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FACULTY OF LAW

TRADE FACILITATION: A NECESSARY TOOL FOR ATTAINING THE INTENDED OBJECTIVES OF THE AFRICAN CONTINENTAL FREE TRADE AGREEMENT.

COURSE: LL.M (INTERNATIONAL TRADE AND INVESTMENT LAW IN AFRICA)

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DEDICATION

This thesis is dedicated to the Agyare-Dwomoh and the Attakora Dwomoh families whose immense contribution to my life cannot go unnoticed. May God bless them richly!

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LIST OF INTERNATIONAL AGREEMENTS

AfCFTA Protocol on Trade in Goods

Agreement Establishing the African Continental Free Trade Area.

Annex 3 (Customs Co-Operation and Mutual Administrative Assistance)

Annex 4 (Trade Facilitation)

Annex 8 (Transit)

Convention Regulating Inter-State Road Transportation between ECOWAS Member States

SADC protocol on trade in goods

Singapore Ministerial Declaration, WT/MIN(96)/DEC.

World Trade Organisation Agreement on Trade Facilitation

LIST OF ABBREVIATIONS

AfCFTA.....	African Continental Free trade Agreement
AfDB.....	African Development Bank
AICD.....	Africa Infrastructure country diagnostic
Art.....	Article
ATA.....	Admission temporaire
CAR.....	Central African Republic
CEMAC.....	Economic and Monetary Community of Central Africa
EAC.....	East African Community
EACCU.....	East African Community Customs Union
EATTFP.....	East Africa Trade and Transport Facilitation Project
ECOWAS.....	Economic Community of West African States
FAO.....	Food and agriculture
GATT.....	General Agreement on Tariffs and Trade 1994
GCC.....	Gulf cooperating council
GVC.....	Global Value Chains
HS.....	Harmonized Commodity Description and Coding system

JBP.....	Joint Border Posts
JIT.....	Just in Time
Kyoto Convention.....	Kyoto Convention on the Simplification and Harmonization of Customs Procedures
LDCs.....	Least Developed Countries
NAFTA.....	North American Free Trade Agreement
NCTIP.....	Northern Corridor Transport Improvement Project
OECD.....	Organisation for Economic Co-operation and Development
OSBP.....	One-Stop Border Post
PPP.....	Public Private Partnership
RTA.....	Regional Trade Agreement
SADC.....	South African Development Community
TEU.....	Twenty-Foot Equivalent Unit
UAE.....	United Arab Emirates
UEMOA.....	West African Economic & Monetary Union
UN/CEFACT.....	United Nations Centre for Trade Facilitation and Electronic Business
UNCTAD.....	United Nations Conference on Trade and Development
UNECE.....	United Nations Economic Committee for Europe
WCO.....	World Customs Organisation
WTO.....	World Trade Organisation

ABSTRACT

Upon the coming into force of the African Continental Free Trade Agreement (AfCFTA), it is estimated that intra-African trade will be boosted considerably which is in line with the AU agenda 2063 and which will lead, ultimately to regional integration.

Nonetheless, on the African continent, impediments to trade is a great challenge affecting trade.

With trade being the primary motive of the AfCFTA, there is a need for trade to ensue in the most favourable manner amongst the African countries. This calls for favourable trade facilitation measures tailored to the African continent which can ameliorate the impediments to trade on the continent. That formed the quest of the study.

It is observed in the study that the trade facilitation measures as spelt out in the protocols, specifically annexes 3, 4, and 8 which deals with customs, trade facilitation and goods in transit are only one sided- dealing with problems at the borders. Further, these annexes, especially annex 4 is heavily premised on the Trade Facilitation Agreement of the WTO.

In addressing this problem, the study sought to find out whether the trade facilitation measures in the annexes are sufficient in removing trade impediments in Africa. It also sought to ascertain whether there are appropriate forms of trade facilitation measures African countries can come up with under the AfCFTA of which will make the intra-African trade more efficient.

To provide a solution to this, the study took a discourse through the history of trade facilitation to ascertain how it emerged and the various forms it takes. A thorough analysis of the trade facilitation measures of the AfCFTA are also discussed with some comparisons being made with other international instruments already in force. Further, the efforts at trade facilitation by African countries are also analysed to see the gaps that needs to be filled. The problem of port infrastructure is identified as a real trade impediment and a thorough discussion is made on it with a comparative study being conducted to propose some practical measures on how African countries can go around it.

The study after the analysis concludes that the trade facilitation measures of the AfCFTA are not enough to eliminate the core trade impediments. It is recommended that the other trade

impediments such as infrastructure is also focused on to boost trading and to aid the AfCFTA obtain its intended objectives.

CHAPTER ONE

TRADE FACILITATION: A NECESSARY TOOL FOR ATTAINING THE INTENDED OBJECTIVES OF THE AFRICAN CONTINENTAL FREE TRADE AGREEMENT.

1.1 Background to the Study

Arguably, trading has become a bane in Africa. Whereas her sister continent Europe can boast as of 2019 as leading the exports in the manufacturing of goods and services as well as being the largest export market to about eighty (80) countries worldwide¹, it is perceived that Africa has close to nothing to show forth regarding world trade. Statistics posits that Africa has performed in a rather poor manner regarding its contribution to production on the larger plane. Several trade impediments exist on the continent to stifle trade.

These trade impediments may be removed through trade facilitation. Trade facilitation in a loose sense makes use of such policies and tools which cuts down all forms of costs and impediments concerning trade and trading activities. It involves any process or measures a country can adopt to ensure that trading is made easier and cost effective.

Trade facilitation in Africa becomes all the more necessary especially in the wake of the African Continental Free Trade Agreement (AfCFTA). The free trade area in Africa which forms part of the Agenda 2063 of the AU commenced definitively in 2012. At the 18th Ordinary Session of the Assembly of Heads of State and Government of the African Union in Addis Ababa, the delegates decided to form the African Continental Free Trade Area and the plan was to make same to be concluded by 2017. At the assembly, the leaders affirmed that the free trade area to be created is necessary to aid the improvement and the encouragement of intra-African trade such as is crucial for “sustainable economic development, employment generation and effective integration of Africa into the global economy”. The Action Plan on Boosting Intra-Africa Trade (BIAT) was also adopted at the session and the aim of this action plan is to put measures in place at growing African countries in trade with each other. The plan recognizes seven themes namely: trade policy, trade facilitation, productive capacity, trade related infrastructure, trade finance, trade information, and factor market integration.²

¹ https://europa.eu/european-union/about-eu/countries_en (accessed 9 May 2019).

² <https://au.int/en/ti/cfta/about> (accessed 10 May 2019).

The AfCFTA as has been intimated will boost intra-continental trade to about 52.3%³ and to double the intra-African trade by 2022 as well as give the continent a common voice on the global market.⁴ Investment is not left out wherein it is projected also that the AfCFTA will attract up to about \$4 trillion worth of investment.⁵

Trade Facilitation, BIAT, and the AfCFTA together seem a brilliant way to improve trading in Africa. However what poses as a core problem is the manner of trade facilitation adopted by the AfCFTA. The legal regime of the AfCFTA on trade facilitation aside being a repetition of international instruments such as the World Trade Organisation, Trade Facilitation Agreement (WTO TFA), does not entirely exhaust the real trade impediments on the continent begging for facilitation. This presents a challenge of which is feared may serve as a stumbling block in achieving the objectives of the AfCFTA- which is to encourage trade amongst African countries.

For the AfCFTA to be effectively implemented much more will be needed to enhance the facilitation of trade. There are many barriers to trade behind the borders which heavily impacts on trade in Africa beyond those spelt out in the agreements.

1.2 The Research Problem

Transactional costs in doing business in Africa are very high and they are high so much so that it is rated as a high-cost and a high-risk business environment.⁶ It is assessed that doing business in Africa costs about 20–40% more than engaging in business in other developing countries.⁷ Fundamental factors have existed since time immemorial to make trading on the African continent a chore rather than a lucrative one. Trade facilitation tools have become powerful arsenals in this field to rectify such anomalies which serve as impediments to trade. Trade facilitation in itself has

³ AK Bramdeo 'The AfCFTA: Its Potential Benefits and Impact'

http://unctad.org/meetings/en/Presentation/tdb65_2d_pres_AUBramdeo_en.pdf (accessed 11 May 2019)

⁴ International Trade Centre 'A business guide to the African Continental Free Trade Area Agreement' 2018 'ITC Geneva, TFPB-18.36.E' at 3.

⁵ A Azikiwe 'African Continental Free Trade Area: Prospects and Problems for Implementation' 2018

<https://www.pambazuka.org/printpdf/9883> (accessed 11 May 2019).

⁶ ML William 'The Business of Exporting: Transaction Costs Facing Suppliers in Sub-Saharan Africa' 23–24 April 2007 'Framework paper presented at the African Economic Research Consortium Collaborative Research Workshop on Export Supply Response Constraints in Sub-Saharan Africa Dar es Salaam, Tanzania'

<https://www.africaportal.org/publications/the-business-of-exporting-transaction-costs-facing-suppliers-in-sub-saharan-africa/> (accessed 11 May 2019).

⁷ World Bank 'World Development Indicators' 2005 <http://www.worldbank.org> (accessed 10 May 2019).

two facets- the narrower aspect and the broader aspects. The narrower aspect of it only focuses on the borders whereas the broader aspect of it focuses on the development of infrastructure and other trade problems away from the border. The AfCFTA trade facilitation legal regime focuses solely on the narrower aspect of trade facilitation- i.e. it focuses on how goods are to be moved at the borders and in transit as well as issues of customs only.

The problem this study seeks to address is whether AfCFTA needs a broader aspect of trade facilitation? If yes, what specific areas must be focused on?

1.3 Aims and Objectives of the Research

This research aims at exploring the potential need for the facilitation of trade under the AfCFTA to go beyond the border and customs rules (the narrower aspect). It is observed that most of the narrower rules on trade facilitation as currently adopted by the AfCFTA have already being enshrined in international instruments such as the WTO TFA. That is not to say that the WTO TFA as adopted by the African member nations of the WTO or the AfCFTA Protocol on Goods must be discarded or discredited nor its implementation undermined. This research is far from that since the evidence has indicated that the full implementation of the WTO TFA in countries also boosts trade and increases the returns countries obtain. It has been pointed out that anytime goods are delayed at a border for just a day, the cost on the product can rise averagely by about 0.8%⁸. This daily calculation shows how the prices of products can skyrocket when goods stay at the ports for several weeks running into months. Away from cost analysis, it is further estimated that when goods delay even for a day in transit, the delay reduces the volume of goods sometimes by a per cent. Additional administrative measures on the clearing of goods also have the propensity of adding about seventy kilometres to the total distance until it gets to the final market.⁹ These problems are dire to which a neglect of the WTO TFA will lead to disastrous consequences.

However and admitting the grave problems that exist at the borders that impede the facilitation of trade to which a legal framework has erupted to solve it, there are several other problems which

⁸ D Hummels 'Time as a trade barrier' 2001 'GTAP Working Paper No. 18 mimeo Purdue University' (accessed 14 May 2019).

⁹ S Djankov 'Trading on time' (2010) 92 *Review of Economics and Statistics* at 166.

also needs the attention of the legal framework to which if same are addressed will further cut down trading cost.

This research will explore the current regime of trade facilitation in Africa and the specific broader trade facilitation measures which are lacking the most and how they can be developed to ensure that the AfCFTA is effectively implemented.

1.4 Research Questions

In this study, it is argued that the legal framework of trade facilitation under the AfCFTA is only one sided and does not address other pertinent trade impediments on the continent. For the AfCFTA to be effectively implemented, the full extent of trade facilitation must be explored to reduce trade costs and improve trading.

The following questions will go for the jugular vein of the issue at hand:

1. What is the history of Trade Facilitation?
2. What has been the African Experience concerning Trade facilitation?
3. What is the efficacy of the current trade facilitation legal regime in Africa?
4. What sector needs trade facilitation the most and how can it be solved?

1.5 Significance of the Study

The study is significant both legally and economically to African countries and the AfCFTA trading area in general. The study reveals the danger of the AfCFTA repeating trade facilitation rules already in force at the multilateral level of which most of the AfCFTA members are already a part of. It further reveals what the AfCFTA will be missing out by neglecting the other side of trade facilitation which is the broader side of it in their trade. Again, the research brings to the fore, some specific areas of trade facilitation countries can focus on and how that can be done. The study again serves as an eye opener to academics and researchers on other trade facilitation measures which can be further researched on and analysed for the AfCFTA to focus on to achieve its intended objectives.

1.6 Literature Review

The usefulness of trade facilitation especially in Africa cannot be underscored. It's all the more crucial especially due to the numerous trade impediments that exist.

A learned author posits quite assertively that in a typical trade procedure there could exist sixty or more procedures before getting to the final consumer.¹⁰ The OECD noted that in each transaction of trade where a per cent is saved on that transaction, there is accrued a gain of US\$40 billion worldwide.¹¹ This points out the complexity of the trading arena to which makes imperative trade facilitation of all forms. Irrespective of this, the definition of Trade facilitation has not been uniform and most of the definitions available are contextual. Also, it is asserted that there is neither a standard definition nor policy for trade facilitation.¹² Hans-Michael further noted that on the international plane, the concept of trade facilitation was associated heavily with the WTO during the DOHA Ministerial Declaration.¹³ Grainger concurs with this notion and further indicates that trade facilitation is “receiving unprecedented attention and is at the heart of numerous initiatives within the customs world.”¹⁴ Again, according to Grainger, ‘The term “trade facilitation” is largely used by institutions that seek to improve the regulatory interface between government bodies and traders at national borders’¹⁵ The WTO defines it as “The simplification and harmonisation of international trade procedures’ where trade procedures are the ‘activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade’.”¹⁶ The United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), adds to the definition the requirement of payments to seal the facilitation.¹⁷ By including payment, it introduces the role financial institutions also play in trade facilitation. The United Nations Economic Commission for Europe (UN/ECE) defines it with a focus on the cutting down of cost as well as the difficulties encountered in trade-related transactions while maintaining that those are done in a transparent, efficient and in a predictable

¹⁰ A Grainger ‘Supply chain security: adding to a complex operational and institutional environment’ (2007) 1 *World Customs Journal* at 17.

¹¹ P Walkenhorst & T Yasui ‘Quantitative Assessment of the Benefits of Trade Facilitation in Overcoming Border Bottlenecks: The Costs and Benefits of Trade Facilitation’ 2009 <https://doi.org/10.1787/9789264056954-2-en> (accessed 14 May 2019).

¹²CE Bolhöfer ‘Trade Facilitation – WTO Law and its Revision to Facilitate Global Trade in Goods’ (2013) 2 *World Customs Journal* at 33.

¹³ W Hans-Michael & O Talke ‘Emerging Issues In European Customs Law’ (2008) 2 *World Customs Journal* at 12.

¹⁴ A Grainger ‘Customs and Trade Facilitation: From concepts to implementation’ (2008) 2 *World Customs Journal* at 17.

¹⁵ Grainger (n 14) 17.

¹⁶ http://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm (accessed 10 May 2019).

¹⁷ <http://tfig.unece.org/details.html> (accessed 14 May 2019).

manner to which all these must be based on such practices as are accepted internationally.¹⁸ The International Chamber of Commerce also analyses this concept from an angle of improvements in administrative measures when dealing with trade in goods internationally.¹⁹ Kafeero acknowledges the fact that the underpinnings and the definition of what trade facilitation entails often depends on the institution that formulates the definition. Nonetheless, the aim is to reduce the time and the associated costs of the trade process.²⁰

From the different definitions as seen above, it is argued that Trade facilitation covers different spectrums and this is asserted by Creck B, where it is indicated that the definition is not only limited to the procedures governing imports and exports but expands wide to cover even the modalities of transport and insurance.²¹ This brings in the concept of trade facilitation having a wider and a narrower view. Other authors maintain the same view of trade facilitation having a narrower and a broader view indicating that the narrower view address such issues that affects goods at the ports of countries whereas the broader spectrum takes cognizance of the problems within the broader picture such as transport, information technology, the regulations that affect trade within the trading area and even standards that goods are made to possess.²²

Rippel takes a bold view, while acknowledging that the notion of trade facilitation is coterminous with the institution that proffers it and its objective, by classifying those approaches of trade facilitation that relies only on the elimination of such barriers around borders as the classic view of trade facilitation.²³ Rippel further argues that the trade facilitation in our world today, however, has grown beyond the classic view and such pertinent issues such as “competitiveness, Physical

¹⁸ UN/ECE ‘Trade facilitation in a global trade environment’ 21 March 2002 ‘Forum on Trade Facilitation, Committee for Trade, Industry and Enterprise Development Report’ at 15.

¹⁹ WTO ‘Updated International Chamber of Commerce Recommendations for an Agreement on Trade Facilitation’ July 2007.

https://www.icc-portugal.com/images/documentos/comissao_duaneiro_facilitacao_do_comercio/Updated-ICC-recommandations-for-WTO-agreement-on-trade-facilitation.pdf (accessed 14 May 2019).

²⁰ E Kafeero ‘Customs and Trade Facilitation in the East African Community (EAC)’ (2008) 2 *World Customs Journal* at 63.

²¹ C Buyonge & K Irina ‘Trade Facilitation in Africa: Challenges and Possible Solutions’ (2008) 2 *World Customs Journal* at 41.

²² J Roy & B Shweta ‘Key Issues in Trade Facilitation’ (2005) ‘World Bank Policy Research Working Paper No. 3703’:

P Maria ‘Trade Facilitation and the EU-ACP Economic Partnership Agreements’ (2008) 23 *Journal of Economic Integration* at 518.

²³ B Rippel ‘Why Trade Facilitation is Important for Africa’ (2011) ‘27 Africa Trade Policy Notes.’

infrastructure, logistics and transport services”.²⁴ The assertion evidently concludes that for trade facilitation to be very effective in Africa and to cut down transactional cost drastically, the continent must not only be focused on how to remove the impediments at the ports and barriers but must by a regulatory framework address the broader aspect of trade facilitation to ensure a holistic approach to cutting down transactional costs.

No study has been conducted analysing the legal framework on trade facilitation under the AfCFTA to assess whether it’s sufficient to enhance the effective implementation of the agreement. In view of this gap, it is the aim of the study to assess the legal regime of trade facilitation under the AfCFTA, to look at broader trade facilitation measures not covered by the AfCFTA trade facilitation provisions and to discuss how AfCFTA countries may implement the broader measures of trade facilitation.

1.7 Research Methodology

This dissertation will make a thorough review of knowledge as they exist in the published journal articles and other forms of publications, in the textbooks, and any form of secondary data that exist on the said subject matter. Distinct emphasis will be placed on treaties as entered into by African countries. Prescriptive and other forms of analytical means of study will also be used in this work. Even though the research is a legal study, non-legal concepts will additionally be employed to effectively analyse the study.

The desktop form of research will be used predominantly.

1.8 Outline of Chapters

The dissertation will be composed of six chapters:

The first chapter shall comprise of the introduction, the background of the study, the aims and objectives, the problem statement and the research questions, the literature review, the research methodology and the outline of chapters.

The second chapter shall explore extensively, the historical antecedents of trade facilitation. It will trace trade facilitation from its earliest times and how it has been developed recently. Emphasis

²⁴ Rippel (n 23).

shall be placed on how it developed from medieval Europe through the Bretton Wood institutions, and how it has developed under the WTO, WCO and regional trade agreements.

The third chapter shall be primarily focused on the experience of African countries under trade facilitation arrangements.

The fourth chapter will discuss the current legal regime under the AfCFTA and it will demonstrate whether it is efficacious enough to boost intra-African trade.

The fifth chapter shall make a comparative study with a trade facilitation mechanism in a free trade arrangement outside the African continent.

The last chapter shall be dedicated to arriving at the conclusion and why the member states must take a second look at the measures of trade facilitation as discussed above. Recommendations shall also be made to member countries.

1.9 Delineation and Limitation of the Study

This research was undertaken between 01/08/2019 and 30/09/2019. It focuses on information relating to African countries and their sub-regions. The information provided for the African countries is limited to those provided for on the internet. Access to information on many African countries is difficult to come by hence limiting the information obtained about some countries.

1.10 Assumption Underlying the Study

The assumption on which this research is premised on is that a legal framework can be formulated concerning the broader trade facilitation measures and the African countries are willing to be committed to facilitate trade.

CHAPTER TWO

2.0 HISTORY OF TRADE FACILITATION IN INTERNATIONAL TRADE LAW

2.1 Introduction

As has been noted in the first chapter, the gravamen of this research is to find out effective trade facilitation measures which may be employed by countries to facilitate trade under the AfCFTA. With this backdrop, this chapter seeks to map out the journey trade facilitation has embarked on since medieval times to become what we have of it now. It is worth tracing the history to show what trade facilitation looked like and what it's currently looking like to provide a better understanding of the substantive provisions of the trade facilitation agreements. The history shall first be traced from medieval times. Thereafter the chapter shall discuss trade facilitation as exists under institutions recognized internationally namely, the World Trade Organisation and the World Customs Organisation. Lastly, it will then proceed to discuss trade facilitation on a regional level as exists under regional trade agreements.

2.2. The Development of Trade Facilitation in Medieval Times

Even though trade facilitation has gained a larger momentum in modern times, it has existed since time immemorial.²⁵ Its history is inextricably intertwined with that of trade liberalisation in the earliest times.²⁶ It may perhaps be as old as trading itself. Identifiable records of it perhaps trace as far back as in medieval Europe. Trade in those days began facing downturns. Prices in transporting goods were astronomical (especially transport on land). The traders only could afford to transport the luxurious goods of which the increase in transport prices increased the price of the goods. The effect of this was that the consumer bore the cost in the long run. The other goods which were the normal or perhaps the inferior goods could not bear the brunt of the astronomical prices in the transportation of it thereof and as such, they were merely sold in the local markets which rather made them uncompetitive. Nonetheless, over time, some improvements began to ensue. There began improvements in transportation infrastructure and improvements in the banking and the financial sector in general, to aid small scale investors to obtain capital to improve their trade. This boosted trade since prices of goods began to reduce and that ultimately led to the

²⁵ A Grainger 'Trade Facilitation: A Review' (2007) 'Working Paper, Trade Facilitation Consulting Ltd' at 1.

²⁶ Grainger (n 25) 12.

economic boom in the 9th century CE in Northern Europe.²⁷ This showed in the earliest times the role trade facilitation played in the reduction of prices in goods as well as to promote the trading environment in general.

The liberalization of trade continued unabated and around the 14th century CE, the liberalization had taken the form of liberalization of cross border operations.²⁸ Massive energy began to be exerted on ways of standardizing the quality of products to ensure that consumers across frontiers and traditions can enjoy the same or almost the same quality in the products from different territories. Treaties also began to emerge on how the different territories are to weigh and measure their products and the comparisons thereof. The towns with the markets then kept the standard weights and measurements which they used on their markets close to their city gates to ensure all seeking to patronize their goods can verify the weights first.²⁹ By the mid-14th century CE, these liberalization measures had begun aiding countries to trade with very distant partners as in the case of Italy which had begun trading with the Mongols.³⁰

Subsequently, states began protectionism. This was because some states began to feel some inequalities in the trading arena as the borders to trade began to be disintegrated. This led them to tighten their controls to hinder easy access to their markets by imposing tariffs, duties and such other protectionist measures.³¹ This then, however, meant that more measures of trade facilitation had to be called for. Trade facilitation continued as a result in different parts of the world but perhaps in a rather unregulated manner.

2.3 World Trade Organisation (WTO)

Before the WTO assumed the role of formalizing trade facilitation procedures, trade facilitation measures were already being pursued on different levels still within the trading arena. The notable institution that was championing this was the GATT. It was established in 1947 after the World War II and it was to act temporally in place of the international trade organisation which had not materialized due to the reluctance of the congress of the United States of America to ratify it. The

²⁷ M Cartwright 'Trade in Medieval Europe' 8 January 2019 <https://www.ancient.eu/article/1301/trade-in-medieval-europe/> (accessed 23 July 2019).

²⁸ Cartwright (n 27).

²⁹ Grainger (n 25) 13.

³⁰ Cartwright (n 27).

³¹ M Engman 'The Economic Impact of Trade Facilitation' 2005 'OECD Trade Policy Working Paper No 21'.

GATT and several of its committees were committed to cutting down red tapes which impeded trade heavily.

Overarchingly, the GATT came into being to solve the canker of protectionism as well as some states discriminating against some other states which was prevalent in no small measure in the 1930s and which was a great impediment to trade.³² The preamble of the GATT amongst other things mandated that countries who were under the GATT arrangements are to reduce substantially tariffs and other forms of barriers to trade. This meant that the GATT arrangements were not only going to reduce tariffs but all forms of impediments which can be identified to trading were going to be reduced drastically to ensure the trading environment is made plain. Such ways or methods of facilitating trade were captured under articles V, VIII and X of GATT.

Subsequent upon the formation of the GATT, the members sought for the establishment of a more permanent body which will possess its secretariat and that led to the formation of the WTO In 1995. The WTO has seen to the fall in average tariffs of which the records show that as of 2006 the average tariffs for industrial products of developed countries had fallen to 3.8%.³³ The success in the fall in tariffs made arguable sense that some more focus must be extended also to the non-tariff measures.

Convincingly, two other reasons have been advanced as spiralling trade facilitation by the trade negotiators. The first is that on the emergence of global value chains (GVC) of which called for a speedy need for effective trade facilitation in countries. Due to the increase in division of labour and production of a particular good across countries, it became expedient that the movement of the unfinished goods across the various countries for their completion was not impeded in any way.³⁴ The next factor is the Just in Time (JIT) factor. It is known that producers only order goods based on that as they need at a material point in time to save the cost of storage and possible spoilage. There is always thus, a real need for the goods as transported to be released as early as possible from the ports to prevent the manufacturing of the goods from being delayed.

³² G Appling & A Archer 'Creating the International Trade Organisation' (1998) 'D Moss Boston Harvard Business School.'

³³ WTO 'Tariffs: More Bindings and Closer to Zero' http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm2_e.htm#tariff (accessed 20 July 2019).

³⁴ K De Backer & S Miroudot 'Mapping Global Value Chains' (2014) 'Working Paper Series No 1677' at 4. <https://www.ecb.europa.eu/pub/pdf/scpwps/ecbwp1677.pdf> (accessed 20 July 2019).

Rightly so and triggered by these needs, non-tariff measures were placed on the agenda at the 1996 Ministerial conference in Singapore where they sought to consider such non-tariff items as trade facilitation, transparency in government procurement, investment and competition policies. In 2001 in Doha, those issues as added to the agenda in Singapore were adopted as part of the development agenda. Aside from trade facilitation, the other issues, however, did not see much light about two years later in Cancun. They came under much criticisms of which they had to be taken off the development agenda for only trade facilitation to be maintained. In 2004, specifically the month of August, the WTO members called for the adoption of what was termed the July-Framework wherein there had been a consensus to commence the negotiation of just one Singapore issue and that was trade facilitation. The first round of negotiations for the trade facilitation agreement commenced in 2004.³⁵

The negotiations for the trade facilitation agreement focused heavily on articles V, VIII, and X of the GATT to ensure that a more transparent and tedious free movement of goods across the ports is achieved. The mandate initially was to ensure that the negotiations will come up with a trade facilitation agreement which will clarify the said provisions of articles V, VIII and X of the GATT 1994. According to the World Trade report in 2015³⁶ the three provisions of the GATT as stated above had been in the GATT provisions since the 1940s without much change and has been transferred into successive GATT agreements yet its biting capacity within the trading schemes had been very minimal if not non-existent.³⁷ Again, the three provisions in the GATT 1994 were deemed to be outmoded within the contemporary trading settings and as such had rendered most of the meaning therein imprecise and obsolete.³⁸ More importantly, the scope of the provisions as intimated by the consensus of the members was that the provisions were unable to trigger commitment from the members.

Subsequently, there was a call for the broadening of the scope of the trade facilitation agreement negotiations to go beyond the three provisions of the GATT 1994 as was being considered and to include such provisions that will aid in the customs or such authorities in the various states responsible for the movement of goods to cooperate properly on matters governing other state

³⁵ WTO 'Trade Facilitation' 2006 http://www.wto.org/English/tratop_e/tradfa_e/tradfa_e.htm (accessed on 20 July 2019).

³⁶ https://www.wto.org/english/res_e/booksp_e/world_trade_report15_e.pdf (accessed 20 July 2019).

³⁷ World Trade Report (n 36) 40.

³⁸ World Trade Report (n 36) 40.

parties complying with customs as well as trade facilitation. Very key to the provisions in the Trade Facilitation Agreement is the implementation measures as was adopted. As noted earlier, the GATT provisions on trade facilitation could not trigger much implementation from the contractual parties due to the lack of commitments to them by the members. This time around, the negotiations took a different turn to ensure that the provisions employ both mandatory and best endeavour approaches to cater for the different strengths of economies amongst the contracting parties. The developed countries committed to provide aid to the less developed countries in the form of special and differential treatment to help them in implementing the provisions. It also allowed the countries to implement the provisions based on their time frames and based on their strengths. This is a far cry from what existed under the GATT provisions where no such variations were allowed and of which treated all countries the same irrespective of their economic viability.³⁹

The WTO Trade Facilitation Agreement was finally concluded in December 2013 at the Bali Ministerial Conference of the WTO after almost a decade of deliberation, advocacy and public education. The agreement took effect on the 22nd day of February 2017.⁴⁰ The agreement is recorded as the first multilateral agreement of its kind since the coming into force of the WTO itself.

2.4 World Customs Organisation (WCO)

As negotiations for the reduction of tariffs increased, there was also the need for customs procedures to undergo improvements too especially since customs activities are very fundamental to the movement of goods. Without them, goods cannot legally enter into the territory of a country. That called for a body to govern same internationally and to ensure the proper harmonization and implementation of the procedures. The WCO was established in 1952 as it was formerly known as the Customs Cooperation Council.⁴¹ As its name suggests, the WCO has been actively involved in the customs affairs of states. Its main aim has been to ensure harmonious cooperation as well as to strike a balance between trade facilitation (in relation to customs) and the legal regime in the

³⁹ World Trade Report (n 36) 41.

⁴⁰ WTO 'Trade facilitation, cutting "red tape" at the border' https://www.wto.org/english/tratop_e/tradfa_e/tradfa_introduction_e.htm (accessed 6 August 2019).

⁴¹ WCO 'What is Securing and Facilitating Legitimate Global Trade' <http://www.wcoomd.org/en/topics/facilitation/overview/customs-procedures-and-facilitation.aspx> (accessed 25 July 2019).

various states.⁴² Globally, the WCO play an unprecedented role in the standardization and simplification of customs procedures across its member countries and that's not only limited to the effective movement of goods across the borders but also in the implementation of structures that will raise income as well as compliance with the relevant legal framework for the country.⁴³ For the WCO when the customs processes of the various countries are simplified and harmonized, trade facilitation is also enhanced and that has been its core motive.

It is worthy to note that the WCO complements the WTO heavily with regards to trade facilitation. The institutions (i.e. WCO and WTO) were cooperating even before the WTO brought into force its TFA. The WCO was in charge of the management of two critical technical committees of two WTO agreements in relation to trade facilitation and these are the Agreements on the implementation of Article VII and that on the rules of Origin. Even regarding the drafting of the WTO TFA, the WCO was involved in the earlier works in providing such technical advice that led to the fruition of the agreement.

In its duty to enhance trade facilitation, it has come up with several legal instruments notable amongst them are the Kyoto convention of 1974 which later became the Kyoto Convention on the Simplification and Harmonization of Customs Procedures after it was revised and adopted in 2006, (to be referred to as the Kyoto Convention), the ATA⁴⁴ and Istanbul conventions, the Time Release Study as well as the customs convention on containers. The ATA convention aims at ensuring that goods are moved freely within territories without the payment of duties when the goods are there only for a temporal period.⁴⁵ It also aims at adopting such standard models for admitting papers temporarily- and that's the ATA carnet.⁴⁶ The time release study provides the framework for measuring and reporting the period which is used by the customs officials in the various countries to finally discharge the goods as has been imported by the trader. This instrument aims at ensuring that goods are not delayed at the ports. The customs convention on containers furthermore, provides for a framework to aid in facilitating the movement of containers in transit. The convention exempts the imposition of taxes or duties on containers which are imported to a

⁴² WCO (n 41).

⁴³ WCO (n 41).

⁴⁴ http://www.wcoomd.org/en/topics/facilitation/instrument-andtools/conventions/pf_ata_system_conven.aspx (accessed 20 July 2019).

⁴⁵ n 44.

⁴⁶ World Trade Report (n 36) 51.

territory temporarily of which it's to be exported to a different territory within three months. It further allows such containers to be free from producing its custom documents.

Of much importance is the Kyoto convention which enshrines key principles enhancing trade facilitation such as the openness and predictability of the activities of customs, ensuring that the goods declaration documents aren't cumbersome and are of a standard nature, simplifying customs procedures, ensuring the optimum use of information technology, reducing the customs controls to help with the rules being complied with, ensuring that there is coordination amongst the agencies at the borders⁴⁷ as well as ensuring that the playing field amongst traders is equal.⁴⁸

2.5 Regional Trade Agreements (RTA)

Regional Trade Agreements in a general sense are forms of treaties which are entered into by governments of different countries often within a geographical space under which they dictate to themselves the rules to govern their trading activities. Examples of RTA's are the North American Free Trade Agreement (NAFTA), and the African Continental Free Trade Agreement (AfCFTA).

RTA's may perhaps be a recent phenomenon and evidence of it perhaps can be traced from the 1970s. They, however, weren't as rapid as after the 1990s. An assessment of the respective periods indicates that from 1970 to 1990 only 11 RTA's were recorded whereas from 1990 to 2015, 244 RTA's were concluded.⁴⁹ The construct of the RTA allows it to harmonise and make the trade regulations of the participating member states consistent with each other which is the first step of trade facilitation. Due to the arrangements under the regional agreements, the countries liberalise their border restrictions and their rules of which grants easy access to the other countries within the RTA framework. In there, the countries negotiate and include such facilitation matters such as obtaining shared processes for the inspection of vehicles, documents regarding the transport of

⁴⁷ World Trade Report (n 36) 51.

⁴⁸ <http://www.wcoomd.org/en/topics/facilitation/overview.aspx> (accessed 25 July 2019).

⁴⁹ World Trade Report (n 36) 46.

goods, certifications and even recognizing controls mutually by the various countries to prevent different standards being exacted.⁵⁰

The statistics suggest that trade facilitation began rising within RTA's significantly in the 1990s. The reasons attributed to this rise has been three fold- first because of the general increase in the number of RTA's, the second, importantly, is the move of RTA's to address more pertinent issues beyond what is traditionally discussed at the multilateral level of which are a major concern to the members of the RTA's and the third is the prevalence of RTA's of which developing countries are part- the developing countries are noted to possess many impediments to trade.⁵¹

After 2004 when the WTO itself began negotiations for a trade facilitation agreement, countries became open to adding trade facilitation in the RTA's and as such RTA's within this period experienced much trade facilitation arrangements within it. Currently and due to their proliferation, it is estimated that almost all RTA's include trade facilitation.⁵²

Suffice it to say, the RTA's which cover trade facilitation only cover a small aspect of the WTO TFA perhaps, 1/5th of it. Again, the nature of trade facilitation under RTA's have been to cover the broader definition of trade facilitation and as such, it covers other matters and areas of trade facilitation not covered under the WTO TFA.⁵³ RTA's then are coming up with a trend where their trade facilitation are moving beyond the normal customs issues to focus on more general yet pertinent issues which affect trade. The RTA's that make the most use of the provisions of the WTO TFA are those of recent origins which are mostly concluded between developed and developing countries such as that amongst the EU, Columbia and Peru in 2011.⁵⁴

The use of the broader definition of trade facilitation by the RTA's as opposed to the WTO TFA enhances complementarity between the two bodies. This is because RTA's are often entered into to create more flexible rules of trade tailored to the specific needs of the countries at hand. The need for specific measures to meet the specific needs of the countries within the RTA explains

⁵⁰ Grainger (n 25) 36.

⁵¹ World Trade Report (n 36) 46.

⁵² World Trade Report (n 36) 46.

⁵³ N Neufeld 'Trade Facilitation Provisions in Regional Trade Agreements Traits and Trends' 2014 'Geneva: WTO Staff Working Paper ERSD-2014-01.'

⁵⁴ World Trade Report (n 36) 48.

why the RTA'S may go for such approaches to trade facilitation which are not covered under the WTO TFA but may be a great impediment within the region or amongst the trading partners.

2.6 Conclusion

The discourse above has shown that trade facilitation is not of a recent phenomenon and it's been pursued at various levels. The attempts by the various institutions at trade facilitation are not mutually exclusive of each other. They all depend on each other in their bid to remove the restraints on trade across the board. Every institution has its unique role and so has the RTA's.

Since RTA's are preferential agreements, and since the members enter into them specifically to solve problems which are not being pursued at the multilateral level, it makes more sense to see that the RTA's have trade facilitation measures beyond those provided at the multilateral level. The members in the RTA identify their specific need and seek to solve it with the RTA. It makes it more understandable for RTA's to pursue broader measures of trade facilitation whiles at the multilateral level, the narrower one which is more generic and universal is pursued. Each region or group of countries have their unique problem and they are best suited to solve it in their RTA'S. RTA's then must not only focus on the narrower aspect of trade facilitation since they are being addressed at the multilateral level and most of their countries are a part of it already. The broader and more specific measures must be pursued in RTA's to complement those being done at the multilateral level.

CHAPTER THREE

3.0 THE AFRICAN EXPERIENCE WITH TRADE FACILITATION AND ITS OUTCOMES

3.1 Introduction

The previous chapter asserts that RTA's are best suited to focus on broader and peculiar measures of trade facilitation to complement the trade facilitation measures at the multilateral level.

This chapter addresses the experience African countries have had in respect of facilitating trade as well as the implementation of the various trade facilitation agreements and arrangements that exists at the multilateral level, in free trade agreements and customs unions. The analysis shall be made with respect to two multilateral institutions namely the WCO and WTO. Further analyses shall be made under sub-regional free trade areas one chosen from each sub-region of the continent i.e. the East, West, South and central parts. The free trade areas to be assessed are the South African Development Community (SADC), the East African Community (EAC), the Economic Community of West African States (ECOWAS) and the Economic and Monetary Community of Central Africa (CEMAC). Concluding remarks are then made to summarise the experience.

3.2 Experience of Trade Facilitation with Customs

Over the years, the WCO has engaged in several works concerning customs in attempts at simplifying procedures at customs to ensure goods are moved in an expeditious manner. The UNCTAD posits for instance that in a normal transaction at the customs, there will be involved about 30 entities with about 40 different documents being issued.⁵⁵ It's for problems as these and more that the WCO introduced conventions like the Kyoto Convention as revised in 2006. Notwithstanding these conventions of which most African countries are signatories to, custom issues are still raging in Africa. In a commission for Africa report, it was stated that the customs in most African countries need urgent reforms. Some countries such as Ethiopia may need about 30 days just to clear goods with customs.⁵⁶ The experience of African countries on trade facilitation

⁵⁵ UNCTAD 'Trade and Development Report' 2004 <http://www.unctad.org> (accessed 13 August 2019).

⁵⁶ Commission for Africa 'Our common interest' March 2005 http://www.commissionforafrica.info/wp-content/uploads/2005-report/11-03-05_cr_report.pdf at 53 (accessed 13 August 2019).

in respect of customs shall be looked at under 3 subheadings namely the relationship between customs and businesses, corruption, and infrastructure.

3.2.1 Relationship between Customs and Businesses

In a report by the Business Action for Improving Customs Administration in Africa on 20 Sub-Saharan African countries from three sub regions namely East Africa, West Africa and South Africa covering the specific countries of Kenya, Uganda, Tanzania, Zambia, Benin, Côte d'Ivoire, Ghana, Togo, Nigeria, Botswana, Mozambique and South Africa, it was indicated that the relationship between businesses and the customs are generally antagonistic. The parties are unable to have a dialogue on issues or procedures. The unavailability of the dialogue also means that when some regulations at the ports are changed, consultations are not made with the business people or the importers and as such, they are often in the dark about what ensues there. The report cites Kenya as the only exception found where therein, the Kenyan customs officials go the other way by inviting the business representatives to have meetings with them and deliberate over issues.⁵⁷ Information about custom operations or processes whether in hard copy forms or soft copies were practically found to be non-existent. The help centres which had been established for these purposes were found in the study to be practically useless. This makes access to vital information extremely difficult which all adds up to the stifling of trade. La Cote and Burkina Faso were the only countries which were found to be using their customs website of which some information could be obtained from there.⁵⁸ Most of these countries assessed also present further problems in terms of the assessments where the customs prefer to overlook green channel assessments and also insist on a 100% verification. They even prefer to ignore results of electronic scanning and always go in for other forms of verification which further delays time. Kenya is cited as an example where notwithstanding the introduction of container scanners the time goods take to leave the ports have not reduced since the officials have adopted their forms of verification in addition to the electronic ones which only delays the movement of the goods.

To augment the above assertion, an interview was conducted across the sub-regions with respect to similar issues and it was confirmed that West African country customs officials have the least engagements with businesses as compared with those in the Eastern and Southern African

⁵⁷ Buyonge & Irina (n 21) 41.

⁵⁸ Buyonge & Irina (n 21) 44.

countries. The customs administrations in West Africa are likened to paramilitaries. The customs cooperation and at that the facilitation of the movement of goods by the customs are better in the more regional economic blocs which are closer integrated such as COMESA, the SADC, the West African Economic & Monetary Union (UEMOA) and the East African Community Customs Union (EACCU).⁵⁹

Some countries have however begun introducing some technological advancements in their customs operations such as to simplify procedures for businesses and one worthy of mention is Egypt which incorporated the single window system into its customs operations and has further merged about twenty-six approvals into only five. ⁶⁰The single window concept has also been introduced by Ghana.

3.2.2. Corruption

A major canker in customs operations is that of corruption. It includes the acceptance of bribes to do that which is illegal or sometimes that which is legally within the mandate of the official to do. At the borders, the duty to be paid on goods are sometimes quite high and that commences the breeding of corruption.⁶¹ Persons in an attempt to circumvent the lawful amount to be paid and the process to be followed collude with the customs officials in that regard. The term, “Facilitation Fee” which is the amount of money the officials demand just to do their lawfully mandated duties also stifles the movement of goods. Entities who refuse to pay such amounts face the danger of their goods remaining at the ports for extra number of days.

The Bribe Payers Index of 2008 rank customs in Africa as the third most corrupt entity with a ranking of 3.6 relative to the total mark of 5.⁶² The customs in countries such as Ghana, Nigeria, Senegal and South Africa ranked 4.1, 4.3, 4.2, and 3.0 respectively. Across other countries on the continent, the corruption at the customs is not any better. Research conducted all paint a gloomy

⁵⁹ Buyonge & Irina (n 21) 44.

⁶⁰ C Buyonge ‘Emerging Issues on the Role of Customs in the 21st Century: An African Focus’ 1 World Customs Journal 58-59.

⁶¹ Buyonge (n 60) 59.

⁶² Transparency International ‘Bribe Payers Index’ 2008.
https://www.transparency.org/whatwedo/publication/bribe_payers_index_2008 (accessed 31 July 2019).

picture. In a survey conducted, one of the merchants stated on a rather sad note that “You bribe Customs and prosper or you stick to the ethical principles and perish”⁶³

An explanation for the increase in corruption may be related to the low levels in automation at the ports such that more human hands man transactions as opposed to automated machines. In a research conducted comparing bribery between Maputo in Mozambique and the Durban port in South Africa, it was shown that the bribery of customs officials at the Maputo port accounted for about 80% of all bribery incidences in Maputo whereas only about 10% was recorded in Durban. The reasons ascribed to this phenomenon by the author were that the automation of the systems, the sanctions in place and the monitoring of the processes in Durban were very high as compared with that in Maputo.⁶⁴

In a further research on the effects of corruption at customs on trade in goods, it showed that often the bribes paid are in respect of some specific goods. They can escalate the total cost of shipping a 20 ft container by about 14%. The amount paid as a bribe in respect of the good inevitably leads to a colossal increase in the salary of the official by about 600%.⁶⁵ Three effects were identified as being the aftermath of corruption and these are the “diversion effect”, the “revenue effect” and the “congestion effect”⁶⁶. With the diversion effect, goods are delayed in being transported since traders in their attempt to escape the corruption at certain ports take winding routes which are often indirect and longer and that affects the time goods take to arrive. This ensues in such instances where the good in question is very vulnerable to corruption of which the firm seeks to escape the corruption at the port. It may travel several kilometres in addition just to escape it. The example is given of the port of Maputo where the good will travel sometimes double the distance only to escape corruption. The research shows that the cost of re-routing could be up to 3 times the amount being demanded as a bribe, nonetheless some firms still seek to escape it and bear the higher transport cost due to the uncertainty that exists at the corrupt ports. The revenue effect analyses

⁶³ Kafeero (n 20) 63.

⁶⁴ S Sequeira & P Macchi ‘The Importance of Soft Transport Infrastructure: Customs Officials in Maputo versus the Port Operators in Durban’ 2009 *Afrique Contemporaine* 230(2).

⁶⁵ S Sequeira & S Djankov ‘On the Waterfront: An Empirical Study of Corruption in Ports’ December 2008 https://www.cgdev.org/sites/default/files/archive/doc/events/2.10.09/Sequeira_Corruption.pdf (accessed 25 July 2019).

S Sequeira S Djankov & S Mullainathan ‘The Long Way Around: the Real Consequences of Corruption in Ports’ 2007 <https://pdfs.semanticscholar.org/d104/6d5d9dab167e042581d452e52c935dd40401.pdf> (accessed 25 July 2019).

⁶⁶ Sequeira & Djankov (n 65).

the effects of the corruption on the tariff amounts that would have been realized from the goods wherein it is estimated that as high as 20% of tariff on the good can sometimes be lost to corruption. The congestion effect in effect leads to a creation of congestion at the various ports due to the indirect routes some goods may take. The congestion often ensues at the few ports where the level of corruption may not be as high as the others. The effect is further realized on the various transport systems too as a result of the re-routing.⁶⁷

3.2.3 Infrastructure

Aside corruption as elaborated above which causes the congestion effects at the ports, another raging cause of congestion at the ports which ultimately slows down trade is the lack of infrastructure. It is generally the case that the continent is faced with the problem of natural ports such that even the artificial seaports that do exist have been developed in a very poor manner.⁶⁸ Arguably, the last few decades have had an increase in goods that transit the ports in Africa. However, the containerization at the ports hasn't been able to match up with the increase in the movement of goods and same with the inland transport systems which largely also remain undeveloped.⁶⁹ Other authors have argued conversely that the problems of congestion as a result in the delay in the movement of the goods is purely an issue of mismanagement at the ports and inefficiency other than the mere lack of infrastructure.⁷⁰ Nonetheless, the authors still do concede that the lack of infrastructure is also a relevant cause to the delay in the movement of goods as they cite the poor railway system in most countries in Africa as an example. Cote D' Ivoire is noted as an exception yet with a very expensive railway system.⁷¹

It is noted that governments of the various countries have begun taking steps to enhance the infrastructure situation. Much of it shall be discussed in chapter 5.

3.3 The Experience of African Countries under the WTO TFA- Implementation

The WTO TFA is comprised of three main sections. The first section is made up of 12 substantive articles which contain provisions to ensure the quick movements of goods as well their clearance

⁶⁷ Sequeira & Djankov (n 65).

⁶⁸ UNCTAD 'Assessment of a seaport land interface: an analytical framework' 2004 https://unctad.org/en/docs/sdtetlbmisc20043_en.pdf (accessed 2 August 2019).

⁶⁹ World Bank 'Reshaping Economic Geography' 2009 'World Development Report' 1 at 179.

⁷⁰ Buyonge & Irina (n 21) 41.

⁷¹ Buyonge & Irina (n 21) 41.

within a territory. It also seeks to clarify the three trade facilitation provisions of the GATT 1994 namely articles V, VIII and X.⁷²

The section contains about 36 trade facilitation measures. In further breaking it down, about 238 notifiable items may be found.⁷³ The second section contains the unique feature of special and differential treatment where under this multilateral agreement, countries are given the option to designate how they are going to implement the provisions of the agreement. Developing and least developed countries (LDCS) are given the opportunity to designate how they will implement the provisions as spelt out in the first section by indicating or categorizing them as Category A, B or C respectively. When a developing country categorises a provision under Category A it means that the country is willing to implement the provisions therein upon the coming into force of the Agreement. An exception, however, is created for LDCS where when they notify under category A, there are still given a year after the coming into force of the agreement to implement. Under this category 117 member states have notified their commitment.⁷⁴

A notification under category B means that upon the coming into force of the agreement, the member will need a transitional period first before the implementation of those provisions can commence. A total of 87 member states have also notified their commitment under this category.⁷⁵

Lastly, a notification under category C means that the member will implement the provisions after a said transitional period as that of category B but will further require assistance be it technically or financially.⁷⁶ Further, flexibilities are given to developing and least developed countries including an ability to shuffle between categories B and C⁷⁷, an extension of the transitional period and an exemption from being subjected to the dispute settlement mechanism over a period depending on the category of notification.⁷⁸ This category has also obtained a total of 76 notifications from member countries.⁷⁹

⁷² https://www.wto.org/english/tratop_e/tradfa_e/tradfatheagreement_e.htm (accessed 31 July 2019).

⁷³ <https://www.tfadatabase.org/notifications/regional-breakdown> (accessed 31 July 2019).

⁷⁴ <https://www.tfadatabase.org/> (accessed 31 July 2019).

⁷⁵ Buyonge & Irina (n 21) 41.

⁷⁶ T Wiggill 'North-South corridor Africa's main vein' 2015 <https://infrastructurenews.co.za/2016/01/15/north-south-corridor-africas-main-vein/> (accessed 6 August 2019).

⁷⁷ Art 19 of the WTO TFA.

⁷⁸ Art 20 of the WTO TFA.

⁷⁹ Buyonge & Irina (n 21) 41.

The third section contains provisions on institutional arrangements wherein a committee on trade facilitation is set up and members are further mandated to set up national committees concerning trade facilitation of which ensure that the provisions are implemented domestically and trade is facilitated.⁸⁰ The committee on trade facilitation at the WTO provides the member states with a platform where they can consult on such issues which are related to the TFA and the promotion of its objectives.⁸¹

3.3.1 Notification of the WTO TFA by African Countries

At the WTO, African countries make about 26% of the total WTO membership⁸² of which 45 members out of the 54 members of the African continent are members of the WTO. The African countries currently not members but are observers are Algeria, Equatorial Guinea, Ethiopia, Libya, Sao Tome and Principe, Somalia, Sudan and South Sudan. Eritrea is the only country in Africa which is not a member of the WTO nor an observer.⁸³ This, in essence, means that only about 14% of African countries are not members of the WTO.

Upon the coming into force of the WTO TFA, all countries are to notify the WTO of the category they seek to implement. The Implementation of the provisions of the agreement can proceed from there. The member states on the African continent have generally notified under all the available categories as well as some not notified at all. Under category A, member states from Africa have a notification percentage of 29%. Under category B 15.3% is recorded as notified whereas under category C, 25.8% is recorded. Those that haven't notified in any of the categories at all amounts to 29.8%.⁸⁴

The table below indicates as of 2019 the various sub-regions in Africa and how they have indicated their notifications.⁸⁵

⁸⁰ Article 23 of the TFA.

⁸¹ Article 23(1)(2) of the TFA.

⁸²P Onyema 'Africa and the WTO: Strengthening Africa's Participation in International Trade' 2018 <https://africaindevelopment.com/2018/04/17/africa-and-the-wto-strengthening-africas-participation-in-international-trade/> (accessed 31 July 2019).

⁸³ https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (accessed 31 July 2019).

⁸⁴ <https://www.tfadatabase.org/notifications/regional-breakdown> (accessed 31 July 2019).

⁸⁵ <http://www.tfadatabase.org> (accessed 31 July 2019).

Sub-Region	Category A	Category B	Category C	Yet to be notified
Sub-Saharan Africa	27.92717087	17.31092437	16.55462185	38.20728291
Northern Africa	56.862745098039	1.1204481792717	28.571428571429	13.445378151261
Eastern Africa	20.648259303721	10.684273709484	28.811524609844	39.855942376951
Southern Africa	38.27731092437	24.327731092437	26.008403361344	11.386554621849
Western Africa	24.264705882353	13.340336134454	26.207983193277	36.186974789916
Central Africa	23.686974789916	17.489495798319	21.271008403361	37.552521008404

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These figures may be comparable with Africa's trading partner Europe where it has an 86.7% notification under category A, an 8.8 % notification under category B, a further 4.3% of category C and a 2.7% of those not yet notified.

Inasmuch as the notification figures of Africa aren't the worst in terms of notifications globally, the continent can do better and be committed more to ensuring it implements the TFA since its assessed benefits are massive.

3.4 The Experience of Trade Facilitation under Sub Regional Bodies

Trade facilitation under the various sub-regional bodies in Africa have taken different forms and the sub-regional bodies to be analysed under this subsection are the EAC, CEMAC, SADC and ECOWAS.

3.4.1 EAC

A major objective of the EAC regarding trade facilitation has been to improve infrastructure to lessen the impediment on the movement of goods across the region. This birthed the Northern

Corridor Transport Improvement Project (NCTIP) as well as the East Africa Trade and Transport Facilitation Project (EATTFP). These two projects have the sole aim of working at lowering transportation cost across the sub-region and to ensure the increase in trade amongst the members of the community. These projects have led to the massive improvements on the Northern corridor of which have led to massive trade improvements in Tanzania, Kenya and Uganda. Other countries within the EAC such as Burundi, Rwanda, Sudan and the eastern parts of the Democratic Republic of Congo have also benefitted from the spill over effects.⁸⁶ Historically, the corridor which runs from Mombasa to Kampala is fraught with heavy traffic with the traffic increasing each year by 10%. Also, about 90% of the trade from Uganda and about 70% of that from Rwanda goes through that corridor.⁸⁷ The improvement in it to lessen the traffic expedites the trade of these countries.

Furthermore, the EATTFP and the NCTIP have advanced transactions at ports and the Mombasa Port is a port worthy to be cited. The initiatives have undertaken such projects of which have cut down drastically the movements of goods after they arrive at the ports. Road transits between Mombasa and Kigali have further been cut down and even the time spent in moving goods between Kenya and Uganda has been reduced drastically. Trading in goods now faces the propensity of being spiralled down due to the efficient road network which has reduced transport costs.⁸⁸

3.4.2 CEMAC

The CEMAC comprises of 6 states. These are Gabon, Cameroon, the Central African Republic (CAR), Chad, the Republic of the Congo and Equatorial Guinea. Two notable trade facilitation projects will be considered under this sub regional body and they are the CEMAC Transit-Transport Facilitation Project and the CEMAC - Transport-Trade Facilitation.

The CEMAC Transit- Transport Facilitation Project aims at facilitating trade within the sub region by the improvement of 5 sectors across the sub region namely the Roads and highways sector, Railway, the General transport sector, the Ports, waterways and shipping sector as well as customs.

⁸⁶ World Bank 'World Bank Annual Report' 2009
<http://siteresources.worldbank.org/EXTAR2009/Resources/6223977-1252950831873/AR09Complete.pdf> (accessed 25 August 2019).

⁸⁷ World Bank (n 86) 32.

⁸⁸ World Bank (n 86) 32.

The road sector will benefit the most from the project by receiving an improvement of up to about 61%.⁸⁹ Hitherto the conception of this project, the CEMAC sub region encountered several challenges with respect to trade. Intra-regional trade was at its worst- recording just about 5% of trading amongst members.⁹⁰ The poor transport system in general, connecting the member states was identified as a factor. The cost associated with transporting goods to CEMAC countries especially the landlocked ones were very exorbitant. The delays associated with transportation only exacerbated the cost. For example, the movement of a 20-foot container may take about 5 weeks to move from a port in Lagos to Chad. This can further cost about 4,500 US dollars which is about four times the amount that it will cost for goods to move from Europe to Douala. This ordinarily should not be so. It results in increasing the prices of basic goods by about a third.⁹¹ When compared with the movement of goods in a country like Rwanda over the same distance from its port, it's realized that those goods rather have lower costs. This is due to the presence of the East African Corridors on which the goods journey on.⁹² Again a journey from Douala to N'Djamena which should not exceed 7 days via a train sometimes take about 21 days when its transported over the sea along the same route.⁹³ That points to the necessity of an efficient transport system.

The aim of the project then is to improve the infrastructure to reduce the delay in transport and those of logistics including the time spent in clearing at the ports, and customs inefficiencies. It is further to ensure connectivity to the landlocked countries within the sub-region.

This trade facilitation project is estimated to provide road transport connectivity to about 9 million people living in Northern Cameroon and the Central African Republic. It is further estimated that the transit period will be reduced by about twenty per cent.⁹⁴

The CEMAC Transport Trade Facilitation which is another ongoing project within the CEMAC to facilitate trade is the Transport Trade facilitation which focuses heavily on the Douala/Bangui and Douala/Ndjamenas corridors. The facilitation project aims at focusing heavily on the

⁸⁹ Project Information Document 'Report No: AB1178'
<http://documents.worldbank.org/curated/en/323561468192233718/pdf/CEMAC0PID0May031.pdf> (accessed 3 August 2019).

⁹⁰ Project Information Document (n 89) 2.

⁹¹ Project Information Document (n 89) 3.

⁹² Project Information Document (n 89) 2.

⁹³ Project Information Document (n 89) 3.

⁹⁴ World Bank (n 86) 32.

transportation sector to provide a continuous link to the landlocked countries within the sub-region in order to access the port of Douala.

3.4.3 SADC

Trade facilitation within the SADC region with respect to infrastructure hasn't been too successful. Most of the trade facilitation policies largely remain on paper and in advocacy without much having been implemented. The protocol on trade of the SADC provides for the facilitation of trade.⁹⁵ It mandates the members to adopt such measures as are necessary to ensure that the processes for trading are simplified. The annex to the protocol which governs specifically trade facilitation is annex III and its objective is to ensure there is cooperation amongst the member states so they can simplify the trade procedures for intra-trade to be boosted.⁹⁶ It further advocates that the members are to adopt such measures which will cut down the cost of trading.⁹⁷

Notwithstanding these trade facilitation measure requirement in the protocol on trade in goods, Costs in trade within the region is still very high. As of 2015, the cost of moving a 20ft container between Lusaka in Zambia and Durban in South Africa which are only neighbouring countries via the sea was between USD 5000 and USD 8000. Having regard to the same cargo, when it is shipped from Durban to Japan, it will cost only about USD 1500.⁹⁸ Road transport hasn't had much attention as a means of facilitating trade.

A trade facilitation measure with success within the region is a bilateral agreement between two SADC countries to establish a one-stop border post and that is the one-stop border post (OSBP) at Chirundu on the Zambia-Zimbabwe border. It is a major step of trade facilitation within the region which shall be discussed.

The preamble to the agreement indicates inter-alia that the establishment of the border is to ensure that the delays at the borders of the two countries as a result of stoppage will be reduced drastically. This will ensue by the merging of the border controls of the two countries at each border point in both countries. The creation of the one-stop border further aims at the parties sharing in each

⁹⁵ Art 14 of the SADC protocol on trade in goods.

⁹⁶ Art 2 to Annex III of the SADC protocol on trade in goods.

⁹⁷ Art 3 to Annex III of the SADC protocol on trade in goods.

⁹⁸ World Bank (n 86) 32.

other's border control infrastructure as they exist already and further to reduce the number of documentation that are required at borders to ease movement of goods.

The Chirundu-One-Stop-Border-Post is a single border mechanism between the Republic of Zimbabwe and Zambia. It brings to bear the workings of several agencies at the borders of the two countries of which it aims at reducing the stoppage of vehicular movements for several checks. The two countries have cooperated such that they both have officials at the border of each other. When the documents of a vehicle travelling are verified at one end of the border, the vehicle can travel into the territory of the other without stoppage. Therefore, the entry of goods destined for Zimbabwe from Zambia are subjected to checks only at the Zimbabwean border and vice-versa. The border brings into work several agencies of the two countries such as the immigration, the customs, the revenue authorities, the Sanitary and Phytosanitary Agencies, the health agencies and others alike.⁹⁹ The coming together of all these agencies allows for checks to be done at a single instance further preventing stoppage for checks along the journey.

3.4.4 ECOWAS

Upon the formation of the ECOWAS free trade area, not much has been done about trade facilitation. Some resulting factors for the lack of trade are the similarity in production (where most countries are into primary production of goods and the importation of manufactured goods)¹⁰⁰ across the sub-region and the marginal difference in the economic wherewithal of countries within the sub-region prevents the members of the ECOWAS from trading amongst themselves.¹⁰¹ They rather prefer to trade nationally or with international counterparts.

Concerning to trade facilitation, an area of prime focus across the sub-region is that of transport. Currently, the transportation network within ECOWAS is one of which member countries must have a relook at. As indicated by FAO 2015, the existing transport systems are outmoded and are

⁹⁹ SADC 'Draft Guidelines for Coordinated Border Management: A Practical Guide on Best Practices and Tools for Implementation' August 2011
https://www.sadc.int/files/7613/7415/0086/SADC_Coordinated_Border_Management_Guidelines_-Aug_2011.pdf
(accessed 15 August 2019).

¹⁰⁰ K Karaki & E Verhaeghe 'Understanding ECOWAS Trade Policy and Trade Facilitation: Advancing economic integration one hurdle at a time' 'ECDPM. Maastricht: ECDPM.'

¹⁰¹ J Bossuyt 'Political economy of regional integration in Africa: The Economic Community of West African States (ECOWAS) Report' (2016) 'ECDPM. Maastricht: ECDPM.'

based on primitive transport infrastructure.¹⁰² This has made the movement of goods within the sub-region very expensive yet inefficient as compared with other parts of the continent and the world at large.¹⁰³ Viljoen posits that the transport of a vessel costs US\$2.43 per kilometre. It rates about 1.5 the amount as will cost in South Africa. The cost of transport in landlocked countries is extremely high and same accounts for about forty-five percent in the increase in the prices of imports as compared with a global average of 5.4%.¹⁰⁴

A few trade facilitation measures have been launched over the years but those recognizable are The Axle Road Harmonisation policy (2012) and the Joint Border Posts programme (2003). These two also haven't seen much with respect to implementation.

The Axle Road Harmonisation policy of 2012 stems from the Convention Regulating Inter-State Road Transportation between ECOWAS Member States of 1982. The convention in an attempt to safeguard the roads which are used for trading activities pegged a limit on the vehicular weight at 11.5 tonnes.¹⁰⁵ The implementation of this rule never saw the light of which led in 2012 to the passing of the supplementary act relating to the harmonisation of standards and procedures for the control of dimensions, weight and axle load of goods vehicles. This act is to serve as a complement to the existing law on axle regulation and to introduce measures in which the act will be implemented by member countries. That hasn't been successful over the few years. Ghana was perhaps the only country that began implementing but was forced to put a halt to it since it's as an inequity on its part to implement the act whereas the other countries do not comply with it.¹⁰⁶ That puts her at a disadvantaged position. It has been noted that the implementation of the act on the axle road will be very difficult because of factors such as corruption of those supposed to enforce the standards¹⁰⁷ and even the collusion that exists between the vehicle drivers and those to enforce the law.¹⁰⁸

¹⁰² FAO 'Agricultural Growth in West Africa: Market and Policy Drivers' (2015) 'Co-published by the African Development Bank and the Food and Agriculture Organisation of the United Nations Rome.'

¹⁰³ USAID 'Impact of Road Transport Industry Liberalisation in West Africa' February 2012 'Final Report'.

¹⁰⁴ W Viljoen 'Transportation costs and efficiency in west and central Africa' Discussion paper March 2016.

¹⁰⁵ Art 4 of the Convention Regulating Inter-State Road Transportation between ECOWAS Member States.

¹⁰⁶ Karaki & Verhaeghe (n 100) 7.

¹⁰⁷ USAID (n 103).

¹⁰⁸ C Saana 'Cross Cutting Issues - Political Economy, Poverty, Informality and Gender' (November 2015) 'ATWA Stage 1 Report: Part 3' http://www.saana.com/wp-content/uploads/2015/03/4-ATWA-Stage-1_Part-3-PEA-and-Poverty_Final.pdf (accessed 15 August 2019).

The Joint Border Post (JBP) was initiated to enhance the movement across border in the sub-region.¹⁰⁹ This was to be achieved through the reduction of processes at the borders. The ECOWAS came up with this initiative in 2003 after it had been started by the UEMOA in 2001 when the UEMOA had identified about 11 border posts of which to enhance processes there.¹¹⁰ As noted by Saana, the processes only remained on paper as the proposed simplification of the processes couldn't be effected. The interconnection by the different customs officials of the various countries also couldn't achieve its implementation.¹¹¹ This also led to the coming into force of a supplementary Act in 2013 which was to ensure that processes are developed to facilitate uniformity at the various borders.

The implementation of the supplementary act is in force albeit at a snail's pace. As of 2015, The JBP of Ghana and Togo as well Benin and Niger was in operation. Those of Nigeria and Benin, Benin and Togo, Gambia and Senegal are underway whereas as those of Ghana and Cote d'Ivoire, Guinea and Mali and Ghana and Burkina Faso haven't commenced at all.¹¹²

The JBP has been completed between Togo/Ghana and Benin/Niger, but the JBP between Nigeria/Benin, Benin/Togo, and Gambia/Senegal are still under construction and the JBP between Ghana/Cote d'Ivoire, Guinea/Mali, and Ghana/Burkina Faso have yet to be built.¹¹³ It is further noted that with those already completed there still exists problems with the post. For instance, with that of Burkina Faso and Togo it was noted that the Interfaces for the parties to share such vital information wasn't fully put in place and that caused them to become white elephants.¹¹⁴

3.5 Conclusion

As discussed above concerning implementing the trade facilitation agreements, for instance, it is noted that the high infrastructural cost that comes with the implementation of trade facilitation makes some countries unable to fully implement them. For others, the human resource cost to be incurred in achieving the benefits of trade facilitation is not worthy to undertake. Worse yet, others are of the view that the whole concept of trade facilitation together with its measures are not in

¹⁰⁹ Karaki & Verhaeghe (n 100) 7

¹¹⁰ C Saana 'Introduction and Context' November 2015 'ATWA Stage 1 Report: Part 1'.

¹¹¹ Saana (n 110) 22.

¹¹² Karaki & Verhaeghe (n 100) 7-8.

¹¹³ Karaki & Verhaeghe (n 100) 8.

¹¹⁴ JICA 'Innovative Approaches for Accelerating Connectivity in Africa - One Stop Border Post (OSBP) Development' (2014) 'Background paper for High Level Side Event at the 1st TICADV Ministerial Meeting' at 10.

line with their policies and they do not serve the peculiar problems and challenges those countries face. This has made it a bit more daunting for such countries who already possess acute resources to channel those resources to ensure trade facilitation is implemented.

Currently and as it stands, to implement the already existing trade facilitation agreement has become a challenge for many African countries. At this stage, therefore, and for purposes of the AfCFTA, further restating the provisions in these agreements on trade facilitation will not make the implementation of them any better for African countries.

Having regard to infrastructure, it is seen that the free trade areas facilitate it best other than at the multilateral level. The research above showed that some of the regions i.e. the EAC and perhaps CEMAC are making some efforts to boost the transport infrastructure. However other regions like ECOWAS and SADC are lagging. It's at least encouraging to know that some efforts are at least in place although at a snail's pace. The AfCFTA must place a focus of facilitating infrastructure development to add up to those already done or underway by the sub-regional bodies.

CHAPTER FOUR

4.0 AFCFTA TRADE FACILITATION LEGAL FRAMEWORK

4.1 Introduction

The previous chapters brought to light the strides in trade facilitation by African countries and more importantly the infrastructural developments in place in terms of transport. As it's trite, movement of goods are heavily premised on transport and regulations governing the transportation of the goods.

This chapter seeks to analyse the legal measures of trade facilitation under the AfCFTA by way of summarising the key provisions in the trade facilitation rules as well as the institutions to be set up to ensure the enforcement of same. The chapter also seeks to ascertain whether the trade facilitation measures provided in the AfCFTA are sufficient to facilitate trade in Africa. The conclusion is provided thereafter to summarise that which has been discussed in the chapter as well as to make recommendations.

4.2 Annex 3 (Customs Co-Operation and Mutual Administrative Assistance)

Annex 3 currently is the leading trade facilitation measure within the AfCFTA legal arrangement concerning customs. Generally, it affords state parties a legal framework to simplify and harmonise their laws on customs through the use of recognizable international standards as adopted by such international bodies as the WCO and the WTO.¹¹⁵ Rightly so, the scope of this trade facilitation measure is provided for in article 2 of the annex as ensuring that the customs authorities cooperate amongst each other as well as mutually assist each other. This is to be done by ensuring that the customs rules adopted by individual state parties are those which are commonly recognised by other state parties to make compliance easier.¹¹⁶ The cooperation is also to be achieved by the establishment of such institutional arrangements at various levels to ensure the compliance and enforcement of the customs regulations. The parties are to mutually assist each other also through the use of their resources and competence for inter alia the observance of the laws on customs in

¹¹⁵ International Trade Centre (n 4) 23.

¹¹⁶ Art 2(1)(a)(i) of Annex 3.

their respective countries, for the prevention of offenses on customs, and generally for the facilitation of the customs processes.¹¹⁷

The annex is broadly categorized into 5 parts. The first part is on harmonisation of customs tariffs amongst member states. The second part requires the harmonization valuation systems by state parties. The third part also requires state parties to simplify and harmonise their customs processes. The fourth looks to the exchange of information by the state parties and the last part encourages technical cooperation amongst the state parties.

4.2.1 Category on Harmonisation of Customs Tariffs

According to the International Trade Centre, state parties in compliance with Annex 3 on customs tariffs are to adhere to the provisions in the WCO Convention on the Harmonized Commodity Description and Coding system (HS) when classifying their goods in their national tariffs.¹¹⁸ The Annex provides in article 3 that the state parties in applying the HS must ensure that the heading and sub-heading to be used are exactly those of the HS. They are permitted no derogation thereof whether in respect of adding to or modifying that as provided for in the HS.¹¹⁹ States are further mandated to adhere to the general rule as used in interpreting the HS¹²⁰ as well as to adhere to the numerical sequence of the HS.¹²¹ An exception may be created for state parties by the council of ministers concerning the duty on states to apply the HS. However, the council of ministers will only create that exception when it has satisfied itself that any such exception it seeks to create for the state party will not serve as a hindrance when the state parties seek to compare their customs tariffs.¹²² Notwithstanding, the parties are given some leeway to make some textual adjustments only on the grounds of making it compatible with its domestic laws.¹²³

Furthermore, there is a duty cast on state parties concerning the publication of their export and import trade statistics as they conform to the HS. They may, however, be excluded from publishing

¹¹⁷ Art 2(2) of Annex 3.

¹¹⁸ International Trade Centre (n 4) 23.

¹¹⁹ Art 3(2)(a)(I) of Annex 3.

¹²⁰ Art 3(2)(a)(ii) of Annex 3.

¹²¹ Art 3(2)(a)(iii) of Annex 3.

¹²² Art 3(1) of Annex 3.

¹²³ Art 3(3) of Annex 3.

same when they are granted an exemption perhaps due to issues of national security or confidentiality.¹²⁴

4.2.2 Harmonisation of Valuation Systems

The harmonisation of how goods are valued across board is very crucial especially because of consistency and transparency. The state parties under article 4 resolve to come up with their unique system of valuation of which they shall use to value their goods. Such a system will be based on three principles namely non-discrimination, transparency and uniformity.¹²⁵ As posited by the international trade centre, the state parties are to harmonize their customs systems based on the Agreement on Implementation of Article VII of the GATT (Agreement on Customs Valuation, 1994).¹²⁶

4.2.3 Simplification of Customs Processes

According to article 5, the state parties are to ensure that the customs processes for the transits, exports and imports as well as the accompanying documentation adopted within their territories are based on international standards, guidelines, regulations¹²⁷ and such principles that encourage the facilitation of trade legitimately.¹²⁸ Such standards include the Revised Kyoto Convention and the WTO TFA.¹²⁹

Another means of simplifying the customs processes is through the automation of the process. Within this era of the fourth industrial revolution, processes are made faster through technology. Within the confines of the annex, the use of advanced data processing systems by contracting members are encouraged under article 6. The state parties are to ensure that they first and foremost establish data systems technologically of which they are to incessantly ensure they are being upgraded. This is to ensure that the cooperation amongst them in terms of data transmission, as well as facilitation in general, isn't impeded.¹³⁰

¹²⁴ Art 3(2)(b) of Annex 3.

¹²⁵ Art 4 of Annex 3.

¹²⁶ International Trade Centre (n 4) 23.

¹²⁷ Art 5(1)(2)(a)&(b) of Annex 3.

¹²⁸ Art 5(2)(c) of Annex 3.

¹²⁹ Art 5(2)(a) of Annex 3.

¹³⁰ Art 6(1) of Annex 3.

The member states are encouraged to further ensure that their customs authorities interconnect their computer and information systems with respect to the clearing of goods.¹³¹ It further encourages the states to adhere to the standards as adopted by the WCO.¹³²

4.2.4 Exchange of Information

The exchange of information amongst the state parties is very crucial for several reasons namely, to prevent congestion at the ports, to verify information as provided at the port in one country, to ensure state parties are up to date with the customs laws and regulations in other countries and to prevent crime.¹³³

Regarding the exchange of information to prevent congestion at the ports, article 7 admonishes the state parties to send across all relevant information in advance to prevent congestion at the ports. This requirement is to the effect that when goods or even persons are moved from one port, by the time they arrive at the other port, all the relevant information would have been sent across for the necessary processing to be done in time so as to prevent situations where the goods would have arrived yet clearing cannot be done which often leads to a waste of time. The exchange in advance can be done manually or electronically.¹³⁴

Again, and regarding the verification of information as provided in one port, Article 9 mandates the state to provide all the necessary assistance in terms of furnishing a party with all forms of information as required under the law when there is a doubt as to the veracity of any export or import declaration. The provision of the information by the state need not be limited only to that as requested specifically.¹³⁵ This is however subject to the confidential rights as recognized under the domestic law.

Moreover, in article 12 there is a recognized need for the member states to exchange information where there is a change in any of their laws or processes (which includes duties) on customs,¹³⁶ where the information is needed to prevent, investigate or suppress a custom crime¹³⁷ or where the

¹³¹ Art 6(2)(b) of Annex 3.

¹³² Art 6(2)(a) of Annex 3.

¹³³ Art 12(1) of Annex 3.

¹³⁴ Art 7(1) of Annex 3.

¹³⁵ Art 9(1) of Annex 3.

¹³⁶ Art 12(1)(a) of Annex 3.

¹³⁷ Art 12(1)(b) of Annex 3.

information is generally needed for implementation purposes.¹³⁸ The list, however, isn't exhaustive.¹³⁹

In furtherance to the requirement of exchanging information in respect of crimes, the annex provides elaborately for same under article 8. The state parties, therefore, are mandated to exchange information on what amounts to a prohibited good within its territory of which cannot be imported. This is to ensure that other state parties do not export such goods into their territory.¹⁴⁰ In the event the states are neighbouring countries, they are to cooperate in this respect by sharing information about their customs offices as are situated along the border.¹⁴¹ For purposes of these exchanges concerning customs offenses, state parties are to execute them in accordance with the WCO's international convention on mutual administrative assistance for the prevention, investigation and suppression of customs offences (Nairobi Convention of 1977).¹⁴²

4.2.5 Technical Cooperation

The last category of the Annex looks to the technical cooperation of state parties. Article 11 admonishes states to engage in such training sessions amongst themselves,¹⁴³ exchange resources (whether scientific, professional and technical information)¹⁴⁴ and even staff members of each other's customs.¹⁴⁵ The states again must aid each other by providing the necessary support be it with respect to modern customs processes¹⁴⁶ or to implement trade facilitation measures in general.¹⁴⁷

4.2.6 Institutions

Aside the trade facilitation measures spelt out under annex 3 it also creates a subcommittee on trade facilitation, customs cooperation and transit.¹⁴⁸ It will be made up of members from the state

¹³⁸ Art 12(1)(c) of Annex 3.

¹³⁹ Art 12(1)(d) of Annex 3.

¹⁴⁰ Art 8(2)(a)(b) of Annex 3.

¹⁴¹ Art 8(2)(c)(i) of Annex 3.

¹⁴² International Trade Centre (n 4) 23.

¹⁴³ Art 11(1)(a) of Annex 3.

¹⁴⁴ Art 11(1)(c) of Annex 3.

¹⁴⁵ Art 11(1)(b) of Annex 3.

¹⁴⁶ Art 11(1)(d) of Annex 3.

¹⁴⁷ Art 11(1)(e) of Annex 3.

¹⁴⁸ Art 13(1) of Annex 3.

parties as designated and its functions will be determined either by the committee on trade in goods or by the annex.¹⁴⁹

4.3 Annex 4 (Trade Facilitation)

The provisions of trade facilitation under this annex seek to achieve two broad purposes namely- the simplification of imports, exports and transits¹⁵⁰ and the expedition of moving, clearing and releasing goods including those transiting in the territory of countries.¹⁵¹ The parties are further encouraged under the annex to apply international standards to their imports, exports and transit procedures¹⁵² as well as technological knowhow.¹⁵³ The use of technology includes making documentation available online as well as their submission¹⁵⁴.

The trade facilitation provisions in this annex have been argued as being heavily premised on the WTO TFA.¹⁵⁵ This subsection shall analyse the provisions of annex 4 in comparison with the WTO TFA and demonstrate the parts of which the annex 4 departs or fully includes the WTO TFA.

4.3.1 Publication

Article 4 of Annex 4 requires of member states to publish information promptly with no form of discrimination amongst the member states of which they must also be easily accessible by all stakeholders.¹⁵⁶ The information to be published includes information that describes the processes and steps to be followed by an importer or an exporter¹⁵⁷ as well as their accompanying documentation¹⁵⁸, the laws and guidelines¹⁵⁹ relating to importation, exportation and the transiting of goods in the territory,¹⁶⁰ and the applied rates,¹⁶¹ fees and charges¹⁶² in relation to imports and

¹⁴⁹ Art 13(2) of Annex 3.

¹⁵⁰ Art 2(a) of Annex 4.

¹⁵¹ Art 2(b) of Annex 4.

¹⁵² Art 16 of Annex 4.

¹⁵³ Art 17 of Annex 4.

¹⁵⁴ Art 17(2)(a) & (b) of Annex 4.

¹⁵⁵ International Trade Centre (n 4) 23

¹⁵⁶ The stakeholders include the member states, those involved in trading and any other person who may be interested.

¹⁵⁷ Art 4(1)(a) of Annex 4.

¹⁵⁸ Art 4(1)(b) of Annex 4.

¹⁵⁹ Art 4(1)(n) of Annex 4.

¹⁶⁰ Art 4(1)(c) of Annex 4.

¹⁶¹ Art 4(1)(d) of Annex 4.

¹⁶² Art 4(1)(e) of Annex 4.

exports. It also requires member states to publish information on how goods are classified or valued¹⁶³, the requirements relating to rules of origin,¹⁶⁴ prohibited exports, imports and transits,¹⁶⁵ penalties,¹⁶⁶ processes for reviews and appeals¹⁶⁷ and the administration of tariff quotas,¹⁶⁸ any agreement the country may have with another country on imports, exports and transit¹⁶⁹ and how to contact their enquiry points¹⁷⁰.

A more relevant distinction between the Annex 4 and the WTO TFA in the requirement to publish information is the duty as cast on the member countries. Under the WTO TFA, the duty to publish the required information is a mandatory one with the use of “shall” in its opening statement.¹⁷¹ However, under Annex 4, member states are required to publish the information to the best of their capabilities as it uses the language “to the extent possible”¹⁷². The difference in obligations as argued by the International Trade Centre represents the disparity in priorities at the WTO level and the AU level. Before the coming into force of the WTO TFA, the African ministers made it clear where their priorities in terms of trade facilitation lay and those included that on improvement in infrastructure and improving trade capacities.¹⁷³ Thus with this priority in mind, the members of the AfCFTA also members of the WTO opted for a commitment under Annex 4 which will be lesser than their commitment at the WTO level.¹⁷⁴

4.3.2 Enquiry Points

Article 5 is an institutional requirement and it mandates the state parties to have enquiry points. The enquiry points aim to provide “reasonable answers”¹⁷⁵ to enquiries concerning the information

¹⁶³ Art 4(1)(f) of Annex 4.

¹⁶⁴ Art 4(1)(g) of Annex 4.

¹⁶⁵ Art 4(1)(h) of Annex 4.

¹⁶⁶ Art 4(1) (i) of Annex 4.

¹⁶⁷ Art 4(1) (j) of Annex 4.

¹⁶⁸ Art 4(1)(l) of Annex 4.

¹⁶⁹ Art 4(1)(k) of Annex 4.

¹⁷⁰ Art 4(1)(m) of Annex 4.

¹⁷¹ Art 1.1 of WTO TFA.

¹⁷² Art 4(1) of Annex 4.

¹⁷³ African Union ‘Conference of the African Union Ministers of Trade’ 24– 25 October 2013 https://au.int/sites/default/files/newsevents/workingdocuments/14525-wd-declaration_on_wto_en_0.pdf (accessed 10 August 2019)

¹⁷⁴ International Trade Centre (n 4) 24

¹⁷⁵ Art 5(2) of Annex 4.

which must be provided under article 4. The enquiry points must deliver the information as needed to the party within a reasonable time.

This provision is substantially similar with that under the WTO TFA save the fact that the WTO TFA under article 1.3 qualifies the obligation on state parties with “within its available resources”. Thus the state is only obligated to establish the enquiry points in accordance with its resources. Under the Annex 4 however, the mandatory language of “shall” is used of which states must comply without qualification.

4.3.3 Advance Rulings

An advance ruling is defined under article 1 as “a written decision provided by a State Party to an applicant prior to the importation of goods covered by the application that sets forth the treatment that the State Party shall provide to the good at the time of importation”.¹⁷⁶

State parties under article 6 must ensure that when an applicant submits a request for an advance ruling, it will honour that request in time before the applicant imports the goods into the country.¹⁷⁷ Again the person seeking the advance ruling must ensure that the application is seised with every detail that will be needed by the state to ensure it issues the written decision.¹⁷⁸ Furthermore, a person may only request for an advance ruling in respect of two concerns namely: the origin of the good and the tariff classification of the good.¹⁷⁹ Again the state can further issue an advance ruling on any preferential treatment the good in question may qualify for, the quota or tariff rate quota a good may be subject to, matters on country of origin labelling or such waivers the good may be entitled to enjoy.¹⁸⁰ When it is issued, it is potent for not less than 6 months after it’s issued.¹⁸¹ The advance ruling will only derogate from this rule only when the basis on which the ruling was made changes. Again under sub rule 8, when the state revokes it at any time, it must provide reasons for the revocation. When the basis for the grant of the advance ruling was false, the state can revoke it and give it a retroactive effect. When the state declines to issue it, it must provide the applicant with reasons why it did so.¹⁸² How to apply for the ruling, for how long it is valid and how long it

¹⁷⁶ Art 1 of Annex 4.

¹⁷⁷ Art 6(1) of Annex 4.

¹⁷⁸ Art 6(1) of Annex 4.

¹⁷⁹ Art 6(2) of Annex 4.

¹⁸⁰ Art 6(3) of Annex 4.

¹⁸¹ Art 6(6) of Annex 4.

¹⁸² Art 6(5) of Annex 4.

will take to obtain the ruling must all be published by the state.¹⁸³ The state has the liberty to publish the advance rulings except that those parts that are confidential must be taken out.¹⁸⁴ The advance ruling is binding everywhere on the territory.¹⁸⁵

The provisions on advance ruling in the WTO TFA and annex 4 are substantially the same.

4.3.4 Pre-Arrival Processing & Electronic Payment

Pre-arrival processing is provided for under article 7. It mandates state parties to set up such procedures which will allow importers to submit their documents and all other requirements as will be needed to release the goods before the goods arrive. The aim of this is to ensure that even before the goods imported arrive at the ports, the clearing can begin so there will be no delay in releasing the goods when they arrive. A corollary to this is expedited shipment as provided under article 14.

Further in article 8, states are to make procedures available which will take care of e-payments with regards to imports or exports. However, this requirement will perhaps depend on the capability of the state party and how practicable it will be in the circumstances.

These are also requirements of states under the WTO TFA and with electronic payments, both regimes (WTO TFA and Annex 4) requires states to make such procedures available only to the extent practicable.¹⁸⁶

4.3.5 Release of Goods before Final Clearance

Sometimes, the goods at the ports suffer damage and destruction due to delays which arise from determinations of how much tariffs are to be paid and other administrative duties. To forestall that, Annex 4 makes provision for the release of goods even when all the final clearance processes haven't been fully satisfied. The member states are therefore to maintain such processes through which importers can have their goods released to them in the event the computation of the duties and charges to be paid are delayed.¹⁸⁷ The state may before the release of the goods in such circumstances require that the party pays any amount that has been determined as being due and

¹⁸³ Art 6(7) of Annex 4.

¹⁸⁴ Art 6(11) of Annex 4.

¹⁸⁵ Art 6(10) of Annex 4.

¹⁸⁶ Art 7.2 of WTO TFA.

¹⁸⁷ Art 9(1) of Annex 4.

with those not determined, that party must provide an amount which will serve as a guarantee.¹⁸⁸ The guarantee may include a potential amount to be paid when a customs offence is suspected to have been committed.¹⁸⁹ The guarantee must however not exceed such amount as are often required by the state in respect of duties and taxes in respect of such goods.¹⁹⁰ This measure is substantially the same under the article 7.3 of the WTO TFA.

4.3.6 Risk Management, Post Clearance Audit and Publication of Average Release Times

The movement of goods in, out and through a country are always on the increase and that always poses a daunting task on the customs officials to facilitate the movement of the goods as well as to apply such measures as will be able to detect offences and other issues as fraud.¹⁹¹ Thus there is the need for the imposition of a risk management measure to determine which goods must be examined and to what extent so that the need to detect offenses and malpractices do not impede the facilitation of trade. Article 10 of Annex 4 requires that state parties (to an extent possible) are to adopt such risk management controls where consignments are categorized as high risk or low risk. With those which are low risk, much controls shall not be applied to them to ensure their release are not delayed.¹⁹² Much controls must, however, be placed on those goods that are high risk.¹⁹³ The application of the risk management system, however, must be done as to avoid arbitrariness or discrimination.¹⁹⁴

To further expedite the process of releasing goods, Annex 4 mandates states to maintain post clearance audit systems to safeguard compliance with customs laws.¹⁹⁵ The results as obtained from the post clearance audit may be used in the risk management as required under article 10.¹⁹⁶

¹⁸⁸ Art 9(2) of Annex 4.

¹⁸⁹ Art 9(4) of Annex 4.

¹⁹⁰ Art 9(3) of Annex 4.

¹⁹¹ UNCTAD 'Technical Notes on Trade Facilitation Measures' 2011 'UNCTAD/DTL/TLB/2010/1 Geneva: United Nations' at 61.

¹⁹² Art 10(3) of Annex 4.

¹⁹³ Art 10(3) of Annex 4.

¹⁹⁴ Art 10(2) of Annex 4.

¹⁹⁵ Art 11(1) of Annex 4.

¹⁹⁶ Art 11(4) of Annex 4.

Lastly, states are also to make available the time goods are released on an average periodically.¹⁹⁷ How the average release time is measured must be done per the capacity of the state.¹⁹⁸ These measures are substantially the same under Article 7.4.5 & 6 of the WTO TFA.

4.3.7 Authorised Operators

In furtherance of trade facilitation, state parties are to ensure authorized operators receive extra trade facilitation aids in their dealings with goods.¹⁹⁹ If that cannot be achieved, the state party can equally afford them the normal customs processes as are afforded all other operators with no special measure afforded them.²⁰⁰ Authorised operators are not specifically defined in the annex but it can be gleaned from the article as those operators who meet such laid out criteria by the state. The criteria for qualification as an authorized operator will be based on whether an entity complies or does otherwise with the state's procedures.²⁰¹ It shall further include the financial solvency of the entity,²⁰² and the supply chain security²⁰³. The state is prohibited from maintaining such a criterion which will result in discrimination amongst the operators or to suppress the activities of small and medium scale operators.²⁰⁴ This measure is substantially the same under Article 7.7 of the WTO TFA.

4.3.8 Perishable Goods

The annex places a premium on perishable goods. Perishable goods are defined as “*goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions*”.²⁰⁵ So long as the due requirements have been satisfied by a party, perishable goods must be released with no delay.²⁰⁶ Even in exceptional instances, they must be released outside the normal working hours of the authorities in charge of releasing it.²⁰⁷ A cardinal rule with dealing with goods by the customs authorities in the countries is that priority must be given

¹⁹⁷ Art 12(1) of Annex 4.

¹⁹⁸ Art 12(2) of Annex 4.

¹⁹⁹ Art 13(1) of Annex 4.

²⁰⁰ Art 13(1) of Annex 4.

²⁰¹ Art 13(2) of Annex 4.

²⁰² Art 13(3)(c) of Annex 4.

²⁰³ Art 13(3)(d) of Annex 4.

²⁰⁴ Art 13(4)(a) & (b) of Annex 4.

²⁰⁵ Art 1 of Annex 4.

²⁰⁶ Art 15(1) of Annex 4.

²⁰⁷ Art 15(1)(b) of Annex 4.

to perishable goods when any bulk of goods are to undergo examinations.²⁰⁸ The member states or the importer may arrange for the storage of perishable goods while they are pending release. The storage facilities should, however, be those that are approved by the authorities.²⁰⁹ This is also a measure of trade facilitation under article 7.9 of the WTO TFA.

4.3.9 Single Window

In order to cut down a lot of movement with respect to documentation and to ensure that processes regarding documentation of importation, transiting and exportation of goods are simplified, Annex 4 encourages member states to adopt the single window system. The Single window provides an avenue for traders and transporters to submit and obtain information and documents at one entry point to fulfil all regulatory requirements in relations to the importation, transiting or exporting of goods.²¹⁰ When parties submit the documents via the single window unless under exceptional circumstances, they won't be mandated to go through the documentation again with the national authorities.²¹¹ Article 10.4 of the WTO TFA provides for a similar trade facilitation measure.

4.3.10 Documentation

Aside the processes for imports, exports and transits being homogenous, the annex requires that the documentation associated with them thereof must be uniform.²¹² Differentiations may be permitted but it must be in respect of a category of goods, their form of transport or their risk management.²¹³ Within those categorizations, however, there must be uniformity. To ensure effectiveness with respect to releasing goods, reduction of time, the cost associated with complying, trade restrictiveness and the prevention of redundancy, there must be constant reviews of the existing documentation and import, export, transit procedures.²¹⁴ This measure is substantially the same as that provided for in article 10.7 of the WTO TFA.

4.3.11 Fees, Penalties and Charges

²⁰⁸ Art 15(2) of Annex 4.

²⁰⁹ Art 15(4) of Annex 4.

²¹⁰ Art 1 of Annex 4.

²¹¹ Art 18(2) of Annex 4.

²¹² Art 20(1) of Annex 4.

²¹³ Art 20(2) of Annex 4.

²¹⁴ Art 20(3) of Annex 4.

When a state party seeks to impose any form of charge which is not a customs duty, regard must be given to Articles II, V and VII of the GATT.²¹⁵ The state must desist from calculating such amounts on an ad valorem basis and the amount must always be a true representation of the services rendered with respect to that import, export or transit.²¹⁶ The state must further ensure that the amounts in question are not being used as a protectionist measure in respect of their own local goods.²¹⁷ To ensure transparency, until the list of the fees are published they cannot be applied.²¹⁸ The amounts must be reviewed constantly for further cutting down.²¹⁹

Concerning penalties, it must always be imposed only on offenders of customs laws of which such penalties must be proportionate to the found breach.²²⁰ The offender is also entitled to an explanation in writing from the authorities on the nature of the breach and how the penalty was arrived at.²²¹ Mitigation factors must always be employed when a person informs the authorities of his/her breach before being found out.²²²

4.3.12 Custom Brokers, Pre-Shipment Inspection Entities and Border Cooperation

Upon the coming into force of the annex, states can no longer require as a matter of law the compulsory use of a customs broker.²²³ If it seeks to use them for any purpose, the state must then make it known to the secretariat and attach measures regarding their use.²²⁴ Pre-shipment inspection officials are also not required under the annex.²²⁵ Further, the annex mandates the cooperation of border authorities of the member states.²²⁶ These measures are also substantially the same as those provided for in article 10.5.6 & 7 of the WTO TFA.

4.4 Annex 8- Transit

²¹⁵ Art 21(1) of Annex 4.

²¹⁶ Art 21(1) of Annex 4.

²¹⁷ Art 21(1) of Annex 4.

²¹⁸ Art 21(2) of Annex 4.

²¹⁹ Art 21(3) of Annex 4.

²²⁰ Art 21(4) & (5) of Annex 4.

²²¹ Art 21(7) of Annex 4.

²²² Art 21(8) of Annex 4.

²²³ Art 23(1) of Annex 4.

²²⁴ Art 23(2) of Annex 4.

²²⁵ Art 24 of Annex 4.

²²⁶ Art 25 of Annex 4.

4.4.1 General Overview

Under this annex the state parties make a guarantee that when goods are transported through their countries, where their countries aren't the final destination, it will grant them the freedom to do so. By doing so, the state shall not examine (except where some irregularity is suspected)²²⁷ nor impose duties or tariffs on such goods however where some services are rendered to the transiting cargo, it can make a charge of that amount. The transit of goods here are only in respect of transport by road.²²⁸ It shall also refrain from discrimination of all forms.²²⁹ Transit traffic will enjoy the benefits of these provisions only under 4 conditions.²³⁰

The first condition is when its operation is by a licensed carrier. The licensing must be done in accordance with the laws of the place of the residence of the operator. Licensing can only be obtained when the cargo and its transport have been examined under article 4 and when the authorities are satisfied that the applicant within the last three years hasn't committed any serious offence.²³¹

Secondly, it will enjoy the benefit when it's transported by such means as has the approval of the customs office at the point of departure and it's given a certificate. Any form of transport used in transit must always obtain its licensing in accordance with its national authority. Before the cargo and its carrying transport begins its journey it must be examined as to whether it has followed all the technical requirements as required in appendix II of the annex.²³²

Thirdly the traffic must have a guarantee. Any transit of goods within the AfCFTA arrangement must have a customs bond and a surety arrangement.²³³

Lastly, the traffic will obtain the benefit under the annex when it's undertaken under an AfCFTA cover. All transit operations under this annex is valid only when it is covered by an AfCFTA transit

²²⁷ Art 8 of Annex 4.

²²⁸ Art 3(3) of Annex 8.

²²⁹ Art 2(4) of Annex 8.

²³⁰ Art 3(2) of Annex 8.

²³¹ What amounts to a serious offense under article 5 includes bribery, smuggling, and theft, destroying documents of evidence, and failing or refusing to give information relating to interstate transportation of goods. For any licensed carrier that commits any of the offenses listed above however or who at the time of the application for the license conceal the offense will have their license automatically suspended.

²³² Art 4 of Annex 8.

²³³ Art 6 of Annex 8.

document. These documents and the transport certificates must always be in possession of the operator to present anytime on demand.²³⁴

The annex also provides for transit procedures where the goods to be transited as well as its means of transport must always be presented to the customs office at the place of departure. These must be accompanied by the AfCFTA transit documents as well as the sureties that must be included.²³⁵ There, it will be ascertained whether the means of transport provided has enough safeguards to enhance customs security.²³⁶ The transport for the carriage of the goods will not be used to carry persons travelling unless the goods can be placed at such a compartment which is sealed to the satisfaction of the authorities.²³⁷ The state party must publish and make clear the goods that will need their means of transport to be escorted through their territory at the expense of the person transiting the goods and those that will have their means of transport to be examined.²³⁸ Where goods are examined, new seals will be affixed and a newly certified declaration must be made.²³⁹ When an accident ensues²⁴⁰ or the goods are destroyed through some means or even the seal is broken,²⁴¹ the carrier must ensure that the safety of the goods, must inform the officials of customs as soon as possible and where needed the goods shall be transferred to another means of transport in the presence of a customs official or such appropriate authority.

The annex further endeavours state parties to establish transit areas to be used in the temporary storing of goods in the event of any delay.²⁴²

4.5 Conclusion

From the discussion above, it may be safe to conclude that the trade facilitation legal framework under the AfCFTA though extensive focuses heavily only on the ports and the movements of goods at the ports, i.e. the narrower definition of trade facilitation.

²³⁴ Art 7 of Annex 8.

²³⁵ Art 9(1) of Annex 8.

²³⁶ Art 9(2) of Annex 8.

²³⁷ Art 9(4) of Annex 8.

²³⁸ Art 9(8) of Annex 8.

²³⁹ Art 9(10) of Annex 8.

²⁴⁰ Art 9(11) of Annex 8.

²⁴¹ Art 9(13) of Annex 8.

²⁴² Art 11 of Annex 8.

Again it can be gleaned from the discussion that the provisions of trade facilitation under the AfCFTA is not too different from the legal regime of trade facilitation under the international institutions especially Annex 4 which is heavily premised on the WTO TFA. Since it is trite that the provisions of trade facilitation amongst the various institutions complement each other, there is no need for a repetition of measures already in place in the AfCFTA. Almost all the members of the AfCFTA are members of these international organisations and as such, they already have an obligation there to implement the measures of trade facilitation as those organisations propose. By repeating them under the AfCFTA rather deprives the AfCFTA members from focusing on how to provide a solution to the other pertinent impediments to trade.

As noted at the conference of the African Union Ministers of Trade, African countries are faced with heavy restraints on infrastructure and that's where priorities lie. It would have rather been pertinent if the legal framework of the AfCFTA could have focused on addressing same to compliment the already made efforts at the multilateral level other than merely repeating it.

CHAPTER 5

5.0 SEAPORT INFRASTRUCTURE

5.1 Introduction

As pointed out in the previous chapter, the trade facilitation measures adopted by the AfCFTA takes the narrower approach to trade facilitation. However, other raging trade problems exist of which begs the attention of a legal framework and for trade facilitation measures to ameliorate them. One such problem very crucial in bulk trading yet neglected is seaport infrastructure.

In this chapter, the infrastructure needed at the seaport to move goods from there to their destination is discussed. It begins by discussing the different types of seaports in Africa as well as what amounts to seaport infrastructure. It continues by discussing the challenges African countries faces in terms of seaport infrastructure. Particular emphasis shall be placed on the seaports in West Africa with respect to seaport infrastructure. Therefrom, a selected free trade area shall be discussed on how their problem of port infrastructure has been ameliorated. Some suggestions are further proffered on how the ports in West Africa (and Africa at large) can improve their infrastructure, taking a cue from the discussed free trade region.

5.2 Types of Seaports in Africa

A seaport is larger in size and often at the shore to receive larger ships. In a research conducted by UNCTAD, trading across the world and for that matter, the movement of goods are done mainly through sea travel.²⁴³ The prominence with sea travel then cannot be glossed over in international trade especially since it provides a means for the movement of goods over very long distances-even across continents. It perhaps accounts for the reason why at the international level much effort has been put into sea travel trade facilitation.

A port, in general, is central in any logistics supply chain such that it serves as a conduit between any country and its trading partners. Rightly so, it acts as the facility that allows for the loading or unloading of goods, for the transfer of goods for inland delivery and for the temporal storage of

²⁴³UNCTAD 'Review Maritime Transport' (2017) 'UNCTAD/RMT/2017' https://unctad.org/en/PublicationsLibrary/rmt2017_en.pdf (accessed 15 August 2019).

goods.²⁴⁴ In general terms, the categorization of a port is done based on what exactly the port does and the type of goods that the port handles. Seven types of ports are identified in Africa namely, General Cargo ports, hub ports, Feeder ports, Bulk Ports, transshipment ports, dedicated oil ports and river ports.²⁴⁵

5.2.1 General Cargo Port

A general cargo port function to deal with cargo only. General cargo ports are often medium sized ports yet with huge volumes often attracting direct vessel calls. The volume ranges from two to ten million tonnes per annum. An example of such a port in Africa is the Port Elizabeth in South Africa.²⁴⁶

5.2.2 Hub Port

A hub port serves as a conduit connecting several smaller ports. Functionally, it acts as a large regional port through which the smaller ports can operate through. More technically, it can be defined as “*an international or regional port that, in addition to the normal cargo-handling functions of import and export trade, also caters for so-called transshipment cargoes (in particular containerized cargoes) to and from major intercontinental or regional shipping routes, with the additional provision of services to a number of (usually smaller and / or shallower) African ports.*”²⁴⁷ An example is the port in Durban in South Africa and the Port Said in Egypt.²⁴⁸

5.2.3 Feeder Ports

²⁴⁴ African Development Bank ‘Port Development in Africa’ 2010
https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/African%20Development%20Report%202010_CH%202.pdf (accessed 15 August 2019).

²⁴⁵ African Development Bank (n 244) 33.

²⁴⁶ African Development Bank (n 244) 38.

²⁴⁷ African Development Bank ‘Going Forward: Developing Regional Hub Ports in Africa’ 2010
https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/African%20Development%20Report%202010_CH%206.pdf (accessed 15 August 2019).

²⁴⁸ African Development Bank (n 244) 38.

Feeder ports are often smaller in size and do not have larger vessels going there. The reason for this is twofold. They lack such large containers which can load onto the vessels and because the ports do not have the space to contain such vessels.²⁴⁹ An example is the Angolan Port.

5.2.4 Bulk Ports

As the name suggests, they are ports with the main purpose of carrying large volumes of bulk goods. They are able to accommodate cape-size vessels.²⁵⁰ Mostly, the goods transported at such ports are coal, raw materials and iron ore. An example is the Port Buchanan in Liberia.

5.2.5 Transshipment Port

These are large ports where there is the transfer of cargo from one ship to the other. At these ports, the goods are moved from one ship, stored temporarily and are moved to another ship for onward transmission to the final destination. These ports handle such large ships such that in Africa only a handful of ports can handle such. An example of a transshipment port is that in Mombasa.²⁵¹

5.2.6 Dedicated Oil Ports

These are ports dedicated to the handling of crude oil. The transport of the oil are also done in huge vessels and an example of such a port in Africa is the port in Durban.²⁵²

5.2.7 River Ports

These are inland ports where the ports are created on a navigable river. It may or may not have access to the sea. With those with access to the sea, it allows ships the access to sail inland to either take on cargo or offload them. Many of these river ports in Africa, however, do not have access to the sea for ships to have access to them. The Matadi river port, however, is one with a difference since can serve on going vessels. It is however restricted in depth.²⁵³

²⁴⁹ M Andersen 'How to save time & money by using the right feeder ports' 2017 <https://blog.greencarrier.com/how-to-save-time-money-by-using-the-right-feeder-ports/> (accessed 15 August 2019).

²⁵⁰ Cape-size vessels are the largest dry cargo ships in existence. They are very bulky carriers which historically couldn't transit the Suez Canal and as such has to pass through the Cape of Good Hope.

²⁵¹ African Development Bank (n 244) 38.

²⁵² African Development Bank (n 244) 38.

²⁵³ African Development Bank (n 244) 38.

5.3 Seaport Infrastructure and the Challenges in Africa

It is noted with much particularity that the success of any seaport as well as its efficiency rests with the type of assets that exist therein. The maximization of the role the port plays in international trade is determined by two assets it possesses and these are its hard physical infrastructure as well as its soft infrastructure. The soft infrastructure services refers to the customs and administrative roles to be played to ensure the movement of goods.²⁵⁴ These have been discussed extensively in the previous chapters and as such much light shall not be thrown upon it here. The emphasis rests on the hard infrastructure.

The hard physical infrastructure consists of two types namely the seaport infrastructure and the superstructure.

5.3.1 Seaport Infrastructure

When the ship arrives at a port, there is a need to moor the ship for purposes of it not moving freely on the sea as the goods are being offloaded. Mooring is any process of which a ship on the sea can be secured firmly to prevent its movement on the sea. The ship is fixed to a position in this process and it's restricted from moving freely on the water. An example is a quay or the use of an anchor.²⁵⁵ For the ship to be moored, there is the need for an infrastructure known as the berth. The berth is a part of the port which is specially made for ships to be moored. Thus sea infrastructure refers to all those forms of infrastructure that are provided to a ship to gain access to the land for loading and offloading. Such infrastructure here includes the berth and deep water channels where the ship can be tied for unloading or offloading of goods.²⁵⁶

5.3.2. Seaport Superstructure

After goods have been berthed for purposes of offloading or on loading, the next hurdle to overcome is how to actually offload the goods for the goods to be moved to their final destination or to on load them for transportation to its final destination. The superstructure thus provides such facilities to solve such problems. They include the transport services to move the goods to their destination from the port, the various equipment to move the goods out of the ship and even such

²⁵⁴ African Development Bank (n 244) 38.

²⁵⁵C Chapman & M Chapman *Piloting, Seamanship & Small Boat Handling* (1996) (62 Ed) Hearst Marine Books. ISBN 978-0-688-14892-8.

²⁵⁶African Development Bank (n 244) 34.

other services as repair services and fuelling.²⁵⁷ The infrastructure and the superstructure both form the hard infrastructure at the seaport.

5.4 Challenges at the Ports

A major problem faced at the ports is congestion and it grows as the volume of trading grows.²⁵⁸ The port management association of eastern and southern Africa indicate that congestion in east and South Africa are caused by such factors as the increase in container volumes as opposed to stagnant port infrastructure, therefore, leading to increase in volumes but with less infrastructure to cater for the growth, inadequate transport facilities to move the goods to their hinterland destination, the increase in dwell times of containers among others.²⁵⁹ As of 2010 for instance, the highest 20-Foot Equivalent Unit (TEU)²⁶⁰ in Africa was that of Egypt which was just 4,755,879 as opposed to that in china and brazil (also developing countries as Egypt) which were 101,963,351, 6,798,200 respectively.²⁶¹ In fact, as of 2007, all of Africa's containerized cargo was just about 15 million TEU. That figure represented was just about half of that as recorded in the largest ports in Singapore and China.²⁶² Further statistics prove that the lack of infrastructure capacity is massive especially in western and central Africa.²⁶³

In assessing the efficiency at the ports, the African Development Bank indicates different indices which can be used in assessing port performance. Two of these indices are discussed concerning port congestion and these are the turnaround time and the dwell time.²⁶⁴

The turnaround time measures how a port performs and it measures the time a vessel spends at a port. Essentially, it assesses the time spent from the time the vessel arrives at the port and the time

²⁵⁷African Development Bank (n 244) 34.

²⁵⁸ The Maritime Executive 'Africa needs to tackle port congestion' 2018 <https://www.maritime-executive.com/article/africa-needs-to-tackle-port-congestion> (accessed 15 August 2019).

²⁵⁹ PMAESA 'Consultative Workshop on Port Congestion in the PMAESA region' 2008 <https://slideplayer.com/slide/10753973/> (accessed 14 August 2019).

²⁶⁰ The TEU is used in measuring the capacity a vessel has with respect with cargo.

²⁶¹ WTO database 'Containerisation International Yearbook' (2009).

²⁶² African Development Bank (n 244) 42.

²⁶³ African Development Bank (n 244) 40.

²⁶⁴ In coming up with these efficiency indices many factors are considered such as infrastructure, the customs regulations and other issues of administration. SK Paik & PK Bagchi 'Process reengineering in port operations: A case study' (2000) 11 *The International Journal of Logistics Management* 59-72.

it departs.²⁶⁵ In other regions outside Africa currently, the turnaround²⁶⁶ time is calculated in hours however in Africa, turnaround time is always in days. The possible reason to account for such a long delay is perhaps, the time it spends waiting to berth and the further time it spends waiting at berth which is known as the waiting rate.²⁶⁷

The dwell time also refers to the length in time that cargo remains at a terminal after it has been offloaded from the ship before storage.²⁶⁸ Evidently, when the dwell time is high, it means there exist a problem at the port most often, a problem of an ability to move the goods to their point of destination. Again in Africa, from the research, the dwell time is very high also in days and perhaps months whereas in other performing ports, it's typically in hours. The port in Mombasa which is considered one of the most efficient in terms of dwell times in Africa has a dwell time of 5 days. Generally, however, African ports²⁶⁹ have an average of 20 days of dwell times.²⁷⁰ In a study by Notteboom²⁷¹ it was asserted that in a comparison between Africa and East Asia, the goods spend an average of 20% of the transport time at the port in East Asia. However, in Africa it spends about 80%. Delmas asserts also that in 2004 it lost about US\$ 5 million as a result of congestion at the African ports.²⁷²

An overview of the port situation across Africa in terms of infrastructure by the African Development Bank shows that central and western Africa records low rates in terms of hard infrastructure at the ports. In other studies by the Rallaband et al, it was affirmed that the ports in

²⁶⁵ HD Le-Griffin & M Murphy. 'Container terminal productivity: Experiences at the ports of Los Angeles and Long Beach' (2006) Paper presented at the 'METRANS National Urban Freight Conference'.

<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.410.615&rep=rep1&type=pdf> (accessed 15 August 2019).

²⁶⁶ The turnaround time may be influenced by several other factors such as the volume and composition of the goods and the infrastructure available. It thus makes it relevant always for further break downs to be made when assessing the turnaround time of any port.

²⁶⁷ African Development Bank (n 244) 45.

²⁶⁸ Le-Griffin & Murphy (n 265).

²⁶⁹ It is noted also that the factors that account for the high berth at the African ports exceeds that of a mere lack of infrastructure-even though it's a major cause. Other factors as strategies employed between importers and customs brokers to increase the cost are worthy of note.

²⁷⁰ G Rallaband 'Why High Dwell Times in African Ports?' (2013) 'World Bank Paper on Poverty Reduction and Economic Management Network' Available at http://www.freightintoafrica.com/article/why_high_dwell_times_in_african_ports (accessed 15 August 2019).

²⁷¹ TE Notteboom 'The Time Factor in Liner Shipping Services' (2006) 8 *Maritime Economics & Logistics* 19–39.

²⁷² GA Pálsson AG Harding & G Raballand 'Port and Maritime Transport Challenges in West and Central Africa' (2007) 'SSATP Working Paper No. 84. Washington, DC: World Bank.'

West Africa, for instance, face great difficulty in receiving larger ships as well as providing proper handling of the cargo.²⁷³

5.5 Ports in West and Central Africa and the Challenges Faced

5.5.1 Ports in Central Africa

The largest port as recognized in the study by the African Development Bank is the port of Douala in Cameroon. The port possesses a TEU of 13,000. The depth at the port is low and as such the larger vessels are unable to utilize the port. Its capacity is also restricted yet its services are utilized beyond Cameroon. The other landlocked countries of the Central African Republic and Chad also make use of its services.

PWC notes that there are two main ports in DRC namely Matadi and Boma. They are both faced with the same challenge of low capacity and as such, they are unable to cater for the needs of some parts of the country.²⁷⁴ The AICD notes that notwithstanding the low capacity at the Matadi port it's port services are expensive yet with no efficiency. To connect from the port to inland destinations is also lacking and that raises the overall shipping cost of a good.²⁷⁵

The port of Noire is located in the Republic of Congo. It is noted that some infrastructural works have been taking place therein since 2009 to refurbish it and to extend the terminals.²⁷⁶

5.5.2 Ports in West Africa

As noted already by the Port Management Association of West and Central Africa, the huge infrastructural problem at the port continually stifles efficiency. The congestion at the ports have exacerbated due to the increase in container volumes more than any other global region.²⁷⁷ The Cotonou port in Benin serves as a port through which 90% of the trade in the country exits as well

²⁷³ GA Pálsson and Others (n 272).

²⁷⁴ The Western Part of the country is often left out.

²⁷⁵ PwC 'Africa gearing up- Future prospects in Africa for the transportation & logistics industry'
<https://www.pwc.com/gx/en/transportation-logistics/publications/africa-infrastructure-investment/assets/drc.pdf>
(accessed 15 August 2019).

²⁷⁶ African Development Bank (n 244) 68.

²⁷⁷ J Streatfeild 'West Africa is Expanding its Maritime Ports to Accommodate Growing Container Trade' (2018) 'US International Trade Commission (USITC) Report'
https://www.usitc.gov/publications/332/executive_briefings/west_african_ports_expansion_final.pdf (accessed 15 August 2019).

as a transshipment centre for Burkina Faso and Benin. However its capacity to cater for the growing trade is very limited. It is noted that the port which only takes 4 million tonnes annually currently operate beyond its ability causing much congestion. This causes a lot of delays in unloading the goods. This ultimately leads to many goods entering into the country through other dubious means.²⁷⁸ The study by Shanghai University ranked it as the most inefficient amongst the 6 largest ports in West Africa.

In Côte d'Ivoire, the Abidjan and San Pedro ports are the main ports there. The container volume increase is on the rise. In 2015, San Pedro recorded 286,516 TEU as opposed to 498,000 TEU in 2006. The infrastructure therein hasn't improved much to cater for this rise and as such inefficiency and congestion is the result.

The situation isn't any different at the ports of Banjul, Tema, Takoradi, Conakry, Tin Can Island, Apapa, Dakar, Onne, Calabar, Lome, Monrovia and Freetown.²⁷⁹ The ports are unable to receive bigger ships and are unable to provide efficient container services.²⁸⁰

It is worthy to note that most of the West African countries have outsourced the management of the ports to foreign companies of which have introduced some level of efficiency at the ports. The average productivity at the Cotonou port, for instance, rose by 48.3% between 2016 and 2017. Some improvements have also been seen at the Lagos port.²⁸¹ Nonetheless, operating costs are also on the rise due to the profit making nature of these operators.²⁸² Two firms stand out here in the management of the ports and these are Bolloré of France and APM terminals in Denmark. It is assessed that notwithstanding the strides in efficiency at some of the ports, there still exists some considerable work to be done at the port.²⁸³

5.6 Selected Free Trade Area

²⁷⁸ AfDB & OECD 2005 'African Economic Outlook' (2005) <https://www.oecd.org/dev/34867795.pdf> (accessed 15 August 2019).

²⁷⁹ Streatfeild (n 277).

²⁸⁰ Pálsson (n 272) 19.

²⁸¹ T Mooney 'Congested West Africa ports lead globe in productivity gains' (2017) https://www.joc.com/port-news/international-ports/port-cotonou/congested-west-africa-ports-lead-globe-productivity-gains_20171210.html (accessed 15 August 2019).

²⁸² Streatfeild (n 277).

²⁸³ Streatfeild (n 277).

The area selected is the Gulf cooperating Council (GCC) which is a bloc of 6 countries in the Middle East namely, Saudi Arabia, Oman, Qatar, Bahrain, United Arab Emirates and Kuwait. It is noted that over 60% of port investments that have been incurred in the Middle East, in general, came from within the GCC.²⁸⁴ Hitherto, and pre-the 1960's the situation in those areas in ports infrastructure was nothing to write home about. Currently, highly digitized and automated ports are being constructed such as to prevent inefficiency and to make room for the largest ships operate with ease. It is also worthy of note that according to 2018 statistics from the shipping council, the Jebel Ali port in Dubai ranked as part of the top 10 ports in the world.²⁸⁵ Further, according to the World Economic Forum report on quality of ports across the world UAE and Qatar emerge as part of the top 15 countries with quality ports ranking with scores of 6.5 and 5.6 respectively (where 1 is the lowest and 7 is the highest).²⁸⁶ The quality of the ports in the GCC region is further enhanced by their linkage to the other logistics chains including the transport systems inland and special economic zones. Four approaches have been identified as been used by the members of the GCC in the development of their ports which are worth emulating. These are an agenda to develop infrastructure, the Public-Private partnership Approach, the build and they will come approach and the use of soft infrastructure as an incentive to attract hard infrastructure.

5.6.1 An agenda to develop Infrastructure

As a preliminary point, all the members of the GCC have placed a great priority on infrastructure development. This priority forms a part of their agenda to diversify from the exportation of hydrocarbons.²⁸⁷ Thus, the priority placed on the infrastructure development is to enable them to construct an integrated logistics network to foster their trading activities across the frontier of each country.²⁸⁸ Even though much debate has ensued and same is still raging on the success of the agenda to diversify from hydrocarbons²⁸⁹ the development of infrastructure as the alternative is

²⁸⁴ Streatfeild (n 277).

²⁸⁵ <http://www.worldshipping.org/about-the-industry/global-trade/top-50-world-container-ports> (accessed 15 August 2019).

²⁸⁶ <https://www.worldatlas.com/articles/15-countries-with-the-best-access-to-quality-shipping-ports.html> (accessed 15 August 2019).

²⁸⁷ R Ziadah 'Constructing a logistics space: Perspectives from the Gulf Cooperation Council' (2018) 36 *Environment and Planning D: Society and Space* 666 at 667.

²⁸⁸ Ziadah (n 287) 671-672.

²⁸⁹ M Hvidt 'Economic diversification in GCC countries: past record and future trends' (2013) 'Research Paper No. 27 Kuwait Programme on Development Governance and Globalisation in the Gulf States' <http://eprints.lse.ac.uk/55252/> (accessed 15 August 2019).

also ongoing. The infrastructures with respect to trade are being integrated into the wider supply chain and large amounts have been secured by these countries from international organisations in the building of newer ports and for the improvement of existing port structures. A noteworthy example is the King Abdullah Economic City which is to be built which is to cost 93 billion United States dollars. The Abdullah City forms part of four new cities to be built of which it is predicted to have the largest port in the region.²⁹⁰ The identification of the new agenda and the ability of the countries to stick to the agenda is a major cause of the success to the infrastructure development at the ports of member countries of the GCC.

5.6.2 The Public-Private Partnership Approach

Public Private Partnership (PPP) refers to an arrangement between a government entity and the private sector to engage in a project often in the long term. These arrangements are with respect to the development of infrastructure or for the maintenance of such.²⁹¹ The PPP has been widely accepted in the GCC region such that most of the capital projects within the region are undertaken by the PPP. An example is the Sohar Port and free zone in Oman. Its management is undertaken by the Sohar Industrial Port Company which is a combined facility by the government of Oman and the Port of Rotterdam. The Sohar Industrial Port Company was set up as a joint venture with each entity a 50% interest to develop the road-air-rail transport sector of the country.²⁹² The first ship berth at the port was recorded in 2004 and as at 2018, there is a record of more than 3434 vessels call at the port. It is further recorded that the port is able to handle more than 1 million metric tons of cargo in a week.²⁹³ It further has a large and well developed infrastructure at the ports such that it can handle even the world's largest ships. Oman as a country is particularly noted as being with few oil reserves and as such with respect to financing on such capital infrastructural projects, it relies greatly on such joint ventures with investors for finance of its ports.²⁹⁴ Another example is the Salalah port also in Oman. It was developed as a result of a concessionary agreement which was entered into by the Oman government and APM terminals. The agreement was for the APM terminals to build the port as well as to oversee its management. The APM terminal is one

²⁹⁰ Ziadah (n 287) 672

²⁹¹ GA Hodge & C Greve 'Public-Private Partnerships: An International Performance Review' (2007) 67 *Public Administration Review*, 545-558.

²⁹² <http://soharportandfreezone.com/en/about/overview> (accessed 5 August 2019).

²⁹³ N 292.

²⁹⁴ Ziadah (n 287) 677.

which is widely known in over 39 countries. It has pursued extensive work at several ports (almost 70 ports) and as such it serves the country the advantage of being brought into the international networking of the APM terminal.²⁹⁵ Today the port has more than 7 berths and it possesses such infrastructure which is capable of handling the largest ships in the world. It also possesses large bunkers and warehouses to contain goods.²⁹⁶ These PPP arrangements are however regulated by law as countries like Kuwait, UAE already has laws and have modified same to cater for the growing use of the PPP as a means of financing such capital projects and Qatar is also in the process of drafting its PPP laws.²⁹⁷

5.6.3 Build and They will come Approach

The early years in the 21st century saw the UAE perpetuate the mantra, build it and they will come with respect to infrastructural developments. The whole idea was that the country should be focused on investing in infrastructure now and the benefits and the results thereof will come later. The approach to investment came to an end after the 2008 financial crises however some successes were chalked. Some free zones were established within the port regions which led to the attraction of a lot of investors.²⁹⁸ The approach as indicated isn't in use formally yet the principle remains. For instance, the development of the SOHAR port which saw the first vessel berth in 2004. The statistics indicate that it has been able to rise beyond the ports to free zones area and it's been able to attract a multinational investment of more than 26 billion dollars with over 26 companies being attracted therein to invest.²⁹⁹ This situation is quintessentially the case of build it and they will come. The GCC countries are able to commence the initiative of development of their ports and when its success commences, other investors who come in are able to skyrocket it.

5.6.4 The Use of Soft infrastructure

Within the GCC region again the countries are able to effectively use incentives such as free zones which offer a 0% corporate tax on companies, full repatriation of profits, and no import or export

²⁹⁵ UNCTAD 'Review of maritime transport' (2015)

<https://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid1374> (accessed 15 August 2019).

²⁹⁶ Ziadah (n 287) 674.

²⁹⁷ Ziadah (n 287) 677.

²⁹⁸ I Dixon 'The Infrastructure Footrace: Why the Gulf Region is moving at a World First Pace' 25 September 2018 <https://medium.com/fitch-blog/the-infrastructure-footrace-why-the-gulf-region-is-moving-at-a-world-first-pace-23f8488cd911> (accessed 15 August 2019).

²⁹⁹ N 292.

duties for foreign companies within free zones and other forms of incentives.³⁰⁰ These attract investors into the country to invest heavily. By the investment, that means goods production, as well as trading, are increased greatly of which these investors will need efficiency at the ports to prevent their trading activities from being stifled. Further, attraction is made then to other companies who seek to develop the ports and that ultimately leads to the improvement of the ports infrastructure.

The GCC provides a model African countries can emulate in the improvement of their port infrastructure.

5.7 Conclusion

This chapter has demonstrated the various types of ports in Africa and it has been evident that the ports in Africa are of various forms and with different capacities. Some of the ports can support relatively larger vessels whereas many are not able to. The lack of port infrastructure is a raging trade facilitation problem and the ports in Western and Central Africa face it the greatest.

The member states of the GCC set a good precedent on providing a solution to this trade facilitation measure. They provide both legal and non-legal measures countries can adopt to develop their port infrastructure. An underlying lesson from the GCC countries is the commitment to see it through.

For problems of port infrastructure to be solved too to easily facilitate trade under the AfCFTA, the approaches as used by the GCC nations may be adopted with a high level of commitment.

³⁰⁰ Ziadah (n 287) 676.

CHAPTER 6

6.0 CONCLUSION AND RECOMMENDATIONS

6.1 Introduction

This study has been to assess the viability of the trade facilitation rules as provided in the AfCFTA and to make recommendations on the real areas of trade facilitation that the AfCFTA must focus on to ensure it achieves its intended objectives. The broader objective of this study has been assessed by analysing the following specific objectives: Analysing the historical antecedents of trade facilitation to ascertain how it emerged and the reasons that led to its emergence. Further recourse was made to the institutions that have championed trade facilitation globally and regionally. An analysis of the current legal regime of trade facilitation under the AfCFTA was also made. Again the experience of African countries and the efforts being put into trade facilitation was assessed and lastly, there was an analysis of the requirement of port infrastructure as a trade facilitation tool.

The purpose of this chapter is to have a relook at the research problem as spelt out in the first chapter and to assess it in the light of the discussions as ensued in the subsequent chapters specifically the second, third, fourth and fifth chapters. Thereafter a conclusion will be drawn from the discussion as has ensued.

Subsequent to the conclusion and flowing from the discussion, recommendations shall be made on the specific areas the trade facilitation legal regime of the AfCFTA must focus on. Thereafter some areas which still begs for future research of which this study couldn't cover will also be stated.

6.2 Restating the Research Problem

In the first chapter, a background to the study was provided where the high transactional costs that come with trading in Africa was made clear. The high transactional costs were identified as being caused by trade impediments such as the lack of infrastructure. These impediments make trade facilitation very necessary on the continent. Trade facilitation in itself is two faceted- namely the narrower aspect of trade facilitation and the broader aspect of trade facilitation. The narrower aspect focuses on issues of trade happening at the borders such as issues of customs and the documentation of movement of goods. The broader aspect focuses on issues beyond the borders

such as transportation, logistics and infrastructure. Upon the coming into force of the AfCFTA and with the coming into being of the trade facilitation rules in the annexes, the legal framework only sought to address matters of trade facilitation solely at the borders, i.e. the narrower aspect of trade facilitation. Worse yet, the narrower aspect of trade facilitation which the AfCFTA trade facilitation rules seek to address has already been addressed by other international bodies of which most African countries are members of and signatories to many of their conventions.

The statistics in Africa reveal that the broader trade facilitation measures are lacking and those are factors leading to the high transactional costs. A typical example is the lack of port infrastructure at most of the ports in Africa with specific emphasis on the ports in the Western and Central African ports. The aim of the study then has been to point out why the trade facilitation rules under the AfCFTA are not sufficient if not a mere repetition of what the AfCFTA members have already begun giving effect to at the multilateral level. Further, the study was aimed at pointing out the areas of trade facilitation which the AfCFTA can focus on instead, to compliment the efforts at the multilateral level to expand the trade facilitation measures.

6.3 Summary of findings

The subsequent chapters to the thesis statement have been to enquire on the veracity of the assertions made in the thesis statement. In the second chapter, a discourse was taken to trace the historical antecedents of trade facilitation at the multilateral level and in regional trade agreements. It was discovered that at the multilateral level much efforts have been made to tackle trade facilitation issues at the border since those are more generic. Examples are the WTO TFA and the Kyoto Convention of the WCO. However, within regional trade agreements, which are preferential agreements and are entered into by the parties often for specific reasons, the members move beyond the narrower aspects of trade facilitation. The emerging RTA's seek to address specific issues of trade facilitation which meets their needs. That, in essence, is the reason for making RTA's- to address issues not being addressed at the multilateral level. If an RTA only repeats trade related matters being addressed at the multilateral level, then its purpose is defeated.

In the third chapter, how African countries have responded to trade facilitation was assessed. Emphasis was placed on the results of trade facilitation under the multilateral institutions as well as efforts being put in place by the sub regional bodies. It was discovered for instance that for customs, notwithstanding the WCO conventions of which many African countries are signatories

to, not much improvements have ensued. Corruption, lack of correlation between the officials and business people are still the order of the day. It was discovered that generally, the relationship between the customs officials and businessmen is antagonistic. Under the WTO also, with the coming to force of the Trade Facilitation Agreement, the developed countries committed to provide special and differential treatment to developing and least developed countries. This in effect means that they are willing to commit resources to support developing and least developed countries to implement the Agreement. Even with that, the chapter demonstrated that African countries are making commitments to the Agreement at a rather snail's pace. Under the various sub-regional bodies, those such as the EAC are making some progress with infrastructural developments such as the development of road transport networks to facilitate trade. Others such as ECOWAS are lagging in that respect.

In the fourth chapter, the legal framework relating to trade facilitation under the AfCFTA was assessed. A comparison was also made with other trade facilitation agreements at the multilateral level. The chapter aimed at demonstrating two specific problems namely- the sole reliance on the narrower aspect of trade facilitation to the total neglect of the broader aspect and a mere repetition of trade facilitation measures already in force at the multilateral level. It was revealed that Annexes 3, 4 and 8 which are the trade facilitation measures proposed by the AfCFTA legal regime only focus on customs, trade facilitation (mostly on documentation and the movement of goods at the borders) and goods in transit. Further, the Annex 4 on trade facilitation is almost a word-for-word replication of the WTO Trade Facilitation Agreement.

In chapter 5, Port infrastructure is identified as a grave problem of which much attention hasn't been focused on yet heavily stifling trade. In analysing the various sub regions, it was discovered that the ports lacking the most in terms of infrastructure are those in Western and Central Africa. The lack of it causes congestion and ultimately the spoilage of goods (where the goods are perishable goods) and an increase in the cost of goods. The time for clearance of goods in many European and Asian countries are typically calculated in hours however in Africa they are quoted in weeks if not in months. The problem typically identified as causing these is the lack of the infrastructure at the ports. This phenomenon demotivates businessmen then from seeking to import or export to other African countries. Businessmen then will prefer to send their goods to European

or Asian countries to enjoy lower costs and expedited movements in their goods due to the proper infrastructure at their ports to move the goods.

A comparative analysis is made with the GCC which is a free trade area of six countries namely Kuwait, Bahrain, Oman, Saudi Arabia, United Arab Emirates and Qatar. These are countries with very improved port infrastructure per global standards. Their rise was drastic coming from a backdrop of having a very poor infrastructure in the pre-1960's era. An analysis of their approach to development indicates four approaches used at arriving at their current situation. These approaches albeit it a combination of legal and non-approaches have been effective. These are the agenda to develop infrastructure approach, the Public- Private-Partnership Approach, the build and they will come approach and the use of soft infrastructure as an incentive to attract hard infrastructure approach. These approaches adopted by the countries coupled with commitment have been a tool of their success. With their port infrastructure being top notched, movement of goods are simplified. The ports can receive the largest vessels across the world with efficiency and no delays. Traders do not have to face herculean hurdles in moving their goods and that attracts all manner of investors into the economy.

It stands to reason there are several motivations for African countries to build up their infrastructure to meet up the trends. Especially in the wake of the AfCFTA, if traders are going to be motivated to trade with African counterparts, then the AfCFTA framework must be poised to facilitate trade. It may come at an initial cost but the long run cost of not putting in measures to facilitate trade is far greater and that may even lead to the redundancy of the AfCFTA.

Generally, the chapters have shown that the narrower approach to facilitating trade under the AfCFTA may reduce efficiency rather than improving it. It places the trade facilitation regime where it still was before the AfCFTA came into force. Little or close to no value has been added to trade facilitation by the AfCFTA trade facilitation measures as provided in the annexes.

6.4. Recommendations

By way of providing a definite conclusion to the thesis statement, the research has shown that there are other pressing trade facilitation measures of which the AfCFTA can focus on to effectively boost trading. Again, it is also observed that the legal framework may be the starting point for

these measures. The attempt at facilitating trade would not be entirely through legal measures. There must be the adoption of legal, social, political and institutional measures in achieving such.

It is realised from the comparative analysis that inasmuch as the collective efforts of the free trade area may help countries to develop infrastructure, the first step rests with the individual countries to make a commitment to do so. As seen in the GCC countries, their first step was to come up with an agenda to develop. Notwithstanding all said and done, if countries do not come up with a specific agenda to develop infrastructure, the efforts may only remain on paper. This agenda to develop must be coupled with the commitment to develop the agenda. For instance in the ECOWAS region, what is needed to develop many of the transport infrastructure policies as rolled out by ECOWAS is the commitment of the countries to those projects.

Secondly, it is trite on the continent that capital and technical know-how is a great challenge. Nonetheless, those must not become impeding factors. As realised from the GCC countries, the projects on port infrastructure were not financed nor built by the countries themselves. Partnerships were created with entities who possess the wherewithal to help in building them of which arrangements were made on how to carry them through. African countries can adopt this measure too as opposed to obtaining direct loans from financial institutions which may not yield much.

Thirdly, it is recommended that the issue of corruption which stifles the already trade facilitation measures must be solved with a three sector approach. It must be solved legally, technologically and socially. The trade facilitation legal framework of the AfCFTA must be designed to address issues of corruption in strict terms to impose sanctions on member states as well as putting measures in place at the ports and borders to make reduce corruption.

From the analysis of the Maputo ports and the Durban ports, it was realised that the Maputo ports were more corrupt than the Durban ports because of many human hands handling the processes as opposed to the Durban ports which are automated. It is recommended in this sphere that automation of processes must be taken more seriously by countries to cut down corruption at the ports. The few hands to man the processes should be those to handle the technology and not those seated in offices working manually who corrupt the system.

Socially the citizenry must be sensitized continually and empowered to fight against it and desist from it.

Fourthly, and by way of an institution, it is recommended that the AfCFTA sets up an institution solely responsible for trade facilitation to conduct research continuously on ways of cutting down trade costs and the areas of trade begging for trade facilitation. Their role must go further into proposing practical and up-to-date measures for the AfCFTA members.

6.5 Areas for Future Research

Due to the limitation in space and the scope of the study, not all the facets of trade facilitation could be addressed. It leaves much more to be researched on. It is suggested that future research on trade facilitation in relation to the AfCFTA must focus on the following-

Firstly, research on the full benefits of focusing on the broader aspect of trade facilitation is recommended.

Secondly, it is recommended that a detailed analysis of the trade facilitation measures being undertaken by the various sub-regions on the continent is embarked on.

Lastly, how exactly a legal framework may be put in place to address the broader aspect of trade facilitation is recommended as an area for future research. It is acknowledged that each country may have a peculiar trade impediment independent of the other of which making a general law may require much more consideration of the peculiar circumstances of the members.

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