AfCFTA: The Need for Cautious Optimism in Assessing its Economic Impact

1. INTRODUCTION

The Treaty ("**Agreement**" or "**AfCFTA Treaty**") establishing the African Continental Free Trade Area ("**AfCFTA**"), was birthed[1] on 21 March 2018 at the end of the Extra Ordinary Summit of the Assembly of Heads of States and Governments of the African Union which held in Kigali, Rwanda. At that epoch Session, 44 out of the 55 Member States signed[2] the Treaty and it came into effect on 30 May 2019. With estimated population of 1.3 Billion and combined nominal GDP of $2.5 Trillion, Africa's huge market remains untapped. This Treaty which creates the world's largest free trade area, since the formation of the World Trade Organization (WTO), has been globally applauded as not only being ambitious but one which presents a veritable platform to harness Africa's untapped potential. As reported, in 2018, Nigeria exported and imported goods to and from the rest of Africa to the value of US$7 billion and US$1.3 billion, respectively. Intra-Africa exports accounts for 13% of Nigeria's total exports and imports for 4% of total imports for 2018[3]. Clearly, this statistic further depicts the untapped opportunities that exist in Africa market. Nigeria, being Africa's largest economy should be in a position to take the lion share of these latent benefits.

The signing of the Treaty is expected to improve the economic prosperity of the African nations, by removing trade barriers like tariffs and import quotas to enable free flow of goods and services amongst its members. As with most treaties, the Agreement has Protocols, Annexes, Appendices and Guidelines which together form an integral part thereof. It must be noted, however, that many of these instruments are still a work in progress. The tariff reductions, rules of origin, and trade in services

[1] The initial signing of the Agreement establishing AfCFTA by the 44 member States (which was an agreement in principle) should not be confused with the subsequent ratification that gave legal teeth to the Treaty. The understanding was that the proposal would come into force 30 days after ratification by 22nd of the signatory States.
[2] Article 12 (2) (b) of Vienna Convention on the Law of Treaties, 1969 (also known as Treaty of Treaties), is to the effect that where the signature is subject to ratification, acceptance or approval, the signature does not establish the consent to be bound. However, it is a means of authentication and expresses the willingness of the signatory state to continue the treaty-making process. The signature qualifies the signatory state to proceed to ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.
[3] https://www.tralac.org/resources/our-resources/13595-nigeria-intra-africa-trade-and-tariff-profile.html Accessed 11 March 2020.

arrangements must still be negotiated and finalized. Implementation will require clarity of purpose and certainty about the powers of the entities to be established, and how they will interact with existing trade regimes. Very concerted efforts are required to tackle well-known problems related to trade facilitation, non-tariff barriers (NTBs), corruption and lack of legal clarity. If not properly implemented (with transparency, trade remedies and sanctions being provided), the benefits which the private sector may gain will be few.[4]

Article 3 of the Treaty highlights some of the general objectives to include the following:

a. creation of a single market for goods and services, facilitated by movement of persons in order to deepen the economic integration of the African continent and in accordance with the Pan African Vision of "An integrated, prosperous and peaceful Africa" enshrined in Agenda 2063;
b. creation of a liberalized market for goods and services through successive rounds of negotiations;
c. contributing to the movement of capital and natural persons and facilitating investments building on the initiatives and developments in the State Parties;
d. laying the foundation for the establishment of a Continental Customs Union at a later stage;
e. promoting industrial development through diversification and regional value chain development, agricultural development and food security; and
f. resolving the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes.

Article 4 prescribes specific objectives and action plans to be undertaken, and or given effect to, by member states to the Treaty. The State Parties are required to;

i. Progressively eliminate tariffs and non-tariff barriers to trade in goods;
ii. Progressively liberalize trade in services;
iii. Cooperate on investment, intellectual property rights and competition policy;
iv. Cooperate on all trade-related areas;

[4] https://www.tralac.org/publications/article/13221-the-afcfta-overview-and-implications.html Accessed 10 March 2020

v. Cooperate on customs matters and the implementation of trade facilitation measures;

vi. Establish a mechanism for the settlement of disputes concerning their rights and obligations; and

vii. Establish and maintain an institutional framework for the implementation and administration of the AfCFTA.

2. WHAT DOES NIGERIA STAND TO GAIN?

Though Nigeria was among the Member States who offered initial resistance to the ratifying of the Treaty while sighting impending negative impact on local manufacturing, the President, Muhammadu Buhari GCFR, subsequently ratified the Agreement on 07 July 2019[5], after consultation with the relevant stakeholders in diverse industries, primarily to increase trade between African countries. Nigeria has a lot to benefit from the implementation of the Treaty due to the peculiar circumstances of the country. The benefits cut across several sectors ranging from manufacturing industry, transportation industry, services, agriculture to industrial specialization and so on. Some of these benefits are enumerated as follows:

A. Increase in Intra-African Trade

The Treaty would be a game changer and a tool for stimulating intra-African trade. Countries like Nigeria with a potentially large manufacturing base can gain more market share across the continent which is a larger market for locally made goods. Traders would no longer have to go through the rigors of inter-border trade which usually involves rigorous clearing procedures and searches at the borders of member states.

B. Increase in Industrial Specialization

The Treaty would boost Nigeria's industrial efficiency, by building on the Nation's comparative advantage. This stems from industrial specialization and its importance

[5] However, the ratification by Nigeria does not make it a binding legal instrument within the country yet until it is domesticated by an Act of National Assembly pursuant to section 12 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

which cannot be over-emphasized. With the Treaty, Nigeria can concentrate on commodities where it has distinguishing expertise and abundant resources in, e.g., palm oil (Nigeria is the fifth largest producer of palm oil in the world, but struggles to get quality oil), crude oil, groundnut, cocoa and textiles. Nigeria can concentrate on the manufacture of such products while other products which the country cannot produce effectively due to some peculiar challenges like climate or agricultural terrain can be sourced from other Member States.

C. Increase in Mutual Trade Liberalization

Nigerian consumers will also gain from the mutual trade liberalization. The more ambitious the trade liberalization, the greater the expansion of Nigerian export to its neighboring countries.

D. Increase in Foreign Investment

The Treaty will boost both Foreign Direct Investment (FDI) and Foreign Portfolio Investment (FPI) of the country. Africa escaped the global decline in FDI as flows to the continent rose to US$46 billion in 2018, an increase of 11% on the previous year while FPIs total inflow was 21.4%. Nigeria is the third host economy for FDI in Africa, behind Egypt and Ethiopia. The country is among the most promising poles of growth in Africa and attracts numerous investors in the sector of hydrocarbon, energy, buildings etc. Estimated at USD 99.6 billion in 2018, the total stock of FDI represents 25.1% of the country's GDP.[6] Some of the main investing countries in Nigeria include the USA, China, United Kingdom, the Netherlands and France. African countries continue to pale in comparison to Europe and the USA in terms of annual contribution to the FDI and FPI inflows in Nigeria. With full implementation of AfCFTA, it is hoped that more investments will come from African countries to Nigeria. Nigeria would equally benefit from technology acquisition Agreements of other African nations.

E. Creation of new markets

[6]https://unctad.org/en/PublicationsLibrary/wir2019_en.pdf Accessed on 13 March 2020.

The Treaty would also create new markets. One of the problems business owners face is the inability of their products to compete with foreign made goods. It is believed that foreign made goods have better quality than locally produced goods. However, with the Treaty, business owners would be able to transport goods to other African countries and compete with other manufacturers in order to improve their production skills.

F. Greater Expansion of Exports

Following the implementation of the Treaty, there would be a great expansion of exports in Nigeria. This is because the economy of Nigeria would strive on the manufacturing of products and the provision of services. This would bring about tariff reduction, trade facilitation and the thus improve the ease of doing business in Nigeria.

G. Investment in the Transportation Industry

The emergence of the Treaty would also boost the transportation industry in Nigeria and Africa as a whole. Nigeria is amongst the fastest growing economies in Africa, and the huge demand for commodities provides an opportunity for the growth in rail, air and water sub-sectors as commodities will need to be transported to the end users. Investors would be interested in investing and financing transportation projects given the huge market and potential therein in Africa.

NIGERIAN LEGAL SERVICES INDUSTRY UNDER THE TREATY REGIME

The Treaty has amongst other things, Protocols dealing with Trade in Goods and Trade in Services. Article 3 (2)(a) of the Protocol on Trade in Services states as part of its specific objectives, enhancing competitiveness of services through: economies of scale, reduced business costs, enhanced continental market access, and an improved allocation of resources including the development of trade-related infrastructure; Article 1 (p) of the Protocol defines "Trade in services" to mean the supply of service: (i) from the territory of one State Party into the territory of any other State Party; (ii) in the territory of one State Party to the service consumer of any other State Party; (iii) by a service supplier of one State Party, through commercial presence in the territory of any other State Party; (iv) by a service supplier of one State Party, through presence of natural persons of a State Party in the territory of any other State Party.

As noted by the Nigerian Bar Association in its "Memorandum on AFCFTA PHASE 1 NEGOTIATIONS – SCHEDULE OF SPECIFIC COMMITMENTS ON TRADE IN SERVICES" recently circulated amongst members, Legal Services is listed under the Professional Services[7] in the sub-sector classified as Business Services, being one of the 5 priority service sectors under negotiation. Concerns have been raised on the need to avoid the adoption of one-size-fits-all negotiation approach in respect of these professions without identifying the peculiarity in each of them. For instance, it has been suggested that negotiations on legal services under AFCFTA should be separated from the negotiations on other types of professional services[8] given the sui generis nature of legal services industry. The one-size-fits-all approach will defeat the peculiar and critical role of the legal profession which includes but is not limited to implementation of Rule of law, protection of private investments and businesses. This definitely varies considerably from jurisdiction to jurisdiction unlike the universal standards obtainable in other professional services.

In an era of globalization posed by technological disruption, which presents serious threats to legal services sub-sector, such negotiation should provide an avenue for Nigeria to agree on terms favourable to Nigerian lawyers and other specialized professional services. The benefits of bespoke negotiated terms and commitments cannot be over-emphasized as it will afford Nigerian lawyers the opportunity to scale up and access global market subject to licensing and qualification requirements. The alternative would be the exclusion of Legal Services from the ongoing negotiation until further consultation with relevant stakeholders to determine the applicable terms that will regulate opening of Nigerian legal market to the rest of Africa.

[7] Other Services grouped under Professional Services are (i) Accounting, auditing and book keeping services, (ii) Taxation Services, (iii) Architectural Services; (iv) Engineering Services; (v) Integrated Engineering Services; (vi) Urban planning and landscape architectural services; (vii) Medical and dental services (viii) Veterinary services; and (ix) Physiotherapists and para-medical personnel.

[8] It is not unlikely that other professional services may also have their peculiarities that need to be given due consideration in the course of the negotiation.

3. **HOW CAN SMEs IN NIGERIA BENEFIT FROM THE TREATY?**

The Small and Medium Enterprises (SMEs) are key to economic growth in Nigeria, as they constitute about 70% of Nigerian businesses. SMEs struggle to penetrate into the overseas markets, but with the emergence of the Treaty, SMEs such as manufacturers of Local footwear and textile would be able to tap into regional export markets and use these as stepping stones for expanding into overseas markets. The Agreement will also ease the process of importing raw materials from other African countries for SMEs production activities. In addition, Nigerian SMEs can set up assembly enterprises in other African countries in order to access cheaper means of production thereby improving their balance sheet positions. The Treaty will also provide an avenue for partnership amongst SMEs in various African countries in order to scale up production of goods and services.

4. **WHAT ARE THE KEY CHALLENGES OF THE TREATY TO THE NIGERIAN ECONOMY?**

Irrespective of the benefits Nigeria seeks to gain, there are also pessimism acknowledged by the relevant stakeholders towards the Treaty which was demonstrated by Nigeria's reluctance to sign the Treaty. This pessimism is primarily driven by the issue of smuggling of illegal products into the country. This has led to Nigeria border closure since October 2019. The rise in smuggling of rice and other staple food from neighboring countries has been blamed for the stunted growth in our food production in Nigeria. Similarly, illicit exports of locally subsidized petrol were being door through the borders to neighboring countries. No doubt the border closure does not represent the spirit of the Treaty but the Federal Government was constrained to apply the measure to curtail the ugly trend. One of the ways Nigerian government can combat the issue of smuggling is to agree on a common external tariff, which would make the issue of re-exporting products non-profitable.

Another challenge of the implementation of the Treaty is the decline in tariff revenue accruing to the Nigerian government. With the decline in revenue from oil, Nigerian government has been very aggressive in its identification and exploitation of alternative source of revenue. The recent Finance Act, 2019 demonstrates the attitude of government in this regard. The Nigerian Customs Service has also been reporting an increased revenue in recent years and there are fears that these gains may be eroded when the Treaty becomes fully operational.

Dumping of Goods: To address this, article 17(1) of the Protocol on Trade in Goods provide for State parties' right to apply anti-dumping and countervailing measures guided by the provision of Annex 9 on Trade Remedies. It is doubtful if this measure can checkmate the issue of dumping that will rear its ugly head under the Treaty regime.

In addition is also the lack of substantial infrastructures such as transportation, tariffs, lack of electricity to enable goods to be exported from one place to another which would adversely affect Nigerian businesses. Finally, Nigeria has a poor record of enforcing Laws and Treaties. This action could frustrate the implementation of the Treaty.

5. KEYS TO SUCCESS OF THE TREATY IN NIGERIA

In order for Nigeria to achieve a smooth implementation of the Treaty, the following should be put in place by the Nigerian government;

I. Tackling Infrastructural Constraints and creating an enabling business environment.
II. Dialoguing with relevant stakeholders in different sectors.
III. Ensuring effective enforcement of laws and treaties. Nigeria is yet to commence the legislative process of domesticating the Agreement by ratifying and codifying as local legislation. Thus, it is necessary that the National Assembly ratify the Agreement for it to become operational in Nigeria as provided in Section 12 of the 1999 Constitution of the Federal Republic of Nigeria.
IV. Setting in place an alternative to eradicate smuggling rather than border closure.
V. Expediting actions on anti-dumping measures on preventing dumping of goods.
VI. Supporting complementary measures, for instance, boosting investment through a national investment legal framework.

VII. Countries that are signatories to the Treaty should properly negotiate and include the Rules of Origin requirements to ensure that only goods that were predominantly made within the free trade area (in this case, Africa) will be allowed to move around with the special treatments (such as 0% tariffs agreed in the Treaty).

6. Conclusion

The central theme of this write-up as deducible from the title is the need to be cautiously optimistic in assessing the gains derivable from the Treaty. The benefits should also be weighed side by side the possible challenges that may be inherent in the implementation of the Treaty. No doubt, Nigeria stands to gain from the larger market provided under the multi-lateral treaty. However, for the country to harness these benefits, drastic measures should be taken to reposition the economy by addressing the fundamental challenges facing the manufacturing and industrial sectors.

The infrastructural deficits bedeviling Nigeria in critical sectors such as power, road and maritime will erode the potential gains that would ordinarily flow from the economic integration. Before further commitments by the Nigerian government and subsequent domestication of the Agreement by the National Assembly, extensive stakeholders' engagement is needed to ensure that the areas that need further negotiations are tailored with a view to benefitting Nigeria's economy. At the end, the benefits of the Treaty to Nigeria can only be measured in terms of how such economic integration is able to provide sustainable and profitable environment for cross-border trade and liberation of trade in services as well as the competitive advantages it offers Nigerian businesses.