

Major Attraction of FDI for Ethiopia: The African Continental Free Trade Area Agreement

Description

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The African Continental Free Trade Area ('AfCFTA') is signed by 54 African Countries out of the 55 African countries. Eritrea being the only country not to sign. As of 15 January 2021, 36 of the 54 signatories ratified the AfCFTA Agreement.

After WTO, AfCFTA is the largest free trade area in the world based on the number of participating countries. It covers nearly 1.3 billion African people. The objective of AfCFTA is to create a single continental market for trade in goods and services and to facilitate the movement of capital and natural persons. Foreign investors thus will be able to do business on a single line of trade and investment procedure across Africa. AfCFTA will promote larger, more integrated markets on the continent. This will make investing in Africa more profitable to foreign investors.

A brief discussion of the contents of AfCFTA Agreement will be made. Then binding and completed protocols namely the protocols on trade in goods, protocols on trade in service and dispute settlement protocol shall follow. A brief discussion on protocols under negotiation namely protocols on investment, protocols on intellectual property and protocol on competition policy shall be made. Finally the positive impact of AfCFTA for attraction of foreign direct investment for Ethiopia shall be discussed.

Contents of the AfCFTA

The general objectives of AfCFTA is set in Article 3 of the Agreement. Some of the major objectives include creation of a single liberalized market for goods, services and movement of persons. In addition to that the objective is to set foundations for establishment of a continental customs union. For realizing these objectives, Article 4 provides specific objectives as follows: *the progressive elimination of tariffs and non-tariff barriers to trade in goods; the progressive liberalization of trade in services; co-operation on investment, intellectual property rights, and competition policy; co-operation on all trade-related areas; cooperation on customs matters and the implementation of trade facilitation measures; the establishment of a mechanism for the settlement of disputes concerning the rights and obligations of member states; and the establishment and maintenance of an institutional framework for the implementation and administration of the AfCFTA.*

The administration and organization of the AfCFTA shall consist of the Assembly, the Council of Ministers, the Committee of Senior Trade Officials and the Secretariat. The composition and decision making powers of each of the above organs are detailed in the Agreement. State Parties to AfCFTA are obliged to promptly publish in their laws publications and make available to the public and the Secretariat of the AfCFTA any trade matter covered under this Agreement.

State parties to AfCFTA shall give on a reciprocal manner, preferences that are no less favorable than

those given to non-members(Third Parties) states. In the event that there arises conflict between AfCFTA and any regional agreement (such as the Arab Maghreb Union (UMA); the Common Market for Eastern and Southern Africa (COMESA); the Community of Sahel-Saharan States (CEN-SAD); the East African Community (EAC); the Economic Community of Central African States (ECCAS); the Economic Community of West African States (ECOWAS); the Intergovernmental Authority on Development (IGAD) and the Southern African Development Community (SADC), this Agreement shall prevail.

The AfCFTA Agreement contains three completed protocols on trade in goods, trade in services, and interstate dispute settlement. So-called “Phase II” negotiations are underway in relation to protocols on investments, intellectual property rights, and competition policy. Overview of the three completed protocols and the three protocols under negotiation are made here-below.

The Completed Protocols

Trade in Goods

Trade in goods protocol apply to trade in goods between State Parties. State Parties shall provide when it comes to trade in goods the most-favored-nation-treatment to one another. Article 2(1) of the Protocol on Trade in Goods provides that “[t]he principal objective of this Protocol is to create a liberalized market for trade in goods in accordance with Article 3” of the AfCFTA Agreement. In doing so, Article 2(2) sets out various objectives, including the progressive elimination of tariffs, the progressive elimination of non-tariff barriers, and the enhanced efficiency of customs procedures, trade facilitation, and transit.

State Parties shall progressively eliminate import duties or charges having equivalent effect on goods originating from the territory of any other State Party. Similarly State Parties may regulate export duties or charges having equivalent effect on goods originating from their own territories.

An important ongoing point of negotiation revolves around the Rules of Origin. Article 13 of the Trade in Goods provide that goods shall be eligible for preferential treatment if they are originating in any of the State Parties. The Rules of Origin are aimed at preventing the import of goods from non-preferential countries at preferential rates of duty. It is not yet clear what rates will apply, but compliance with the Rules of Origin will be necessary in order to access the preferential rates.

Trade in Services

The Protocol on Trade in Services defines ‘Service’ as to include any service in any sector except services supplied in the exercise of government authority. The aim of the Protocol on Trade in Service is to facilitate the liberalization of trade in services. Article 3(2)(a,b,c,d and e) of the Protocol on Trade in Services allows member states to *“enhance competitiveness of services through: economies of scale, reduced business costs, enhanced continental market access, and an improved allocation of resources including the development of trade-related infrastructure; promote sustainable development in accordance with the Sustainable Development Goals (SDGs); foster domestic and foreign investment; accelerate efforts on industrial development to promote the development of regional value chains; progressively liberalize trade in services across the African continent on the basis of equity, balance and mutual benefit, by eliminating barriers to trade in services; progressively liberalize trade in services across the African continent on the basis of equity, balance and mutual benefit, by eliminating*

barriers to trade in services”.

Each State Party shall accord immediately and unconditionally to service and service suppliers of any other State Party treatment no less favorable than that it accords to like services and service suppliers of any Third Party.

Dispute Settlement

Article 20 of the AfCFTA Agreement establishes an interstate Dispute Settlement Mechanism that will be administered according to the Protocol on Rules and Procedures on the Settlement of Disputes ('Dispute Settlement Protocol'). The Dispute Settlement Protocol was set out along with the AfCFTA Agreement. Article 3(1) of the Disputes Settlement Protocol state that *"This protocol applies to disputes arising between State Parties concerning their rights and obligations under the provisions of the Agreement"*. The aim of the dispute settlement mechanism is to provide security and predictability to the regional trading system. The dispute settlement mechanism shall preserve the rights and obligations of State Parties under the Agreement and clarify the existing provisions of the Agreement in accordance with customary rules of interpretation of public international law.

This mechanism has copied the dispute settlement system of the WTO and is therefore a state-to-state system. Accordingly, it is important for businesses and individuals to be note that, if they are of the view that a member state has breached an obligation, they should appeal to their home or host country to take up the dispute (while bearing in mind that a dispute is only likely to be taken up in exceptional cases where the subject matter is of national importance and diplomatic efforts have failed).

Procedures under the Dispute Settlement Mechanism is as follows. Where a dispute arises between or among the State Parties, in the first instance, recourse shall be had to **consultations**, with a view to finding an amicable resolution to the dispute. Where an amicable resolution is not achieved, any party to the dispute shall, after notifying the other parties to the dispute, refer the matter to the (Dispute Settlement Body) DSB, through the Chairperson and request for the establishment of a Dispute Settlement Panel, ("Panel") for purposes of settling the dispute. The DSB shall adopt Rules of Procedure for the selection of the Panel, including the issues of conduct, to ensure impartiality. The Panel shall set in motion the process of a formal resolution of the dispute as provided for in this Protocol and the parties to the dispute shall, in good faith, observe in a timely manner, any directions, rulings and stipulations that may be given to them by the Panel in relation to procedural matters and shall make their submissions, arguments and rebuttals in a format prescribed by the Panel. The DSB shall make its determination of the matter and its decision shall be final and binding on the parties to a dispute. Where the parties to a dispute consider it expedient to have recourse to arbitration as the first dispute settlement avenue, the parties to a dispute may proceed with arbitration as provided for in Article 27 of this Protocol.

Protocols under negotiation

Investments

As mentioned above, there have been ongoing negotiations on the Investment Protocol of the AfCFTA. Nevertheless, the Investment Protocol has not been completed. One hurdle facing the negotiations is the already negotiated and existing international investment agreements at the bilateral and regional

level. There are currently 171 intra-African bilateral investment treaties that the AfCFTA Agreement aims to supersede by creating and offering a single treaty that would regulate all intra-African investments. In the future, the AfCFTA Agreement may serve as a basis for negotiations on international investment agreements, including those with non-African countries.

Intellectual Property Rights

The on-going discussions on the Protocol on Intellectual Property will be aimed at creating a consolidated approach to intellectual property rights across the African continent. The Protocol on Intellectual Property will therefore achieve a higher level of certainty to a currently fragmented legal landscape for intellectual property.

Competition Policy

The AfCFTA Agreement will bring greater integration between member states by reducing tariff and non-tariff barriers. This will pave the way to an upward increase in cross-border business. Such cross-border business will require a strong regulatory framework in order to promote competition and protect consumers at a regional level. In this regard, according to some commentators, the Protocol on Competition Policy aims to address cross border anti-competitive cases such as cartels, abuse of dominance, mergers analysis, creation of a competitive environment conducive for existing competitors and new entrants.

Potential for Ethiopia

Ethiopia is a signatory to AfCFTA and also has ratified the AfCFTA Agreement under its Proclamation No 1124/2019 done on the 5th day of April 2019. Foreign investors thus will be able to do business on a single line of trade and investment procedure across Africa. AfCFTA will promote larger, more integrated markets on the continent. This will make investing in Ethiopia more profitable to foreign investors. The conducive business environment existing in Ethiopia, in terms of labor, land, laws, infrastructures and favorable climate will provide foreign investors with access to market across the African continent. As the seat of the African Union, Ethiopia provides direct access to expedited handling of settlement of disputes as well.

Conclusion

Therefore, the AfCFTA Agreement officially came into force as of January 1, 2021, in the middle of the Covid19 pandemic. AfCFTA signals a positive hope in the middle of a global economy hardship. Foreign investors now have the opportunity to tap into a vast market that has more legal and economic certainty. Ethiopia is one great access route for such an investment. It is important for local and foreign businesses in the Ethiopia to be aware of and take advantage of the new platform that is now available.

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