JONES DAY

COMMENTARY

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44 African Countries Sign Agreement to Establish African Continental Free Trade Area

IN SHORT

The Situation: African leaders gathered in Kigali, Rwanda, in March 2018 to sign the draft Agreement Establishing the African Continental Free Trade Area ("CFTA") and other related protocols. Forty-four of the 55 Member States of the African Union signed the agreement. When 22 states have ratified, the Agreement enters into force.

The Development: If successful, the CFTA could radically reorient and expand intra-African trade, boost industrialization, and provide desperately needed jobs for Africa's fast-growing population. It could also make the continent a more desirable destination for foreign investment.

Looking Ahead: How difficult will upcoming rounds of negotiations prove? What challenges to implementation will need to be overcome? Can a full Customs Union eventually be achieved?

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The implementation of various regional economic communities ("RECs") has had a positive impact on intra-African trade, reflected in an increase in the percentage of intra-African trade to 16 percent. By comparison, however, 70 percent of European trade is intra-European. Part of this disparity is explained by Africa's overreliance on extractives. This combines with a relatively low level of industrialization, at around 10 percent of continental GDP, to limit trade within the region. Other factors currently inhibiting intra-African trade include relatively high tariffs on many goods, non-tariff barriers ("NTBs"), trade facilitation challenges at and behind many African borders, relatively small single-country markets, and underdeveloped physical infrastructure such as road and rail links between countries. The CFTA and related instruments aim to address some of these challenges.

CFTA Can Also Increase Opportunities for Foreign Companies in Africa

Foreign companies looking toward Africa can also benefit. In contrast to an array of (relatively) small, individual country markets, the CFTA sets the stage for a greater Africa market. Africa remains full of potential: a market with a growing middle class, higher-than-global-average economic growth, and fast-growing population that has already reached 1.2 billion.

American Companies Are Still—and May Remain—Disadvantaged, But There May Be More Opportunities for EU Companies.

While the recently renewed African Growth and Opportunity Act ("AGOA") helps some African firms export to the United States tariff-free, it is not designed to promote U.S. investment in Africa, and American companies may remain disadvantaged in Africa vis-à-vis European companies. The European Union has negotiated economic partnership agreements ("EPAs") in Africa with:

- 16 West African countries, the Economic Community of West African States, and the West African Economic and Monetary Union;
- Cameroon;
- Madagascar, Mauritius, Seychelles, and Zimbabwe;
- The East African Community; and
- Southern African Development Community.

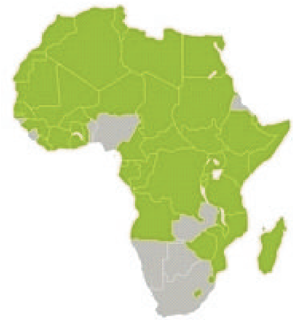
In addition, many African countries have duty-free and quota-free access to the EU market under the EU's Everything-But-Arms scheme. Like AGOA, the European Union's EPAs provide duty-free access for African products. Unlike the AGOA, the EPAs provide incentives and investment protections for investment in Africa. More EPAs are being developed. For instance, the EU and two Central African regional organizations, the Economic and Monetary Community of Central Africa, and the Economic Community of Central Africa States, are currently exploring an EPA using the "stepping-stone" agreement entered into with Cameroon. A more integrated African market through CFTA is therefore likely to benefit EU companies active in Africa. The United States has only one free trade agreement in place with an African country—Morocco. Additionally, while African countries have signed more than 800 bilateral investment treaties ("BITs"), the United States has signed only six BITs with African countries (including Morocco and Egypt).

The U.S. Congress is considering the BUILD Act, which would create a U.S. International Development Finance Corporation ("IDFC") by integrating parts of USAID into the U.S. Overseas Private Investment Corporation ("OPIC"). The IDFC would have a $60 billion lending cap, double the amount that OPIC currently can lend, and could make equity investments up to 20 percent of the total equity of a project. This will make the United States more competitive with Chinese state-backed funds, which often take similar equity positions.

> According to the UN Economic Commission on Africa, with rapid implementation of the Agreement, intra-African trade could grow by 50 percent over current levels by 2022.

The Agreement and its African Challenges

The Kigali meeting from March 17-21, 2018, technically the Tenth African Union Extraordinary Summit on the [African Free Trade Area](), provided the venue for signing the CFTA documents.



Initial signatories to CFTA shown in green

Notably, Africa's two largest economies—Nigeria and South Africa—did not sign the Agreement in Kigali. It is, however, anticipated that both countries will join in due course.

The Agreement remains a work in progress, with major protocols on goods, disputes, rules of origin, and other issues not yet finalized, or in some cases barely underway. Implementation is likely to prove challenging.

What Can the Agreement Mean for Africa?

If the Agreement eventually encompasses all 55 African Union member states, it will include more than 1.2 billion people and a combined GDP already more than $2 trillion. According to the [UN Economic Commission on Africa](), with rapid implementation of the Agreement, intra-African trade could grow by 50 percent over current levels by 2022 and by 100 percent if NTBs are successfully addressed.

The draft Agreement aims to remove tariffs on 90 percent of goods. Removal of tariffs on the remaining 10 percent of "sensitive items" will be phased in later. The Agreement will also liberalize trade in services and hopes to tackle non-tariff barriers, such as border delays, which hinder trade between African countries. The CFTA's aims are to create a single continent-wide market for goods and services, including free movement of businesspersons and investments; eventually establish a Customs Union; and perhaps one day result in a single currency.

THREE KEY TAKEAWAYS

1. The CFTA is a bold step forward. It potentially heralds transformative economic relations between African countries, as well as significant economic growth and industrialization in Africa.
2. If fully implemented, the CFTA can also make Africa a much better economic partner for non-African companies. But implementation is likely to prove challenging.
3. Thus far, the U.S. response has been muted. At present, European and Chinese companies are probably better positioned to take advantage of the changes likely to be brought by the CFTA.

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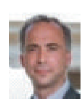
CONTACTS

Javade Chaudhri
Saudi Arabia / Washington

Michael P. Gurdak
Washington



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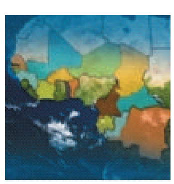

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