« WILL THE AFRICAN CONTINENTAL FREE TRADE AREA BE ABLE TO LIFT THE CONTINENT OUT OF THE ECONOMIC DOWNTURN CAUSED BY COVID-19? »

contact
Tania.Cascais@mirandalawfirm.com
+351 217 814 800

By Tânia Cascais
Partner at Miranda & Associados

Tânia Cascais is Partner at Miranda & Associados, co-head of Corporate, Commercial & Projects areas and responsible for Angola and Senegal jurisdiction's. Has over 20 years of experience and her practice is focused Corporate & Commercial, Energy and Foreign Investment.

At a time when the world seeks solutions to deal with the socio-economic effects of a pandemic of unforeseeable dimensions, the African continent faces additional challenges. Speaking at a trade conference in Dakar, Senegal, the recently-appointed Secretary-General of the African Continental Free Trade Area (AfCFTA), Mr. Wamkele Mene, noted that the COVID-19 pandemic had, for the first time in 25 years, caused a contraction of GDP of between 2 to 5% in sub-Saharan Africa.

The AfCFTA is a trade agreement that came into force in May 2019. The decision to create this pact was made in 2012, but negotiations began in 2015 and the agreement was signed in March 2018, in Kigali, Rwanda. Overall, the AfCFTA aims to address Africa's historical economic fragmentation. It will create the largest free trade area in the world in terms of the number of participating countries, connecting 1.3 billion people across 55 African Union (AU) Member States and encompass a joint GDP of around US$3.4 trillion. One of its aims is to prioritize intra-African trade and improve regional and continental trade integration. Initially, large economies such as South Africa and Nigeria refused to join. South Africa, however, signed up in 2018 and Nigeria in 2019, leaving Eritrea as the only AU Member State still refusing to join the new block.

The AfCFTA has been going through lengthy negotiations, though, which will certainly continue during the subsequent phases of its implementation. So far, during Phase 1 of the negotiations, important milestones have been agreed: Member States negotiated the AfCFTA Protocol on Trade in Goods (TIG Protocol), which includes a reduction of 90% of import tariffs. For the 7% most sensitive products, the process will be phased over a period of between 10 and 15 years, and 3% of import tariffs, not exceeding 10% of the value of imports, will enjoy permanent protection. Other parts of the TIG Protocol have been agreed, notably those relating to general principles and rules on non-tariff barriers (NTBs) and trade facilitation measures. The AfCFTA also includes a Protocol on Trade in Services, which aims to progressively liberalize this area by eliminating barriers. Phase 2 of AfCFTA negotiation includes competition policy, intellectual property and investment provisions, and was expected to be completed in 2020. Phase 3 will include an e-commerce protocol.

However, and although the agreement is already in force, trade under the agreement has not yet begun and is only expected to start in January 2021. The delay is due to several factors such as the COVID 19 pandemic and the fact that negotiations on key substantive issues are still to be completed, including tariff concession schedules (Annex 1 to the TIG Protocol), rules of origin (Annex 2 to the TIG Protocol) and commitments on specific services sectors.

While the proponents of the deal have claimed that the AfCFTA will foster development in Africa and help African commerce, notably during the pandemic crisis, the deal has also attracted criticism and disapproval. Studies have shown that there will only be small gains from reducing trade tariffs, with the most important gains resulting from the reduction of NTBs. African countries generate significant revenue from import tariffs. While countries should ultimately compensate the losses resulting from tariffs reduction with higher tax revenue from increased consumption and income, there will be a period of losses and the possible gains will be determined by how countries pursue steps to lower NTBs. As most African countries have significant NTBs and other protectionist measures, this will pose a significant challenge. For instance, looking at a country like Senegal, which is generally perceived as being an economy that will rapidly benefit from trade under the agreement, it is yet to be seen how the new legal framework applicable to the provision of services and goods to the oil sector – currently under preparation and soon to be enacted, and which usually includes protectionist measures to foster local entrepreneurship – will adjust to the AfCFTA's objectives.

The COVID-19 pandemic creates a pressing need to reduce Africa's high trade dependence on non-African countries. The AfCFTA could help facilitate this process, but it would mean increasing the pace of the negotiations and reducing the timelines for implementation. Achieving this, however, becomes even more challenging in light of the current lockdowns and border closures across the continent. Ultimately, it seems that before the AfCFTA can achieve its goals of increasing intra-Africa trade and foreign investment, there is a very significant amount of work for African countries to do and very substantial policy reforms to implement at national levels. The reforms may require politically difficult decisions. That said, it is worth bearing in mind that the AfCFTA is a major opportunity for Africa as it lays down the path for making the continent as competitive as any other region in the world.