LEGAL AND REGULATORY FRAMEWORK FOR LEVERAGING ON THE AFRICAN CONTINENTAL FREE TRADE AREA BY NIGERIAN COMPANIES[1]

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Abstract

The African Union recently signed the African Continental Free Trade Area (AfCFTA) agreement with 44 of its members giving the AfCFTA a push. There is no gain saying the fact there the African economy will be weaned from over dependence on imported goods especially from Asia and Europe which sees Africa as a consumer continent. This paper analysed the meaning and scope of the AfCFTA, the opportunities it offers and the challenges of its implementation. In view of the biting effects of the Coronavirus pandemic on the economies of nations, the paper offers suggestions to stakeholders in the Nigerian economy on ways to reap the fruits of AfCFTA.

Keywords: Africa, Continental Free trade, Treaty

1.0 Introduction

In March 2018, representatives of member countries of the African Union at the end of the 10th extraordinary session of the Assembly of Heads of State and Government of the African Union, forty-four out of the fifty-five member states of the Union signed the African Continental Free Trade Area (AfCFTA) Agreement.[3] This agreement provides a framework for trade liberalization in goods and services and is expected to eventually cover all African countries.[4] The Agreement establishing the African Continental Free Trade Agreement (AfCFTA) came into force on 30 May 2019 for the 24 countries that had deposited their instruments of ratification. This date marked 30 days after 22 countries had deposited their ratification instruments with the African Union Commission (AUC) Chairperson – the designated depositary for this purpose, as stipulated in Article 23 of the Agreement. AfCFTA promotes a border – free African trade synergy for mutual benefits. This paper will examine the meaning and scope of the AfCFTA, the

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[3] The African Continental Free Trade Agreement: Welfare Gains Estimates from a General Equilibrium Model. See also Andrea Cofelice, African Continental Free Trade Area: Opportunities and Challenges. THE FEDERALIST DEBATE Year XXXI, N° 3, November 2018, DOI: 10.2478/tfd-2018-0032

[4] *Ibid*.

benefits and challenges of the implementation as well as offer solutions to the challenges posed to Nigerian companies and economy as a whole.

2.0 The Meaning and Scope of the AfCFTA

The African Continental Free Trade Area (AfCFTA) is a free trade area which, as of 2018, includes 28 countries. The United Nations Economic Commission for Africa estimates that the agreement will boost intra-African trade by 52 percent by 2022. The main goals of the AfCFTA are to create a continental market for goods and services, with free movement of people and capital, and pave the way for creating a Customs Union.[5] It will also grow intra-African trade through better harmonization and coordination of trade liberalization across the continent. An FTA requires, at minimum, schedules of preferential tariff concessions and preferential rules of origin.[6]

The legal framework for the operation of the AfCFTA is the Agreement itself. It can only be amended in line with Article 29 of the AfCFTA. It is divided into Parts with each of the Parts having various Article provisions ranging from dispute resolution mechanisms, general obligations and disciplines of state parties, protocol on trade in services, technical assistance, capacity building and cooperation, anti – dumping and countervailing measures, product standardization and regulations, trade remedies, customs cooperation, trade facilitation and transit, general elimination of quantitative restrictions, liberalization of trade, non – discrimination principles, rules of interpretation, exception of security information. The AfCFTA will eventually comprise several legal instruments covering trade in goods, trade in services, dispute settlement, investment, competition policy and intellectual property rights. During the First Phase of the AfCFTA negotiations a founding Agreement and Protocols on trade in goods, trade in services and dispute settlement have been adopted. As of 13 December 2019, trades in goods negotiations have been concluded except for the several outstanding issues: tariff schedules, rules of origin (clothing & textiles, automotive, sugar and edible oils), trade remedies

[5] https://www.google.com/search?client=firefox-b-d&q=African+Continental+Free+Trade+Area Accessed August 30, 2020
[6] www.tralac.org FAQs on ACFTA as of December 2019. Accessed August 30, 2020

guidelines, infant industry guidelines, and special economic zones regulations. Nigeria signed the AfCFTA on July 7, 2019.

In terms of the structural framework for implementation, the Assembly of the AfCFTA is the AU Assembly consisting of all AU Heads of State and Government. It provides oversight and guidance on the AfCFTA. The Council of Ministers comprises Ministers for Trade of the State Parties. It will take decisions on all matters under the AfCFTA Agreement, and reports to the Assembly through the Executive Council of the AU. The AfCFTA Council of Minister is separate from the AU Ministers of Trade (AMOT). The Committee of Senior Trade Officials comprises Permanent Secretaries or other officials designated by State Parties. It is responsible for the development of programmes and action plans for the implementation of the AfCFTA Agreement. The Secretariat is the administrative organ to coordinate the implementation of the AfCFTA. It is expected to be functional by 31st March 2020 but it is still in Phase One of implementation. It will be based in Accra, Ghana. The Protocols of the AfCFTA Agreement establish various technical committees to assist with the implementation of the Agreement. They include the Trade in Goods Committee and Trade in Services Committee.[7]

3.0 Opportunities for Implementing the ACFTA

The world has reached a stage where Africa ought to speak boldly in terms of synergy for economic development and liberalization. By creating a single continental market for goods and services, the Agreement aims to boost intra-African trade, facilitate structural transformation of African economies and promote sustainable and inclusive socio-economic development across the African continent.[8]

According to the United Nations Economic Commission for Africa, the implementation of the agreement could increase intra-African trade by 52%, compared to 2010 levels, by 2022, thus reducing the gap with intraregional trade quotas currently characterizing Asia (51%), North America (54%) and Europe (67%).[9]

[7] Committees on Investment, Competition Policy and Intellectual Property Rights have been proposed.

[8] Sean Woolfrey, Philomena Apiko and Kesa Pharatlhatlhe, Nigeria and South Africa: Shaping Prospects for the African Continental Free Trade Area. Discussion Paper 242 presented in February 2019. Available via https://ecdpm.org/wp-content/uploads/DP-242-Nigeria-and-South-Africa-Shaping-prospects-for-the-African-Continental-Free-Trade-Area.pdf Accessed August 30, 2020

[9] Andrea Cofelice, African Continental Free Trade Area: Opportunities and Challenges. THE FEDERALIST DEBATE Year XXXI, N° 3, November 2018, DOI: 10.2478/tfd-2018-0032. Accessed August 30, 2020

In terms of existing Regional Trade blocs within the African region, Article 19(2) of the AfCFTA Agreement already takes cares of that. Article 19(2) of the AfCFTA contains an important provision: "State Parties that are members of other regional economic communities, regional trading arrangements and custom unions, which have attained among themselves higher levels of regional integration than under this Agreement, shall maintain such higher levels among themselves." This means that customs unions such as the Southern African Customs Union (SACU) and those planned for in some of the RECS, as well as the Tripartite Free Trade Area (TFTA), once in force, shall also be maintained. Their members obviously consider them to be beneficial for their regional trade. The AfCFTA not only ensures the continuation of the benefits accrued from the deeper integration in the Regional Economic Communities, but also provides for alignment of RECs' laws and regulations. In case of inconsistency between the Agreement and any regional agreement, the provisions of the AfCFTA Agreement 'shall prevail to the extent of the specific inconsistency, except as otherwise provided in this Agreement'.[10]

The provisions in Part V (Article 18) of the overarching Agreement, which deal with 'continental preferences', provide that 'following the entry into force of this Agreement, State Parties shall, when implementing this Agreement, accord each other, on a reciprocal basis, preferences that are no less favourable than those given to Third Parties.'[11] Article 18 continues that 'a State Party shall afford opportunity to other State Parties to negotiate preferences granted to Third Parties prior to entry into force of this Agreement and such preferences shall be on a reciprocal basis.

In the same vein, Article 4 in the Protocol on Trade in Goods provides that 'Nothing in this Protocol shall prevent a State Party from concluding or maintaining preferential trade arrangements with Third Parties, provided that such trade arrangements do not impede or frustrate the objectives of this Protocol, and that any advantage, concession or privilege granted to a Third Party under such arrangements is extended to other State Parties on a reciprocal basis.[12]In essence, African nations will begin to accord one another preferential treatment on the principle of reciprocity. This is healthy for continental economic development instead of boosting the trade balance of advanced continents.

When properly managed, AfCFTA will ensure that member states are no longer dumping ground for Asian and European products. AfCFTA has the tendency to ensure balance of trade between Africa and

[10] Article 19 of AfCFTA
[11] Culled from: A Business Guide to the African Continental Free Trade Area Agreement. Developed by the International Trade Centre. P. 6
[12] Article 4 of AfCFTA

the continents which views Africa as a consumer market. Potential advantages to the private sector include increasing economies of scale and access to cheaper raw materials and intermediate inputs; better conditions for regional value chains and integration into global value chains; catalyzing the transformation of African economies towards greater utilization of technology.[13]The AfCFTA will encourage free movement of citizens within the continent with minimal travel and Visa restrictions, promote African brotherhood and culture.

4.0 Challenges of Implementing the AfCFTA

It is difficult to coordinate and implement the AfCFTA but doable. This is because we should be reminded of how difficult it is to integrate 55 sovereign States at very different levels of economic development into a Free Trade Agreement. A Free Trade Agreement requires that these States accept a wide range of obligations to liberalise trade. Implementation of the eventual schedules is within the purview of the AfCFTA State Parties. Nigeria and other member state parties should be wary of dumping of goods which may have a counter – productive effect on economies experiencing dumping due to increase in production by the dumping nation.

In furtherance of the above, there is also the challenge of getting all the 55 member states to sign, ratify and domesticate the AfCFTA. It is easier in letters but cumbersome in practical steps towards the realization of borderless inter – state African trade. The domestication mechanisms across various state parties may not be compatible with state legislations on trade integration and economic policy.

The economic performance of most African Regional Trade Agreements has not met the expectations of member countries, partly due to below-potential market integration that reflects high trade barriers. This is because when small markets are combined, regional integration leads to economies of scale. The AfCFTA seeks to remove language barrier by having translations of the signed agreement in Portuguese, English, French and Arabic languages.

5.0 The AfCFTA, Nigerian Companies and the Way Forward for the Nigerian Economy

In the words of Woolfrey, Apiko and Pharathathle, beyond concluding negotiations, ratifying the AfCFTA Agreement and establishing the AfCFTA institutions, member states will eventually need to

[13] Ogunyemi, I. O., 'African Continental Free Trade Area: Challenges and Opportunities for Small and Medium. Scale Enterprises in Nigeria' American Journal of Business. Economics and Management, (2017) 5(4), p. 30–37

implement the AfCFTA.[14] Effective implementation will require concerted effort by member states, many of whom do not have a good track record of implementing the trade agreements they have signed. In this wise, Nigeria needs to show leadership within the member states and especially in the West African sub – region.

One of the ways suggested by Cofelice is that for the AfCFTA to be result – oriented, there is a need to adopt a gradual and targeted approach to liberalization processes, in order to safeguard the most vulnerable groups of the population, especially in vital sectors such as food security among others.[15]
There must therefore be a feedback cohesion and strong synergy between the regulators of the Nigerian economy and our representatives at the AfCFTA Roundtable.

The National Assembly also has a huge role to play in ensuring not only the ratification of this vital agreement but to ensure legislative oversight in order for Nigeria to enjoy the fruits of the sacrifices it would make with the sphere of AfCFTA. In furtherance of the above, the National Assembly must be ready to remove legislative bottlenecks which may inhibit the implementation of the AfCFTA from our domestic laws without prejudice to the Nigerian economy.

Stakeholders such as the Federal Ministry of Foreign Affairs, Central Bank of Nigeria, Securities and Exchange Commission, Corporate Affairs Commission, Nigerian Customs Service, Nigerian Immigration Service, Nigerian Investment and Promotion Commission, Federal Competition and Protection Consumer Protection Commission, Nigerian Export – Import Bank (NEXIM), Standards Organisation of Nigeria among others have huge roles to play if the country is to drain the gains and grains of the AfCFTA. This paper suggests a One – Stop AfCFTA Shop with representatives drawn from the aforementioned agencies among others.

There is no gain saying the fact that AfCFTA will ensure that Nigerian companies earn foreign exchange which will help them access with ease, raw materials for better productivity. This will help our trade balance in a great deal as a nation. AfCFTA will boost import and create employment for our looming youthful population. This is because access to markets which are ordinarily inhibited by trade barriers will

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[14] Sean Woolfrey, Philomena Apiko and Kesa Pharatlhatlhe, Nigeria and South Africa: Shaping Prospects for the African Continental Free Trade Area. Discussion Paper 242 presented in February 2019. Available via https://ecdpm.org/wp-content/uploads/DP-242-Nigeria-and-South-Africa-Shaping-prospects-for-the-African-Continental-Free-Trade-Area.pdf Accessed August 30, 2020
[15] *Ibid*.

be unlocked and there will be higher profit for Nigerian investors due to wider market reach available to investors.

In effect, there will be cumulative increase in revenue earned by the various tiers of government. Agencies such as the Federal Inland Revenue Service and the Nigerian Customs Service will have to review the strategies for increased revenue generation occasioned by the implementation of the AfCFTA. The hospitality industry will also enjoy increase in patronage and this will boost the revenue base of the government.

Nigeria through the various legislations and ease of doing business policies such as the Finance Act 2020, Companies and Allied Matters Act 2020 and a host of other initiatives ought to move from not merely promulgating statutes to encourage economic development to improvement of critical infrastructure in the various sectors such as the electricity, transport, housing, tourism industries. Where these critical infrastructures are not provided, Nigeria will lag behind in the actualisation of the AfCFTA benefits. This is because Nigerian's industrial sector would not be able to meet up with the production demands of the African market. Developed economies in Africa such as South Africa, Egypt, Rwanda would take advantage of the AfCFTA and further develop their economics no matter the policy of inclusiveness put in place by the Regional and Continental blocs.

6.0 Conclusion

In order to increase trade flows both in existing and new products, the AfCFTA has the potential to generate substantial economic benefits for African countries. These benefits include higher income arising from increased efficiency and productivity from improved resource allocation, higher cross-border investment flows, and technology transfers. Besides lowering import tariffs, to ensure these benefits, African countries will need to reduce other trade barriers by making more efficient their customs procedures, reducing their wide infrastructure gaps, and improving their business climates.[16]

The highlighted benefits of the AfCFTA cannot be over emphasized. Suggestions have been offered in view of the identified challenges in implementing the AfCFTA. From the above, this paper shows the essence of having a Free – market – Restrictions among African member states. With the recent global pandemic occasioned by the outbreak of the coronavirus and looming global recession, a proper and systemic implementation of the AfCFTA will cushion the economic impact on African nations because

[16] https://www.imf.org/en/Publications/Staff-Discussion-Notes/Issues/2020/05/13/The-African-Continental-Free-Trade-Area-Potential-Economic-Impact-and-Challenges-46235. Accessed August 31, 2020

the strong economies will protect the weak and each member state will be protected where they are most vulnerable.