinent for law makers and policy analysts to consider the path to successful implementation of the AfCFTA Agreement and to analyse the roadblocks to successful intra-African trade. This article therefore intends to carry out an analysis of the implementation of the AfCFTA Agreement.

## 2. THE AFRICAN CONTINENTAL FREE TRADE AREA AGREEMENT

The AfCFTA Agreement was created to expedite the political and socio-economic integration of the whole of Africa to allow

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<sup>2</sup> BBC News, Coronavirus: *World must prepare for pandemic, says WHO*, 25 February 2020, available at <https://www.bbc.com/news/world-51611422>, accessed on 26 February 2020.

<sup>3</sup> Elliott C. McLaughlin and Steve Almasy, *CDC Official Warns Americans it's not a question of if coronavirus will spread, but when*, CNN Health, 25 February 2020, available at <https://edition.cnn.com/2020/02/25/health/coronavirus-us-american-cases/index.html>, accessed on 26 February 2020.



for free movement of persons, capital, goods and services between the countries making up the African economic bloc. It aims to promote in Africa, agricultural development, food security, industrialization and structural economic transformation by creating a single continental market governed by the free movement of business, people and investments. Considering that there are 55 countries in Africa, the AfCFTA Agreement has the ambitious aim of being the largest single continental market in the world. It was signed by African countries in Kigali, Rwanda, on 21 March 2018 and became effective on 30 May 2019.

As of July 2019, 54 states have signed the AfCFTA Agreement and only Eritrea is yet to append its signature to the trade document. Of this number, only 29 countries have ratified the AfCFTA Agreement and submitted their instruments of ratification with the depositary (Chair of the African Union Commission).

The AfCFTA Agreement was supposed to enter into force upon the ratification of the document by 22 countries. The 22-country threshold was reached on 29 April 2019 when Sierra Leone and the Saharawi Republic deposited their instruments of ratification with the depositary. Kenya, Ghana, Rwanda, Niger, Senegal are

amongst the countries that have ratified the AfCFTA Agreement while Nigeria, Benin, Kenya are amongst the countries that have not ratified the AfCFTA Agreement.

### 3. RATIFICATION VERSUS SIGNING

It is important to understand the difference between ratifying a treaty and merely signing a treaty as this has implications on the implementation of such a treaty by an independent state. UNICEF's Introduction to the Convention on the Rights of the Child<sup>4</sup> defines signature of a treaty to mean an act by which a country provides preliminary endorsement of the instrument. It further states that signing does not create a binding legal obligation but does demonstrate such a country's intent to examine the treaty domestically and consider ratifying it. While signing does not commit a country to ratification, it does oblige the country to refrain from acts that would defeat or undermine the treaty's objective and purpose.<sup>5</sup>

On the other hand, ratification, acceptance or approval, as the case maybe, refers to an act by which a country signifies an agreement to be legally bound by the terms of a particular treaty.<sup>6</sup> To ratify a treaty, the country first signs it and then fulfils its own national legislative requirements with

<sup>4</sup> Retrieved from <https://www.unicef.org/french/crc/files/Definitions.pdf> accessed on 25 February 2020.

<sup>5</sup> Article 18(a) of the Vienna Convention on the Law of Treaties signed at Vienna 23 May 1969 obtained from <https://www.oas.org/legal/english/docs/Vienna%20Convention%20Treaties.htm> accessed on 25 February 2020. The Vienna Convention on the Law of Treaties is an international agreement regulating

treaties between states, adopted and opened to signature on 23 May 1969 and entered into force on 27 January 1990. As at January 2018, it has been ratified by 116 countries.

<sup>6</sup> Article 2 of the Article 18(a) of the Vienna Convention on the Law of Treaties signed at Vienna 23 May 1969 obtained from <https://www.oas.org/legal/english/docs/Vienna%20Convention%20Treaties.htm> accessed on 25 February 2020.



regard to ratification. This is done by the appropriate national organ of the country following well-laid constitutional procedure and making a formal decision to be a party to the treaty.<sup>7</sup> Usually, the president of a country makes a representation internationally that the country has ratified the treaty.<sup>8</sup>

It is important to consider the implication of the AfCFTA Agreement's entry into force on parties that have either signed or ratified the agreement. 'Entry into force' has been explained to mean that a legislation, regulation, treaty and other instrument has legal force and effect and becomes legally binding on parties.<sup>9</sup> UNICEF's Introduction to the Convention on the Rights of the Child explains that a treaty enters into force for those countries which gave the required consent<sup>10</sup> or at such time and upon such conditions set out in the agreement or treaty.<sup>11</sup>

In the case of the AfCFTA Agreement, we believe that the provisions of the AfCFTA Agreement has only entered into force (i.e. become legally binding) for those countries

that have submitted their instruments of ratification with the depositary in accordance with the provisions of the AfCFTA Agreement. For countries like Nigeria and Kenya, they are only obliged to refrain from acts that would defeat or undermine the treaty's objective and purpose.<sup>12</sup>

#### 4. IMPLICATION OF AFCFTA AGREEMENT FOR AFRICA'S ECONOMY

The AfCFTA Agreement consists of three (3) Protocols vis: Protocol on Trade in Goods, Protocol in Services and Protocol on Rules and Procedures on the Settlement of Disputes. These Protocols contain provisions on tariff concessions, customs co-operation, mutual administrative assistance, elimination of technical barriers to trade amongst other provisions, and are binding on signatory countries. It will also be governed by five operational instruments - the Rules of Origin, the online negotiating forum, the monitoring and elimination of non-tariff barriers, a digital payments system and the African Trade Observatory.<sup>13</sup>

<sup>7</sup> UNICEF's Introduction to the Convention on the Rights of the Child. Retrieved from <https://www.unicef.org/french/crc/files/Definitions.pdf> accessed on 25 February 2020.

<sup>8</sup> What is the difference between signing and ratifying a treaty? Retrieved from <https://www.institut-fuer-menschenrechte.de/en/topics/development/frequently-asked-questions/3-what-does-signature-of-a-treaty-entail-and-what-is-the-difference-to-ratification/> accessed on 25 February 2020.

<sup>9</sup> Entry into Force Law and Legal Definition. Retrieved from <https://definitions.uslegal.com/e/entry-into-force/>

<sup>10</sup> Retrieved from <https://www.unicef.org/french/crc/files/D>

[efinitions.pdf](#) accessed on 25 February 2020.

<sup>11</sup> Article 24 of the Vienna Convention on the Law of Treaties signed at Vienna 23 May 1969 obtained from <https://www.oas.org/legal/english/docs/Vienna%20Convention%20Treaties.htm> accessed on 25 February 2020.

<sup>12</sup> Article 18(a) of the Vienna Convention on the Law of Treaties signed at Vienna 23 May 1969 obtained from <https://www.oas.org/legal/english/docs/Vienna%20Convention%20Treaties.htm> accessed on 25 February 2020.

<sup>13</sup> African Continental Free Trade Area (AfCFTA Agreement) Legal Text and Policy Documents. Retrieved from <https://www.tralac.org/resources/by->



By signing the AfCFTA Agreement, African countries who are signatories to the AfCFTA Agreement have committed themselves to a progressive elimination of import duties and other non-tariff barriers on imports within the African continent to aid the interaction of trade and investments between member nations of the African Union.

If the objectives of the AfCFTA Agreement are achieved, it will be easier for African countries to trade with each other in the absence of current barriers. Also, countries will have access to a larger market of around 1.2 billion people. This will potentially trigger industrialization and manufacturing across the continent and, in turn, create vast employment opportunities on a continent which is home to the world's fastest growing labour force. The United Nations Economic Commission for Africa (**UNECA**) estimates that if signatory countries follow through with policies that spur local productivity, the free trade argument could boost intra-African trade by 52% by 2022.<sup>14</sup> Thus, with free trade under attack in much of the

developed world, Africa is forging a new path for itself to foster sustainable wealth and development for the continent.<sup>15</sup>

While the AfCFTA Agreement promises to unlock Africa's economic potential, the AfCFTA Agreement still faces an uphill battle for implementation and must surpass a number of challenges before it can be considered a success. Inefficient bureaucracy, poor infrastructure, persistent non-tariff barriers and other protectionist measures, heavy dependence on traditional export crops and commodities, little cross-border harmonisation of rules and regulations, long delays at road border crossings for cargo trucks and poorly functioning rail systems are amongst the myriad problems militating against a successful implementation of the AfCFTA.<sup>16</sup>

Commentators<sup>17</sup> are however hopeful and have explained that there are several things that African countries stand to benefit from the economic integration which will result from the emergence of the AfCFTA Agreement including but not limited to:

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[region/cfta.html](#) accessed on 25 February 2020.

<sup>14</sup> Onwuka, O.N. and Udegbonam, K.C., The Africa Continental Trade Area: Prospects and Challenges. Retrieved from <https://www.accord.org.za/conflict-trends/the-african-continental-free-trade-area/> accessed on 26 February 2020.

<sup>15</sup> Campbell, J. African Continental Free Trade Area: A New Horizon for Trade in Africa. Retrieved from <https://www.cfr.org/blog/african-continental-free-trade-area-new-horizon-trade-in-africa> accessed on 26 February 2020.

<sup>16</sup> Is Africa really ready for the AfCFTA? Retrieved from [www.independent.co.ug/is-africa-really-ready-for-the-afcfta/](http://www.independent.co.ug/is-africa-really-ready-for-the-afcfta/) accessed on 27 February 2020.

<sup>17</sup> In the Guardian of 11 February 2020, the President/Chairman of the Board of Directors, African Export-Import Bank (AfreximBank) Professor Benedict Oramah stated that the AfCFTA Agreement is the cornerstone of Africa's economic independence. According to him, AfCFTA Agreement will help African economies to industrialise and improve Africa's share of global manufacturing output and increase the continent's annual economic growth, create more wealth and reduce poverty. Also, in The Sun of 3 February 2020, Senior Partner of KPMG Nigeria and Chairman of KPMG Africa, Kunle Elebute disclosed that the AfCFTA Agreement agreement, if well implemented, has the potential to industrialise the African continent.



### **A larger market:**

The mission behind AfCFTA Agreement is to turn the whole of Africa into a very large economic bloc so that trade, people and investment can move from one part of the continent to the other with little or no barriers. The implication of this for each African country that ratifies the agreement is that their locally produced goods and services may freely compete in international African markets without any corresponding trade restrictions from recipient countries, thus, boosting each country's Gross Domestic Product (GDP). In a market economy, there are three main players: consumers, producers and exporters: the benefit of a larger market to the consumers is that healthy trade competition is encouraged. This means that consumers have access to more goods and at relatively cheaper prices. Exporters gain more traction in the sale of their products as they have access to a larger market for their goods. Producers also have access to affordable and skilled labour as there will be mobility of labour between African countries thereby leading to increase in productivity.

### **More jobs:**

As noted above, AfCFTA Agreement will result in increased mobility of labour across markets. This means that there will be more job opportunities for Africans as people will

be able to move freely from one country to the other in the pursuit of job opportunities they are better suited for. With the promotion of more labour-intensive trade, AfCFTA Agreement will generate more employment and create opportunities.

### **The Supply chain:**

Small and Medium-Term Enterprises will find it easier to connect to regional companies by making it easier for SMEs to connect to regional companies thus bringing faster and deeper development.

### **Women in Business:**

It is estimated that in Africa, women account for around seventy percent (70%) of the informal cross-border trade.<sup>18</sup> The AfCFTA Agreement is poised to reduce tariffs and facilitate movement and trade. This will enable the informal sector to operate through formal channels and will result in increased participation of women in formal business sector.

## **5. AFRICAN TRADE IN A TIME OF COVID 19**

China, the country where COVID 19 originated is the world's second largest economy and leading trading nation. China is also the biggest oil importer.<sup>19</sup> In 2019 alone, China's exports to Africa was valued at US\$113 billion while its trade with Africa was valued at US\$208 billion.<sup>20</sup> The IEA

<sup>18</sup> In Nigeria, for instance, the International Monetary Fund (IMF) estimates that the informal sector constitutes about sixty per cent 60% of the Nigerian economy and is worth about \$270bn. Please see Business a.m. live, *Nigeria's informal economy accounts for 65% of GDP – IMF*, 8 August 2017, available at <https://www.businessamlive.com/nigeria-s-informal-economy-accounts-65-gdp-imf/>, accessed on 26 February 2020.

<sup>19</sup> Celemente, J. China is the world's largest oil & gas importer. Retrieved from [https://www.forbes.com/sites/judecelemente/2019/10/17/china-is-the-worlds-largest-oil-gas-importer-/amp/](https://www.forbes.com/sites/judecelemente/2019/10/17/china-is-the-worlds-largest-oil-gas-importer-/) accessed on 26 February 2020.

<sup>20</sup> Nyabiage, J. China's trade with Africa grows 2.2. per cent in 2019 to US\$208 billion. Retrieved from <https://www.scmp.com/news/china/diplomacy/article/3046621/chinas-trade->



stated in its latest monthly report that, "Global oil demand has been hit hard by the novel coronavirus (COVID-19) and the widespread shutdown of China's economy. Demand is now expected to fall by 435,000 barrels year-on-year in the first quarter of 2020, the first quarterly contraction in more than 10 years."<sup>21</sup>

With the outbreak of COVID 19, if the virus is not contained as quickly as possible, companies in many African countries will experience shortage of products and parts. This shortage is already underway due to the delayed opening of factories in China after the Lunar New Year and workers being mandated to stay at home to help reduce the spread of the virus. Bloomberg reports that the outbreak of COVID 19 has "shut down entire swathes of the Chinese economy, threatening world economic growth and curbing appetite for oil and metals that are the lifeline of many African nations."<sup>22</sup>

As African countries plan to start trading under the AfCFTA Agreement on 1 July 2020, it is important to understand that most African countries have trade relationships with China. As the Chinese economy grapples with the effects of COVID 19, the slow trade coming out of China at this time gives African nations an opportunity to create trading partnerships with one another and strengthen their trade relations aimed towards a successful take

off of trade under the AfCFTA Agreement in July, 2020.

One challenge to this successful development of intra-African trade under AfCTA Agreement is the sheer number of countries who have ratified the agreement versus the number of countries that have not ratified it. This could mean a low level of implementation and could be an indication that some countries are apathetic towards a successful implementation of the AfCFTA Agreement. For example, since October 2019, three months after signing the AfCFTA Agreement, Nigeria shut its borders to its neighbours effectively banning all trade with countries it shares land borders with – Benin, Niger, and Cameroon. This action goes against the spirit and letter of the AfCFTA Agreement – the creation of a continental market with the free movement of persons, capital, goods and services<sup>23</sup> and is an indication of what happens when a country merely signs but does not ratify a treaty.

Although the Nigerian government has given its reasons for the closure of its border, with no end in sight to the continued border closure in one of Africa's foremost economies, the implementation of the AfCFTA Agreement seems poised for a turbulent take off, especially in light of the effects of the outbreak of COVID 19 on China's trade into Africa. Africa is ready and poised for intra-African trade and the COVID

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<sup>21</sup> [africa-grows-22-per-cent-us208-billion](#) accessed on 26 February 2020.  
Rosamond Hutt, *The economic effects of the COVID-19 coronavirus around the world*, Retrieved from <https://www.weforum.org/agenda/2020/02/coronavirus-economic-effects-global-economy-trade-travel/> accessed on 25 February 2020

<sup>22</sup> Alonso Soto, *Even without a case, Africa may be a big victim of coronavirus*, Retrieved from <https://bloomberg.com/amp/news/articles/2020-02-23/even-without-a-case-africa-may-be-a-big-victim-of-coronavirus>

<sup>23</sup> Article 3 of the AfCFTA Agreement



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19 situation grants it an opportunity to reassess its marketing strategies and trading partners and emphasize cross border trade with its neighbours so as to reduce the effects of an over reliance on China's economy and avert any direct impact on its economies from similar outbreaks in the near future.

## **6. CONCLUSION**

The signing of the AfCFTA Agreement by African countries has come at a time when some countries on the continent are grappling with a rising debt profile, increase in inflation and massive unemployment. Despite obvious hurdles, ratification and subsequent implementation of the AfCFTA Agreement by all African countries would give the AfCFTA a huge chance of becoming a successful regional trade agreement. Thus, even though the AfCFTA Agreement has been signed by 54 countries, implementation will be gradual as countries continue to negotiate tariff schedules, rules of origin, and commitments for service sectors.

