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**The African Continental Free Trade Area (Afcfta):  
A Bold Attempt at Trade Liberalization in Africa**

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**Abstract**

This paper examines the prospects and challenges of the African Continental Free Trade Area (AfCFTA) initiative. Africa is at an extraordinary point in history, one in which a global decline in fertility rates is being experienced. In Africa, unlike the rest of the world, births outnumber deaths four to one. Within the next 30 years, Africa will be home to the largest population of young people in the world, and by the year 2100, a third of the global labour force will be African. These demographic changes are instructive. Africa must seize the opportunities that come with an increasingly dynamic market space, or its 2063 Agenda of transformation may elude it. The African Continental Free Trade Area (AfCFTA) initiative was formulated as a reaction to this. This paper evaluates the African Continental Free Trade Area and its significance to the broader conversation on the Continent's development. The paper also examines the 'development integration model, upon which the AfCFTA initiative is based and appraises the legal agreement creating it along with its supporting protocols on goods, services and dispute settlement. It goes on to consider the Initiative's prospects with regards to economic growth and development on the Continent and examines challenges likely to bedevil its operation. In the paper, it is argued that optimizing the benefits of the AfCFTA will require a broad perspective as well as coherent development policies driven by ambitious and transformational leadership.

**KEYWORDS:** AfCFTA, TRADE, AFRICA, DEVELOPMENT

## **The African Continental Free Trade Area (AfCFTA): A Bold Attempt at Trade Liberalization in Africa<sup>1</sup>**

### **1.Introduction**

It was not until the early 1960's that most African countries became decolonised and attempted for the first time to identify themselves in the comity of Nations. Before then, many African nation-communities were agrarian and cultivated small farmlands to feed their subsistent families. Despite the fact that the Continent was vastly endowed with raw materials, many of its inhabitants lacked the capacity to convert them into wealth for the larger society. Life continued in this way until the coming of colonial interests and the subsequent crystallization of full-fledged colonial rule at the turn of 1900, which was fueled by economic considerations.

The end of colonialism came with an opportunity for Africa to grapple with the intricacies of statehood, however the toll of colonial rule on the Continent continued to interfere with its growth and development.<sup>2</sup> The corollary to this state of affairs was that Africa continued to play catch-up in global trade and political affairs. This situation was exacerbated by a cycle of inept leadership which over the years further complicated the economic challenges caused by colonialism.

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<sup>2</sup> Pan-Africanists such as Walter Rodney and Frantz Fanon captured how foreign rule set the developmental clock of Africa backwards. See Rodney Walter, *How Europe Underdeveloped Africa* (rev edn, Pambazuka Press, 2013) pp 106-160; Fanon Frantz, *The Wretched of the Earth* (1<sup>st</sup>ed,Grove Press,1969) pp 63-65.

Pundits agree that Africa is at a delicate point today, mainly due to its rising population. By 2050, it is projected that the Continent's population will rise to around 2.5 billion, most of which will be comprised of its youth. Amidst the low fertility rates experienced in other parts of the world, Africa has proven to be demographically exceptional. This therefore imposes an imperative for more innovative initiatives to optimise the Continent's youth potential. Without robust and significant economic policies domestically and regionally, the Continent risks wasting its golden opportunity to develop. This is therefore the reason why the African continental free trade Area (AfCFTA) initiative is crucial. The African Union's flagship Project, the African Continental Free Trade Area (AfCFTA), was launched in March 2018 to optimise the Continent's natural and human resources for trade-driven development.

This paper holistically evaluates the African Continental Free Trade Area (AfCFTA) initiative viz-a-viz its impetus to the actualization of economic development and transformation. Importantly, the legal provisions of the Agreement which makes the AfCFTA initiative operational as well as the approach it employs are appraised in detail. Furthermore, the paper introspects on the prospects of the highly ambitious Initiative, as well as the challenges that may become its Achilles heel.

## **2. The Concept of a Free Trade Area (FTA)**

Different societies have traded with each other since the beginning of recorded history.<sup>3</sup> However, one of the first efforts at articulating a rigorous intellectual basis for the economic benefits of facilitating trade between members of different states was made by Adam Smith. In the seminal work, *The Wealth of Nations* published in 1776, Adam Smith argued eloquently that the gains that could be realized from international trading relations could be extended to international economic activity thus:

*The tailor does not attempt to make his [...] shoes but buys them off the shoemaker. The shoemaker does not attempt to*

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<sup>3</sup> See William J. Bernstein, *A Splendid Exchange: How Trade Shaped the World* (Atlantic Books, 2008) pp 21-42; Nayan Chanda, *Bound Together: How Traders, Preachers, Adventurers and Warriors Shooed Globalization* (Yale University Press, 2007) 12.

*make his [...] clothes but employs a tailor.... what is prudence in the conduct of every private family can scarcely be folly in that of a great kingdom. If a foreign country can supply us with a commodity cheaper than we [...] can make it, better buy it off them with some part of the produce of our [...] industry, employed in a way in which we have some advantage.<sup>4</sup>*

This eloquent statement has become the basis of the now widely accepted concept in macroeconomic theory namely ‘Absolute Advantage’. Smith’s theory of Absolute Advantage argues that countries should export those products which they can produce more efficiently than other countries and import those products which they cannot. For example, if countries with tropical climates traded with countries in temperate climates, the latter should welcome such as trade.<sup>5</sup> In Smith’s thought, international trade is merely a means by which to broaden the division of labour by expanding the size of the market. It is important to note that according to the Smith, unilateral trade liberalization would be an advantageous policy for a country to pursue as even if other countries do not liberalize their trade policy, a country which did liberalize its trade policy, could realize economic gains.<sup>6</sup>

It is on this principle therefore, that the idea of a Free Trade Area (FTA) among nations is hinged. Whereas un-free-trade, (which is punctuated globally by an array of trade barriers such as tariffs and import duties) prevents nations from trading with each other and maximally profiting from their strength and competencies; under a free trade area, barriers to substantially all trade between nations such as duties and other restrictive regulations of commerce are significantly eliminated.<sup>7</sup> This brings down the price of goods that circulate in the trade area and benefits the markets of the participating states.

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<sup>4</sup> Adam Smith, *The Wealth of Nations* (reprinted, Modern Library Edition, 1937) 424.

<sup>5</sup> Micheal J. Trebilcock, *Advanced Introduction to International Trade Law* (rev edn, Edward Edgar Publications, 2015) pp 1-16.

<sup>6</sup> *Ibid.*

<sup>7</sup> See also Article XXIV:8(b) GATT 1994.

By design, an FTA is simply a trade arrangement whereby a group of countries agree to have few or no barriers to the flow of goods and services between each other.<sup>8</sup> Free trade areas allow the agreeing nations to focus on their comparative advantages and to produce the goods they are comparatively more efficient at making, thus increasing the efficiency and profitability of each country's ventures. One of the most well-known free trade areas was the North American Free Trade Agreement (NAFTA) created in 1994. Under the NAFTA trade regime Canada, the United States and Mexico agreed to gradually reduce and eliminate barriers to investment and trade between them, essentially encouraging and creating one of the largest trade blocs in the world by Gross Domestic Product (GDP).

To develop an FTA, participating nations must develop rules for how it will operate. This includes the custom procedures to be followed by the parties to the agreement, the tariffs (if any) to be paid on different kinds of goods, the methods of resolving trade disputes, the means of transportation of goods, intellectual property rights amongst other sensitive issues. The goal is to create an unhindered trade system that all parties in the FTA agree upon and which are mutually beneficial as far as practicable.<sup>9</sup>

Apart from the economic benefits, an FTA also has benefits for consumers. Consumers within it gain increased access to less expensive and higher quality foreign goods as governments reduce or eliminate trade barriers. Free trade initiatives also lead to increased competition and with it an opportunity for transfer of skill and competencies in production processes, leading to higher efficiency. This may likely result in shifts in market control by domestic producers and job losses and gains by domestic workers as production become more dynamic. Overall FTAs encourage economic growth, higher incomes

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<sup>8</sup> Peter Van den Bossche, *Law and Policy of the World Trade Organisation: Text, Cases and Materials*. (Cambridge University Press, 2005) pp 658-659.; See also Schott Jeffrey, *More Free Trade Areas*. (Institute for International Economics, 1989) 25.

<sup>9</sup> Jim Chappelow 'Free Trade Area' Available online <[https://www.investopedia.com/terms/f/free\\_trade\\_area.asp](https://www.investopedia.com/terms/f/free_trade_area.asp)> accessed 2<sup>nd</sup> November 2019.

and increased living standards.<sup>10</sup> These are the most fundamental aspiration of the AfCFTA.

### **3. Background of the African Continental Free Trade Area (AfCFTA)**

The African Continental Free Trade Area (AfCFTA) initiative was essentially set-up to create a single market for Africa's 1.2 billion people, its combined gross domestic product (GDP) of \$2.5 trillion and across its 55 States. The AfCFTA became imperative in light of the relatively low intra-African trade level of 18%. Businesses across African States find it more difficult to export to markets in other African Countries than outside it.

The AfCFTA is a multilateral agreement between African States to progressively eliminate the high intra-African tariff rates (of 6.1% on average), thus making it easier for African businesses to trade across borders but within Africa. It should be stated that even though the AfCFTA is called a 'Free Trade Area' it is more akin to a comprehensive partnership agreement, as its mandate transcends trade in goods to services, investment, competition and intellectual property.<sup>11</sup> By the year 2050 when the population of Africa is projected to reach 2.5 billion and comprise of 26 per cent of the world's labour, the single market created by the AfCFTA will be the most dynamic market space in history.<sup>12</sup>

The route to establishing the AfCFTA began in 2012, when the African Heads of State and Governments resolved to establish a single Continental market for goods and services, with free movement of business persons and investments. Consultations and negotiations for establishing the treaty commenced in June

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<sup>10</sup>*Ibid.*

<sup>11</sup> Trade Law Centre, 'African Continental Free trade Area (AfCFTA). FAQs. Question & Answers' (Cape Town, 1 June 2018) 1.

<sup>12</sup> United Nations Economic Commission for Africa, 'African Continental Free Trade Area - Questions and answers.' *African Trade Policy Centre* (Addis Ababa, 15 August 2019) <[https://www.uneca.org/sites/default/files/Publication/Files/qa\\_cfta\\_en\\_230418.pdf](https://www.uneca.org/sites/default/files/Publication/Files/qa_cfta_en_230418.pdf)>

2015 during the 26th Ordinary Session of the African Union (AU) Assembly of Heads of States and Governments in Johannesburg, South Africa.<sup>13</sup>

The year 2017 was adopted as the deadline on which the treaty would become operational. However, a consensus was not reached among many member nations who requested for more time to continue consultations on the potential impacts on their economies. The scope of the treaty covered agreements on trade in goods, services, investment, and rules and procedures on dispute settlement, including a range of provisions to facilitate trade, reduce transaction costs, provide exceptions, flexibilities and safeguards for vulnerable groups and countries in challenging circumstances.<sup>14</sup>

The negotiations from which the AfCFTA was produced were founded on international trade principles such as most favourable nation (MFN) treatment, national treatment, reciprocity, special and differential treatment, transparency, substantial liberalization, consensus, best practices and reservation of *acquis*.<sup>15</sup> Other factors which were considered in negotiating the agreement were variable geometry and the need for the initiative to be driven by AU member states and Regional Economic Communities (RECs) such that they served as the AfCFTA's building blocks.<sup>16</sup>

The negotiations took place in two phases encompassing a total of ten sessions held in Addis Ababa, Niamey and later Abuja. After the launch of the first phase of negotiation in Johannesburg in June 2015, technocrats from around the Continent intensely reviewed each other's mandates to identify and grasp

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<sup>13</sup> Basse Udo, 'Understanding the African Continental Free Trade Agreement' *Premium Times* (Lagos, 30 July 2019) <<https://www.premiumtimesng.com/business/business-interviews/263441-understanding-the-africancontinental-free-trade-area-agreement.html>>

<sup>14</sup> *Ibid.*

<sup>15</sup> i.e. Building on existing levels of integration, tariffs must be lowered beyond what has already been agreed through multilateral system or EPAs.

<sup>16</sup> Regional Focus and Third World Network Africa, 'The Continental Free Trade Area (CFTA): Process and Political Significance' (Accra, 26 July 2019) <<http://twnafrica.org/RR%20+%20TWN-A%20%20CFTA%20Primer.pdf>>; Yakubu Nagu, 'From OAU to AfCFTA: Analysing the prospect of African Development' (Cape Town, 3 October 2018) pp33.

the foundational issues and complexities around intra-African trade.<sup>17</sup> It was not until the 8th session of the CFTA-NF in Abuja held on November 2017, that the AfCFTA along with its three foundational protocols; on Trade in Goods, Trade in Services and Dispute Settlement was tabled for the first time for final review. All it took afterwards were two legal scrub up sessions and the legal text was tabled before the African Union Assembly in Kigali in March 2018. The number of negotiating sessions in a way expresses a resolve and a dedication towards the AfCFTA initiative unlike any like it before on the Continent.

The draft agreement was signed on March 21, 2018, during the 18<sup>th</sup> Extraordinary session of the Assembly of AU Heads of States and Governments in Kigali, Rwanda. About 44 of the 55 African countries signed the treaty. The signatories included host Rwanda, Niger, Angola, Central African Republic, Chad, Comoros, Congo, Djibouti, The Gambia, Gabon, Ghana, Kenya, Mauritania, Mozambique, Cote D'Ivoire, Seychelles, Algeria and Equatorial Guinea.<sup>18</sup> Others include Morocco, Swaziland, Benin, Burkina Faso, Cameroon, Cape Verde, Democratic Republic of Congo, Guinea, Libya, Madagascar, Malawi, Mali, Mauritius, South Sudan, Uganda, Egypt, Ethiopia, Sao Tome and Principe, Togo and Tunisia and others.<sup>19</sup>

At the second phase of negotiations launched in August 2018 (after the signing of the agreement and protocols produced from the first phase), the overarching mandate of negotiators was stated to be towards providing a framework for investment, competition and intellectual property.

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<sup>17</sup>African Union, 'The Sixth Meeting of the Continental Free Trade Area Negotiating Forum (CFTA-NF) kicks off prior to the African Union Ministers of Trade Meeting' (Addis Ababa, 8 June 2017)

<<https://au.int/en/pressreleases/20170608/sixth-meeting-continental-free-trade-area-negotiating-forum-cfta-nfkicks>>.

<sup>18</sup> Trade law Centre n 11, 5.

<sup>19</sup> Nine other countries did not sign the agreement including surprisingly Nigeria, South Africa, Zambia, Tanzania, Burundi, Eritrea, Botswana, Lesotho and Namibia. The Nigerian government at the time said it was delaying its signature to the document to widen and deepen consultations to ensure all concerns are addressed as it would not sign any document that would not fairly and equitably meet the interest of Nigerians. *Ibid.*



Deliverables under the second phase is expected to be submitted for adoption to the January 2020 Session of the African Union assembly.<sup>20</sup>

With the ratification of the agreement by the parliaments of no fewer than 22 Countries in March 2019 (and the deposition of the instruments of ratification at the AU secretariat), the AfCFTA came into force. On the 7<sup>th</sup> of July 2019 after months of back-forth, Nigeria, a major economic player in Africa signed the agreement bringing the total number of countries to have signed the agreement to 52. In a way, the initial reluctance of Nigeria to sign the agreement expresses the aggregate scepticism on the Continent of the ambitious initiative in a highly dynamic region, even though the theory of free trade favours the agreement.

#### **4. An appraisal of the Agreement establishing the African Continental Free Trade Area.<sup>21</sup>**

From the preamble and objectives stated in the agreement, the initiative is essentially intended to act as an enabler of the economic goals contained in the African Union's Agenda 2063. The agreement establishes that the initiative's overarching goal is the deepening of economic integration through securing partnerships on the Continent for the promotion of agricultural development, food security, industrialisation and structural economic transformation.<sup>22</sup> The goal of creating a single market is also stated to be inspired by the Pan-African vision of an integrated, prosperous and peaceful Africa, as contained in the Africa 2063 Agenda.<sup>23</sup>

The AfCFTA agreement establishes four key institutions namely the Assembly of Heads of States and Governments, which acts as the highest decision-making body. The Council of African Ministers responsible for trade which makes primary decisions on the workings of the agreement. The Committee of

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<sup>20</sup>*Ibid.*

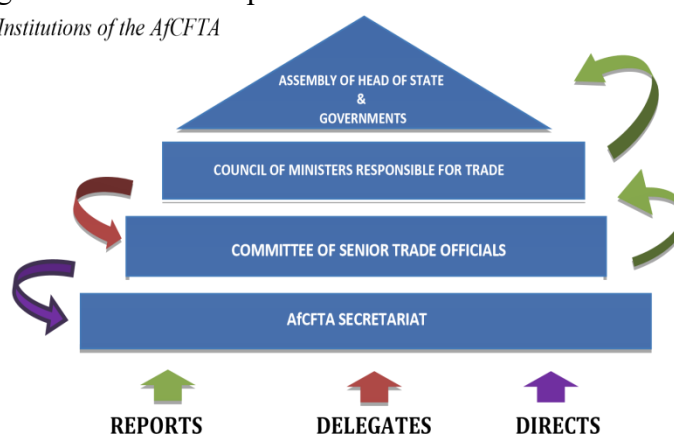
<sup>21</sup> The version of the AfCFTA Agreement used for this research is the November 2018 Update. African Union, 'Agreement Establishing the African Continental Free Trade' (Addis Ababa, 1 November 2018) <<https://www.tralac.org/documents/resources/african-union/2162-afcfta-agreement-legally-scrubbed-versionsigned-16-may-2018/file.html>>

<sup>22</sup>AfCFTA Agreement, 2018, Preamble.

<sup>23</sup>AfCFTA Agreement, 2018, Article 3.

Senior Trade Officials which develops the programme and action plans for the running of the initiative, and the Secretariat which acts as the administrative body for coordinating the AfCFTA's implementation.<sup>24</sup>

Fig. 1.1: Regulatory Institutions of the AfCFTA



In accordance with Article 23(3) of the agreement, the initiative became operational 30 days after the 22<sup>nd</sup> instrument of ratification was deposited by the Sahrawi Republic on 30th May 2019. The agreement becomes enforceable against State parties subsequently on the date that party eventually deposits its accession instrument.<sup>25</sup> The AfCFTA agreement is subject to review every five years, however, amendments may be proposed to the secretariat by State parties, which, after facilitating a review and a broad consultation process, may submit the amendment to the assembly for adoption by a consensus.<sup>26</sup>

The agreement is supported by three protocols: the protocol on trade in goods, the protocol on trade in services and the protocol on rules and procedures on the settlement of disputes. While the protocol on trade in goods and the protocol on rules and procedures on the settlement of disputes are supported by annexes, the annexes to the protocol on trade in services are still being negotiated.<sup>27</sup> These protocols to the agreement are essentially the framework of regulations for the FTA.

<sup>24</sup>AfCFTA Agreement, 2018, Article 13

<sup>25</sup>AfCFTA Agreement, 2018, Article 23 (3).

<sup>26</sup>AfCFTA Agreement, 2018, Article 28.

<sup>27</sup>*Ibid.*

#### **4.1. The Protocol on Trade in Goods:**

The Protocol on Trade in Goods is the first protocol to the AfCFTA agreement and its central objective is to supplement the AfCFTA by setting up a liberalized market for the trade in goods. The protocol is the most extensive document in the AfCFTA suite of documents. It is comprised of eight parts and nine annexes, with some of the annexes additionally comprising schedules, guidelines and appendices.<sup>28</sup> Like the AfCFTA agreement, and in the same fashion as the World Trade Organization's general agreement for tariff & trade, the protocol reiterates the most favourable nation and national treatment principles, reinforces the significance of nondiscrimination to the facilitation of an open and liberalized market for goods trade.<sup>29</sup> While some tariff is permitted to be levied at reduced rates, quantitative restrictions and non-tariff barriers are expressly prohibited.<sup>30</sup> Part four of the protocol encourages customs cooperation, trade facilitation and transit.<sup>31</sup>

The protocol also makes provision for trade remedies.<sup>32</sup> Noteworthy in this regard, is the provision which stipulates that the imposition of remedies within the AfCFTA will be in accordance with Article XIX of the General Agreement for Trade & Tariff, and the World Trade Organization's agreements.<sup>33</sup> Product standards and measures to regulate the sanitary and Phyto-sanitary condition of goods traded within the free trade zone are permitted under the protocol to be imposed by State parties; they are however subject to the conditions spelt out by the protocol's annexes six and seven.

#### **4.2. The Protocol on Trade in Services:**

The second protocol to the AfCFTA is on services trade. Services in Africa has remained low despite the global increase in services trade. Data from 2017 show that only 2% of global service export is from Africa, with intra-

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<sup>28</sup>such as the annex on transit as well as the annex on trade remedies.

<sup>29</sup>AfCFTA Agreement, 2018, Part 2.

<sup>30</sup>Protocol on Trade in Goods, AfCFTA Agreement, 2018, Articles 9 and 12.

<sup>31</sup> See *Ibid.* Articles 14, 14 and 16 respectively.

<sup>32</sup>Part 5 *Ibid.*

<sup>33</sup>Article 18 *Ibid.*

African Trade in services declining by 1%. It was to address this situation that the AfCFTA includes a Protocol on Trade in Services to encourage regulatory reforms in service sectors across the Continent, and liberalization within them to boost intra-African service trade.

The Protocol on Trade in Services is not as exhaustive as the Protocol on Trade in Goods. It contains six parts of twenty-nine articles and six annexes which are still being negotiated. The broad objective of the protocol is to create a single liberalized market for service trade by eliminating barriers to trade in services.<sup>34</sup> Within the context of the protocol, ‘*services*’ exclude those supplied in the exercise of government authority and the term ‘*trade in services*’ means “the supply of service from the territory of one State party into the territory of any other State party or from the territory of one State party to a service consumer of any other State party, or by a service supplier of one State party, through commercial presence in the territory of any other State party, or by a service supplier of one State Party, through the presence of natural persons of a State party in the territory of any other State Party”.<sup>35</sup>

The protocol allows leverage to State parties to “...regulate and introduce regulations on services and service suppliers within its territory in order to meet national policy objectives,” in so far as those regulations do not disturb the commitments under the protocols and are administered reasonably, objectively, transparently, and reflect non-discrimination principles.<sup>36</sup>

#### **4.3. The Protocol on Rules and Procedures on the Settlement of Dispute**

The African Continental free trade initiative aims to attain the WTO’s level of proficiency and therefore models its dispute settlement system in like fashion, to be administered in accordance with a protocol on rules and procedures on the settlement of disputes (Dispute Settlement Protocol). The protocol establishes a dispute settlement body (DSB) to serve the role of

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<sup>34</sup>Protocol on Trade in Services, AfCFTA Agreement, 2018, Article 3.

<sup>35</sup>Article 2(3)(c) *Ibid.*

<sup>36</sup> See Article 8, 9 and *Ibid.* respectively.

securing the predictability of the rules and regulations of the AfCFTA's trading system. It does so through preserve the rights and obligations of State parties and clarifying the existing provisions of the agreement in accordance with the customary rules of interpretation of public international law governing dispute settlement between State parties.<sup>37</sup>

The protocol on rules and procedures on the settlement of disputes cover any disagreement between State parties regarding the interpretation or application of the Agreement in relation to their rights and obligations.<sup>38</sup> The protocol is aimed at creating a framework for the transparent, accountable, fair, predictable and consistent settlement of disagreements arising from the interpretation of the provisions of the AfCFTA.<sup>39</sup> The protocol comprises 31 articles, which *inter alia* creates a disputes settlement body and stipulates the methods of dispute resolution. It also contains three annexes on the working procedures of the dispute settlement body.

The DSB is vested with the authority to establish dispute settlement panels and an appellate body. These are to function like a Court of first instance and an appellate Court within domestic judicial systems, and are to be composed of representatives from State parties.<sup>40</sup> The role of the DSB with respect to the panels and appellate body is therefore to establish their procedural rules in order to guarantee their efficiency; adopt reports from them and also to perform other supervisory roles.<sup>41</sup> The decisions of the DSB in this regard are to be arrived at by consensus.<sup>42</sup> The parties to a dispute under the Agreement are at liberty to refer their disputes for arbitration as the first

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<sup>37</sup> Protocol on Rules and Procedure on the Settlement of Disputes, AfCFTA Agreement 2018. Articles 21(3);

Article 2

<sup>38</sup>Article 3 *Ibid.*

<sup>39</sup>Article 2 *Ibid.*

<sup>40</sup> Protocol on Rules and Procedure on the Settlement of Disputes, AfCFTA Agreement 2018, Article 5 (2).

<sup>41</sup>*Ibid.* Article 5 (4) & 5 (5)

<sup>42</sup>*Ibid.* Article 5 (6)

dispute settlement avenue, in which case the use of the DSB is foreclosed, till the arbitration option is exhausted.<sup>43</sup>

The scope of the DSB's mandate is to adjudicate on only disputes between State parties. This means that according to existing protocols and agreements relating to the initiative, private and individual rights cannot be directly asserted before the dispute settlement body. This reflects the intention of the initiative to focus on harmonizing governmental trade policies while treating the disputes arising from it as merely incidental. Thus, neither the AfCFTA nor the DSB its dispute settlement organ was established to further the interests of the individual trader.<sup>44</sup>

Although the AfCFTA's dispute resolution enabling protocol mechanism is yet to be operational, some of its features which may have a positive effect on the operation of the AfCFTA and which should be safeguarded include its enforcement system. Its enforcement system is designed to guarantee compliance by allowing a complaining state party to temporarily suspend previously granted trade concession to any State party which defaults in implementing the recommendations and rulings of the DSB in respect to an AfCFTA trade dispute.<sup>45</sup>

### **5. The African Continental Free Trade Area's Approach to Integration.**

Towards success in any regional integration experiment, the employment of the 'proper' model is imperative. The proper model also serves as scaffolding on which analysis is built and which provides generalizations, abstractions and create the links that ultimately manifest in a working and functional structure if properly employed. A proper model for integration is one which suits the social, political and economic peculiarities of the region where it is to be employed. As far as Africa's experimentation with integration over the years is concerned, two models of integration have

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<sup>43</sup> See also Article 6(6) and Article 27 *Ibid.*

<sup>44</sup> See Charnovitz Steve, 'The WTO and the rights of the individual' [2001] (36)(2) *Intereconomics*; 98–108.

<sup>45</sup> Protocol on Rules and Procedure on the Settlement of Disputes. n 40, Article 25.

featured prominently; the Market Integration model and the Development Integration model.

The AfCFTA applies the Development Integration model of integration. The choice of this model represents a breakaway from the previously utilized Market Integration model which punctuated the EU's integration experiment. This shift has therefore led to concerns being raised on which approach is best suited to deal with the realities of the Continent. It is in view of giving an opinion on this concern that this paper now assesses the suitability of either of the two models.

The Market Integration model envisages a linear process of trade barrier elimination from FTA to the deepest levels of Political union.<sup>46</sup> The neo-classical international trade economist, Jacob Viner who is known to have propounded this theory, argued that a linear approach to integration would be more trade creating than trade diverting, and will result in significant welfare gains and therefore is a desirable integration model.<sup>47</sup> He therefore proposed creation of a network for market access (among regionalising states) as well as a continuous and steady process of removal of barriers to trade that eventually results in constructing a political union.<sup>48</sup> The model was significantly expanded by the Balassa conventional analysis of economic integration and explained further to occur incrementally from a preferential trade arrangement, to a Free Trade Association, to a customs union, to the formation of common markets, then economic union and ultimately to the creation of a political union.

However, the Market Integration model has drawn a lot of criticism for its ignorance of the diversity in global economic landscapes, and its sheer

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<sup>46</sup>Owoeye, O, 'Regionalism and WTO Multilateralism: The Case for an African Continental Free Trade Area' (2016) 50(6) *Kluwer Law International* BV 1086 - 1087  
<<http://www.kluwerlawonline.com/abstract.php?area=Journals&id=TRAD2016043>> accessed 29 July 2019

<sup>47</sup> Jacob Viner, *The Customs Union Issue*. (Carnegie Endowment for International Peace, 1950), pp 21-25.

<sup>48</sup> Samuel OjoOloruntopa and MammoMuchie (eds), *Innovation, Regional Integration, and Development in Africa: Rethinking Theories, Institutions, and Policies* (Springer, 2019), pp31-34.

failure to recognise the individuality of the states involved.<sup>49</sup> Furthermore, it has been criticised for its prioritisation of economic objectives over non-economic state-centric objectives, and also for the fact that it proved inadequate to attend to the peculiarities of the African economic climate largely because the model was theorised within the context of the perfections of the European market.<sup>50</sup> The Abuja Treaty signed in 1991 but which came into force in 1994 presents a near example of integration in the market model's brand. This is because it elaborately set out a linear process of trade barrier reduction.

The Abuja Treaty set the framework for the establishment of an African Economic Community (AEC). Under the treaty, the proposed AEC was to use regional economic communities as strengthening pillars. It provided for a six-step solution towards integration and development which included the creation of a Customs Union, Common Market, Monetary Union, FTA and eventually pave the way for full socio-economic and political integration. However, despite the elaborate ambitions set for the development of the Continent by the Abuja Treaty, the welfare gains predicted by the Market Integration approach still remains elusive and the Continent is still plagued by poverty and underdevelopment amidst rising debt profiles as well as socio-economic instability.

The discourses on African integration took an ideological turn due to the proven inadequacies of the Market Integration model. Accordingly, the Development Integration model was advocated to be better suited to meet the peculiar demands of integration on the Continent. The AU resolved to adopt

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<sup>49</sup> See Lamy P, 'Regional Integration in Africa: ambitions and vicissitudes' in Ismail Faizel, *Transformative Industrialization and Trade in The Context of the CFTA: Opportunities and Challenges* (UNECA press, 2017), 35. See also Richard Gibb, 'Regional Integration and Africa's Development Trajectory: meta-theories, expectations and reality' [2009] (30)(4) *Third World Quarterly*; 701-721

<sup>50</sup> A perfect market in this regard is one within which exists- Perfect competition in transport markets, free flow of labour and capital inside but not between countries, little or No transport costs, Tariffs as the only trade restrictions, balanced trade between countries, Prices reflecting the opportunity costs of production, Resources, etc. See Davies, R, 'Promoting Regional Integration in Africa: An Analyses of Prospects and Problems from a South African Perspective'. [1996] (5)(5). *African Security Review* 96. See also Faizel *Ibid*.



the development integration model for the AfCFTA. The Development Integration model emphasizes the importance of (both macro and micro) coordination in a multi-sectoral programme, which essentially covers production, infrastructure and trade.<sup>51</sup>

The model represents an interim shift in focus from the market integration model to a development centred model which concentrates on production capacity, planning, and cooperation for the propagation of trade growth (which is more integral to development). It takes acknowledges the low level of industrialization in Africa and emphasises the need to spur the industrial capacity of states within it.<sup>52</sup> The model is characterised by the conscious intervention of the regional partners to promote cooperation and interdependence by ensuring the equitable distribution of the gains of integration, using compensatory and corrective mechanisms.<sup>53</sup>

A noteworthy feature of the Development integration model which is evident in the AfCFTA is that it is marked by the fostering of cross-border cooperation between countries in a region, not just in terms of trade, but also in terms of investment, research and infrastructural development.<sup>54</sup> The need for this comes in the wake of the realisation that exposure of underdeveloped industries to competition in an integration project could have devastating effects and could lead to de-industrialisation rather than industrialisation.<sup>55</sup> It therefore combines a strong institutional capacity and architecture with clearly articulated goals, as well as the framework for the assurance of peace and security, towards the achievement of symmetrical gains for all member states involved.

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<sup>51</sup> Ismail Faizel *Ibid.* 36.

<sup>52</sup> Ostergaard, T, 'Classical Models of Regional Integration: What relevance for Southern Africa?' In South Africa and the World Economy in the 1990s. (Ed. P. H. Baker, A. Borraine & D. Lewis) 14.

<sup>53</sup> S.K.B Asante, *Regionalism and Africa's Development: Expectations, Reality, and Challenges.* (Macmillan, 1997), 138-140,

<sup>54</sup> Ismail, F. *Ibid.*

<sup>55</sup> United Nations Economic Commission For Africa, 'Economic Report on Africa 2015. Industrializing Through Trade' (Addis Ababa, 2015). <<http://www.uneca.org/publications/economic-report-africa-2015>> in Ismail F. *Ibid.*

The Development integration model may however not be without its limitations. It is argued that driving the AfCFTA forward by using the Development Integration approach may prove to be extremely difficult to implement. This is because it is primarily corrective in nature and requires a tremendous level of commitment across the board. Also committing to high levels of corrective measures demanded by a Continental scale integration project will be a huge hurdle for African States, many of which still find even national and regional commitments too burdensome. Furthermore, a difficulty may be faced in implementing the development integration model because it places heavy reliance on international support, which has in the past been shown to lead to more negative outcomes for the Continent than any positives. An instance of this is the 1986 United Nations formulated 4-year economic recovery plan (UNPARRED 1986 -1990), which was an abysmal failure due to the unredeemed pledges by the international community.

Notwithstanding its limitations, the Development Integration model remains a better policy alternative. This is because of its more wholistic approach to the demands of development in Africa. The development Integration model projects regionally deficient fundamentals such as food security, transport networks and other relevant infrastructures, as development priorities necessary for facilitating economic transformation going forward. Also, unlike the Market integration approach which neglects to account for how the potential benefits of trade creation may be evenly distributed, the development integration approach also focuses on cooperation among countries in a broader range of areas including investment, research and development, as well as policies aimed at ensuring that the welfare dividends of integration are evenly distributed among the stakeholders.<sup>56</sup>

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<sup>56</sup> S Adejumobi and Z Kreiter, 'The Theory and Discourse of Developmental Regionalism', Paper Prepared for Presentation at a Regional Forum on: "Developmental Regionalism, Peace and Economic Transformation in Southern Africa" organized by ECA-SRO-SA and APN-SSRC in collaboration with the SADC Secretariat and

An instance of the Development integration model at work is seen in the Greater Mekong Sub region of South East Asia where economic or development corridors are used as tools to attract investment in infrastructure and productive capacity. In this regard, the East-West Economic corridor was a development integration initiative in the sub region that promoted integration through development of trade infrastructure to connect Myanmar, Thailand, Laos, Cambodia and Vietnam. In the same vein, trade corridors are also used as tools for enabling the development integration model in Africa. An example is the Trans-Kalahari Corridor (TKC) which currently deepens the regional integration programs of SADC, SACU and NEPAD and boosts trade by connecting the SADC region from Mozambique to Namibia through South Africa and Botswana (East to west).<sup>57</sup>

### **6. The AfCFTA: An Opportunity for Economic Prosperity in Africa**

Africa has been the proverbial pawn in the chessboard of the economic superpowers through the two leading financial institutions namely, the International Monetary Fund (IMF) and the World Bank. And more recently, China has joined the list of nations that hopes to interfere with the future of Africa's largely young populations through debt instruments that leave Africa at the receiving end of the bargain. Zambia was recently in the news for being on the verge of losing its international airport for failure to meet up with its debt obligations to China.<sup>58</sup> A recent report by The Economist warned that Africa may be running into huge financial crisis with its

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hosted by the Government of Kingdom of Swaziland from 28-30 September 2016, Ezulwini, Swaziland. UNECA, SADC, SSRC, APN.

<sup>57</sup> Daniel Brundige and others, 'An Economic Development Strategy for the Trans-Kalahari Corridor' (Walvis Bay, 11 May, 2011) <[https://web.wpi.edu/Pubs/E-project/Available/E-project-050411-134215/unrestricted/An\\_Economic\\_Development\\_Strategy\\_for\\_the\\_Trans\\_Kalahari\\_Corridor\\_49ULBNAM2.pdf](https://web.wpi.edu/Pubs/E-project/Available/E-project-050411-134215/unrestricted/An_Economic_Development_Strategy_for_the_Trans_Kalahari_Corridor_49ULBNAM2.pdf)> accessed 4 November, 2019

<sup>58</sup> Richard Krah 'China to take over Zambian International Airport for debt repayment default; neo-colonialism?' *CADTM* (Liège-Belgique, 11 September 2018) <[www.cadtm.org/China-to-take-over-zambian-international-airport-for-debt-repayment-default](http://www.cadtm.org/China-to-take-over-zambian-international-airport-for-debt-repayment-default)> accessed 26 August 2019.

worrisome debt profile, noting that in the last six years, the region has issued \$81 billion in dollar bonds to investors hungry for yield.<sup>59</sup>

The ugly indices speak to a Continent largely in need of re-evaluation of its trade policy, thus making the AfCFTA an imperative. Research shows that Intra-African trade currently stands at slightly over 18% of the total volume of trade in the Continent, thereby constricting the expansion of African markets and its attendant economic consequences. Such trade is further limited by the relatively high tariff protection rate of about 8.7%, with heterogeneous tariff structures that range much higher in many states. The United Nations Conference on Trade and Development's (UNCTAD) recent data however shows that intra-African trade share has risen from about 9% in 2005 to 18% in 2018. This growth shows some dynamism which brings positive news for boosting intra-African trade through the AfCFTA.<sup>60</sup>

By creating a single Continental market for goods and services, the AfCFTA will bring together 1.2 billion people with a combined GDP of over \$2Tn. The United Nations Economic Commission for Africa (UNECA), has estimated that by 2022, full implementation of the agreement could increase the 2010 intra-Africa trade volume by up to 52%.<sup>61</sup> A research paper by UNCTAD concedes that the elimination of all tariffs between African countries would reduce the trading states' treasury by up to \$4.1 billion annually, but would also create an annual welfare gain of \$16.1 billion in the long run. Conversely, the \$4 billion projected yearly loss to African

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<sup>59</sup> The Economist, 'Reckless in Lusaka: Zambia's looming Debt crisis is a warning for the rest of Africa' *The Economist* (London, September 15 2018) <https://www.economist.com/leaders/2018/09/15/zambias-looming-debt-crisis-is-a-warning-for-the-rest-of-africa#ampf=undefined> accessed 30 July, 2019.

<sup>60</sup> United Nations Conference on Trade and Development, 'Policy document 2017; African Continental Free Trade Area: Policy and Negotiation Options for Trade in Goods'. UNCTAD (New York, Geneva, 2016) [https://unctad.org/en/PublicationsLibrary/webditc2016d7\\_en.pdf](https://unctad.org/en/PublicationsLibrary/webditc2016d7_en.pdf) accessed 26 August 2019.

<sup>61</sup> United Nations Economic Commission for Africa, 'Accessing Regional Integration in Africa VI: Harmonizing Policies to Transform the Trading Environment' *ARIA* (Addis Ababa, 2013) [https://www.uneca.org/sites/default/files/PublicationFiles/aria\\_vi\\_english\\_full.pdf](https://www.uneca.org/sites/default/files/PublicationFiles/aria_vi_english_full.pdf) accessed 26 August, 2019

governments from the free trade agreement could arguably multiply in the long run to yield more than \$16.1 billion annually, if properly managed.<sup>62</sup>

The AfCFTA is an important pillar and driver for Africa's growth and development in the period ahead and the reasons are not far-fetched. Having been touted as a key aspect for the realization of "Africa's Agenda 2063", aimed at building a prosperous and united Africa, it could help improve prospects for African countries to implement the United Nations 2030 Agenda for sustainable growth and development. It also has a realistic prospect of bringing about consolidation of African economic integration process through harmonization or coordination of free trade arrangements within RECs.

Furthermore, the initiative will set the basis for the formation of a Continent-wide economic space which will widen the internal market demand available to African countries to withstand any global economic crises. Beyond this, it will improve the nature of Africa's engagement in trade negotiations at the global level such as in the WTO. From macro-economic perspectives, the AfCFTA would add US\$ 17.6 billion (2.8 per cent) to Africa's overall trade with the world (compared to a 2022 baseline scenario without it). It will also stimulate Africa's exports by US\$ 25.3 billion or 4 % over the 2022 baseline scenario. Industrial exports would see a boost of US\$ 21.1 billion, a very respectable 4.7 % higher than the 2022 baseline, amongst a host of other identified benefits which the size of this paper would not immediately accommodate.

## **7. The African Continental Free Trade Area: Challenges and Recommendations**

Seizing the opportunities of the AfCFTA will not be without challenges. One of the foreseeable challenges will be the capacity to coherently develop and deploy national strategies to optimise the potentials of the AfCFTA. The deficiency of coherent development strategies in African countries over the

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<sup>62</sup> Henry Boyo, 'African Continental free trade area: Matters Arising' *Vanguard* (Lagos, 26 March 2018) <https://www.vanguardngr.com/2018/03/african-continental-free-trade-area-matters-arising/>> accessed 26 August

years has (for instance) had trickle-down effects on their attitudes to sub-regional initiatives and resulted in their membership of multiple RECs.<sup>63</sup>

These overlapping trade agreements have been a reason for the weak implementation of regional integration schemes and the limited effects of trade agreements generally in Africa.<sup>64</sup> Conflicting trade rules interfere with realizing trade gains from preferential market access and also create confusion around integration goals. Tavares and Tang argue that the complexities created by overlapping trade obligations slow down trade liberalization within the integration area and hamper the effects of integration.<sup>65</sup> More than 25% of national policymakers think that overlapping agreements make it hard to meet intended integration commitments while 23% find overlaps as a reason for low programme implementation. Therefore, coherence in trade policy development will always be crucial.

Another foreseeable albatross on the neck of the AfCFTA is the paucity of infrastructure on which the trade is to be sustained. Trade infrastructure is crucial to optimising the potentials of any free trade area. Therefore, taking advantage of the AfCFTA will require state parties to create more development corridors to link regional economic zones and facilitate the movement of goods and services. In this regard, strategic investment in national and regional infrastructure such as ports, rail, roads, power etc. is crucial. This will be a challenge for Africa which currently has an infrastructural deficit requiring over \$150 billion annually to address.<sup>66</sup> To

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<sup>63</sup> Brendan Vickers, *Handbook on Regional Integration in Africa- Towards Agenda 2063* (Commonwealth Secretariat, 2017) 67.

<sup>64</sup> Yang, Yongzheng and Gupta, Sanjeev, 'Regional Trade Agreements in Africa: Past Performance and the Way Forward' [2005] (5)(36) *IMF Working Paper*; 12.

<sup>65</sup> Tavares, Rodrigo and Tang, Vanessa 'Regional Economic Integration in Africa: Impediments to Progress' [2011] (18)(2) *South African Journal of International Affairs* 217-233

<sup>66</sup> African Development Bank, '*Africa Economic Outlook 2018*' (African Development Bank Group, 2018)

<[https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/2018AEO/African\\_Economic\\_Outlook\\_2018\\_-\\_EN\\_Chapter3.pdf](https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/2018AEO/African_Economic_Outlook_2018_-_EN_Chapter3.pdf)> accessed 28 July 2019

make any headway on the goals of the AfCFTA, parties will have to engage the Continent's economic infrastructural deficit holistically.<sup>67</sup>

Closely linked to the above is the challenge of the low level of industrialisation across Africa. More trade would not necessarily lead to development unless the value of what is traded itself is improved on through industrialisation. Across the Continent commodity sectors are still significantly underdeveloped and economies are largely natural resource-based. The literature on economic development provides apposite proof that the chances of sustainable development are slim, without an industrial policy framework to attend to the issues of improving productive capacity and manufacturing quality.<sup>68</sup> Therefore, the countries within the AfCFTA must look to developing manufacturing capacity especially in sectors with higher productivity to enable industrialisation.

Furthermore, another challenge will be with adhering to trade rules or obligations under the AfCFTA. In this regard, engendering adherence will require building capacity of the AfCFTA institutions as well as properly creating a systematic framework for their operation. Also, the fact that institutions charged with the implementing the AfCFTA initiative must be run by experts in law, trade and economic policy, cannot be overemphasised. Therefore, attention must be paid to the quality of staff to be employed within AfCFTA institutions.

In addition, African trade hegemons (such as Nigeria, South Africa, Kenya, and Egypt) must commit to principles of fair play as the AfCFTA becomes operational. These hegemons must be cognizant of the fact that the nature of their engagement in AfCFTA driven trade will generally have spill-over effects on how other smaller African countries. They therefore have a role in positively influencing fair trade principles and eschewing any unnecessary politicization. Carefully preventing unfair trade practices and politicization

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<sup>67</sup> Ismail F. *op cit.*

<sup>68</sup> See generally Harvey, David and others, 'The Prebisch-Singer Hypothesis: Four Centuries of Evidence.' [2010] (92)(2) *The Review of Economics and Statistics* 367–377.

of issues within and between States will aid in maintaining the harmony of purpose which seemed to exist at the initiation of the AfCFTA and without which the process will be derailed.

The role of trade law practitioners (such as lawyers) in the driving of the AfCFTA agenda cannot be gainsaid. It will be the role of law firms and lawyers alike to provide businesses and governments with a global perspective for viewing trade rules and strategic guidance under the AfCFTA regime. This will become more crucial as AfCFTA negotiations begin to touch on more complex themes. Developing expertise on the AfCFTA and its auxiliary trade, competition and investment protocols will thus be important to enable the provisions to be properly engaged, especially vis-à-vis the Dispute settlement protocol.

In the face of untested dispute resolution mechanisms in many preferential trade agreements, trade diplomacy remains an essential vehicle for resolving disputes with authorities that have created obstacles to trade or investment. Therefore, trade lawyers across the Continent must also develop negotiation skills, within the context of the AfCFTA agreement.

This is understandably a challenge for international lawyers. Businesses now expect that law firms have the capacity to handle trade diplomacy, resolve international problems, and understand how to profit within global supply chains. Trade practitioners who have actively participated in the negotiation of trade agreements and know the critical players in each region have a strong advantage, as do attorneys with business sense who have worked closely with leading international companies throughout the world. Legal practitioners, as well as other professionals in the trade sector, must therefore enhance competencies in the area of international trade to provide the needed professional advisory services that would facilitate the objectives of the AfCFTA.

## **8. Conclusion.**

This paper evaluated the African Continental Free Trade Area and its significance to the broad conversation on development. In the paper, it was



argued that the ambitious initiative is important for the Continent not just because the theory of absolute advantage and Free trade areas have support, but more importantly because of the imperative for boosting the relatively low intra-African trade level for the good of the Continent's growing and young population.

Furthermore, the paper examines the Agreement creating the AfCFTA along with its supporting protocols on goods, services and dispute settlement and the development integration approach, upon which the AfCFTA initiative founds its integration agenda. After distinguishing between the approach and the market integration approach the paper argues in favour of the former because of its holistic nature and the depth of its attention to the core demands of development in Africa. The paper also examines the extents to which the initiative seeks to ensure economic growth and development on the Continent and ends by examining a few challenges likely to bedevil the AfCFTA when it becomes operational.

Overall, optimising the benefits of the AfCFTA and promoting developmental integration in Africa will require a broad perspective as well as a comprehensive vision of trade and development. The expanded single market in African for goods and services (brought about by the AfCFTA) will not automatically result in economic diversification and the enhancement of human capital. It will require coherent development policies by ambitious and transformation minded leadership. African leadership must therefore ensure proper engagement of all stakeholders and equip them with the capacity and knowledge of the intent, content and design of the AfCFTA so that the resulting opportunities created can be properly exploited.