African Continental Free Trade Agreement: The real issues for Nigeria

And how to make the Free Trade Area work for Africa

The real issues are not with the AfCFTA Treaty itself but potentially its implementation. The best way to address the identified challenges is to get involved. If you are not at the table, then you may be on the menu. Like Nelson Mandela once said, I hope that our choice on this matter reflects our hopes and not our fears.

Background

On 25 May 1963 in Addis Ababa, Ethiopia, the Organisation of African Unity (OAU) was established with 32 signatory governments. It was the first regional body on the continent. The OAU later transformed into African Union (AU) in 2002 and now has all the 55 countries on the continent as members without prejudice to the recent suspension of Sudan.

At the 2012 AU Summit, Heads of State and Government adopted a Decision on the Establishment of a Continental Free Trade Area and endorsed the Action Plan on Boosting Intra-Africa Trade which identifies seven areas of cooperation namely: trade policy; trade facilitation; productive capacity; trade related infrastructure; trade finance; trade information; and factor market integration. These are expected to lay the foundation for the establishment of a Continental Customs Union at a later stage.

Presently, there are a number of Regional Economic Communities (RECs) within Africa, eight of which are recognised by the AU. These are the Arab 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).

Key provisions of the treaty

The African Continental Free Trade Area (AfCFTA) is expected to cover all 55 countries of over 1.2 billion people and a gross domestic product (GDP) in excess of USD 2.5 trillion. The scope of the Agreement covers trade in goods, services, investment, intellectual property rights and competition policy.

Article XXIV of the General Agreement on Tariffs and Trade (GATT) defines a free-trade area as an agreement among a group of two or more customs territories in which the duties and other restrictive regulations of commerce are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

Following the deposit of the instrument of ratification by Sierra Leone and the Saharawi Republic on 29 April 2019, the Treaty came into effect on 30 May 2019. This is in line with Article 23 of the Agreement which stipulates that the Agreement will enter into force 30 days after the deposit of the twenty second (22^{nd}) instrument of ratification.

As at the commencement of the Treaty, 52 countries have signed the agreement while 3 countries – Republic of Benin, Eritrea and Nigeria are yet to sign.

Trade in goods - The Treaty provides that a State Party (a member state that has ratified or acceded to the AfCFTA) shall accord to products imported from other State Parties treatment no less favourable than that accorded to like domestic products of national origin, after the imported products have been cleared by customs.

State Parties are to progressively eliminate import duties and charges. Special and differential treatment is allowed for State Parties at different levels of economic development. A State Party may however regulate export duties or charges having equivalent effect on goods originating from its territory provided it is applicable to goods exported to all destinations on a non-discriminatory basis.

Trade in services - With respect to trade in services, Article 20 requires each State Party to accord to services and service suppliers of any other State Party treatment no less favourable than that accorded to its own like services and service suppliers. Also a State Party shall not maintain or adopt limitations on the total value of service transactions, or quotas on the total number of natural persons that may be employed or measures which restrict or require specific types of legal entity. The Treaty recognises the significant contribution of air transport services and, in particular, the Single African Air Transport Market.

Review and withdrawal - A State Party may withdraw from the Agreement after 5 years from the date of entry into force and the withdrawal shall be effective 2 years after receipt of notification or such later date as may be specified in the notification. The Agreement is subject to review every 5 years. With respect to trade in services, a State Party may modify or withdraw at any time after 3 years have elapsed from the date on which that commitment entered into force.

Objective and benefits

The key objective of AfCFTA is to boost intra-African trade through progressive elimination of tariffs and non-tariff barriers to trade in goods and liberalisation of trade in services. The Agreement will also involve cooperation on investment, intellectual property rights and competition policy.

Progressively, a deeper integration is expected in form of a single common market, and economic and monetary union, a single African Central Bank and a single African Currency. In addition, there will be free movement of people and rights of residence and establishment.

Expected benefits include scale, efficiency and significant welfare gains to the people, employment expansion, and intra-African trade growth in the long-run. The highest positive impact is expected in Agriculture and food as well as industrial goods. It is also expected that the AfCFTA will help resolve the challenges of multiple and overlapping REC memberships.

Opportunities abound under the Treaty especially in terms of building capacity and training for trade in services; improving the export capacity of both formal and informal service suppliers, with particular attention to micro, small and medium size; women and youth service suppliers. Those who are able to learn the major languages in Africa – English, French, Portuguese and Arabic will have an advantage.

While Nigeria may be relatively disadvantaged in the area of trade in goods due to its poor infrastructure and high cost of production, the country can leverage on services to accelerate economic and social development in areas such as professional services and Intellectual Properties such as those produced out of Nollywood which are already quite popular within Africa.

The objective will be to develop capacity to provide top-notch services, which can match the very best on the continent and improve competitiveness for export of services outside the continent. Taking steps to compete under the agreement will also improve local competitiveness resulting in better quality and lower prices for the people. Protecting domestic industries through tariffs on import of similar goods is effectively a tax on consumers to pay for local inefficiency.

Possible challenges

The provision of the Treaty will potentially affect current company rules regarding minimum capital, directorship and shareholding in many African countries. It will also have effect on capital control exchange regulation and local content rules.

There is the need to harmonise existing rules such as the rules of origin which differ between various RECs on the continent. This ranges from 60 percent of local content of total raw materials used for wholly produced goods originating from the ECOWAS region to 40% material content rule in COMESA to a more complex product specific low import and high value-added requirements in SADC. In the same manner plastics are not allowed in some African countries so this has to be considered in the packaging of goods destined for export to other countries.

Some stakeholders have raised concerns about the risk of transhipment and dumping of goods which may hurt domestic businesses especially infant industries. However, the AfCFTA Treaty already has provisions to address these concerns.

Next steps and key priorities

The real issues are not with the AfCFTA treaty but potentially its implementation. The best way to solve the problems is to get involved and work with other countries in shaping the Free Trade Area to ensure a win-win outcome for all parties.

Action #1 – Review and harmonise trade policies

A review of existing trade policies to identify areas of improvement and harmonise macro-policies. Also harmonise elements of national laws, upgrade of legal institutions handling potential disputes, competition policy and consumer protection legislation. For instance, the current rule of origin is heavy on materials and low on intangible value added and customs clearance procedures are too cumbersome.

Action #2 – Identify areas of competitive advantage

Find competitive advantage in key industries to compete favourably in goods while addressing barriers to trade in services including a progressive easing of visa restrictions.

Action #3 – Build institutional capacity

Develop institutional and human capacities across trade and investments, policies, dispute resolution etc. This will include capacity for customs cooperation, mutual administrative assistance.

Action #4 – Address non-tariff barriers

Address non-tariff barriers to trade including policies relating to industrial, agriculture, fiscal, banking, investment competition, ICT and telecommunication, transport, standards, labour markets, and government procurement.

Action #5 – Develop safeguards

Apply preferential policies to protect infant industries as provided under the treaty and develop anti-benefit abuse clauses.

Preferential policies should have sunset clauses and be kept under constant review.

Action #6 – Engage key stakeholders and build consensus

National consultation is critical in gathering the views of interested non-States actors such as the organised private sector, civil society, workers and academia. Consultation with key stakeholder should include trade associations, chambers of commerce and industry, professional associations, legislature and the academia.

Action #7 – Build robust infrastructure

To be competitive in the long run, Nigeria must address its infrastructural challenges especially those with direct impact on cost of production such as electricity and transportation.

My final thoughts

In order to make the Treaty work, Africa needs to learn from itself in terms of experiences from its existing RECs and also from the rest of the world. Eliminating tariffs is good but a larger impact on boosting trade requires the removal of non-tariff barriers, reforms of services sector and improvement of trade facilitation measures.

Nigeria needs to join the train and provide leadership, not stay away. Like the popular saying, if you are not at the dinner table you may be the menu. After all the country is a member of ECOWAS so we believe in the concept, what we need to do now is act. Like Nelson Mandela once said, I hope that our choice on this matter reflects our hopes and not our fears.

Taiwo Oyedele is the Head of Tax and Regulatory Services at PwC Nigeria and Tax Leader for PwC West Africa. He is an author and public speaker on tax, business and economic matters.

Visit our tax blog for in-depth analyses, unique insight and superlative perspective on tax matters: **www.pwcnigeria.typepad.com**. *Subscription is free!*