Developing Robust and Coherent Regional Trade Policy could quell the chaos surrounding Land Border Closures in Nigeria

By:

Olabisi D. Akinkugbe

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Despite the pivotal roles played in the establishment and reform on the Economic Community of West African States (ECOWAS) among other continental initiatives in Africa, significant questions remain whether Nigeria is truly committed to a meaningful regional economic integration regime in the implementation phase. The recent inquest into Nigeria's regional trade policy has exacerbated because of two major occurrences.

First, Nigeria's delay in signing the African Continental Free Trade Area Agreement (AfCFTA) led to critical reactions on the readiness of one of Africa's largest economies to embrace a continental rules-based trade regime. Others, including me, however argued that Nigeria's delay for the purpose of national

consultation was a step in the right direction. Second, the critical reactions have been invigorated by Nigeria's incessant resort to land border closures. Unilateral land border closures initiated by Nigeria which targets imports from Benin is not new. The unilateral closure of land borders by Nigeria not only goes against the formal commitments to free trade and movement of persons among the ECOWAS Member States but also the foundation of regional economic integration. The latest of the incessant border closures by Nigeria began in August 2019. The Nigerian government closed land borders to trade in goods on the grounds that the measure would end the smuggling of specific items such as rice and frozen chicken among others to Nigeria from Benin.

Land borders is significant to the flow of export and import trade in Nigeria. The continued closure of some of Nigeria's land borders has therefore raised economic concerns regarding formal and informal trade between Nigeria and its neighbouring ECOWAS Member States. These occurrences paint a picture that entrenches critiques of protectionist state and the idea that African countries are mainly interested in symbolic regionalism.

Nigeria is not a protectionist state. As I argued at the Commercial Law Research Network Nigeria (CLRNN) conference at Reading Law School in September 2019 in the context of my on-going research, there are at least two ways to imagine why Nigeria's international trade policy should not be viewed as protectionist. One perspective is to focus on the policy direction of different heads of state overtime and try to make sense of them. This approach yields a complex outcome that is beyond the scope of this blog. While mostly incoherent, successive presidents and military administrators in Nigeria have supported regional integration. Yet, an overwhelming narrow focus on the poor and popular policy choices in certain periods during an incumbent's tenure entrenches the perception that the State is not a liberal trade regime. Another perspective is to focus on the roles of Nigerian intellectuals and "foot-soldiers" [1] in international economic institutions as driving force behind various regional and continental economic integration initiatives. Many of these intellectual figures, with the support of the political leaders at the time, played critical roles in the negotiations and processes leading to the establishment and functioning of continental and regional economic communities and development initiatives, such as the African Union; ECOWAS; the Lagos Plan of

Action 1980; the New Partnership for Africa's Development (NEPAD); the African Economic Community; and the African Continental Free Trade Area Agreement. (AfCFTA).[2]

In this post, I focus on the role of the Nigerian government, and in the context of the CLRNN's call for legal reform, I contend that adopting and implementing a coherent and robust regional trade policy would go a long way in mitigating the closure of land borders in Nigeria. In this regard, I acknowledge the complexity of other factors relating to physical infrastructure, information and communications technology among others that are critical to the successful implementation of such a policy the analysis of which is outside the scope of this blog.

Balancing Trade policy is a challenging Task

In an unequal word, navigating the appropriate policy balance to galvanize economic development is a challenging task. While the nexus between trade and development holds an important promise, trade policy-making which is a challenging task by its own nature, assumes a greater posture in the context of developing countries. It involves an intricate balancing of overlapping developmental objectives in the interests of both consumers and producers. While the difficult task of trade policy balancing in undertaken, "the goals of the most efficient and export-oriented industries must be weighed against those that are still struggling to achieve competitiveness." (See, UNCTAD Trade Policy Frameworks for Developing Countries, p. 2)

In contemporary African trade regimes, getting the balance right in trade policy matters have become more complicated because of the range of issues that are brought to the negotiating table have proliferated. The on-going negotiation of the rules of origin for trading and the Phase II negotiations on contentious themes such as intellectual property rights, investment and competition illustrate this challenge. Further, the different demands that a limited – albeit growing – pool of trade policy experts confront in this new order are technically more complex and exposed to backlash. While institutions such as the United Nations Economic Commission for Africa and the African Trade Policy Centre in particular devote significant expertise to assist African countries navigate the balance of national trade policy, the challenges remain.

Nigeria’s incoherent approach to regional trade policy

Nigeria’s approach to regional trade policy is no exception to the difficulty of balancing competing developmental needs. The approach defies static or oversimplified narratives of protectionism or support for multilateralism. Nigeria’s approach to trade policy consists of overlapping strategies that may be aimed at developing certain industries; empowering services in some sectors; dealing with incidences of dumping; or capturing tax revenues that may otherwise be lost among other aims.

Nigeria instrumentalizes these practices in furtherance of any or more of its objectives at any particular time. A key factor that connects them all is an entrenched vision of contending nationalism, regionalism and multilateralism. Let us illustrate with the on-going land border closure.

Land border closures: beyond the tale of the rice industry

The Nigerian government views its land borders as a porous route for the smuggling of illegal products, arms, drugs, and other items with significant negative impact on individual and collective lives of Nigerians. While the recent debates have centered on developing a competitive rice industry as the dominant rationale for the border closure, in reality affected products that informed this extreme measure includes other items such as tomatoes. Hameed Ali, the Comptroller General, Nigeria Customs Service (NCS), says Nigeria’s borders will remain closed until the country and its neighbours agree on existing ECOWAS protocol on movement.” Ali noted further that by closing the borders, Nigeria was able to completely block the importation of illicit goods, “and most important, stopped the exportation of petroleum product which is the biggest problem …” Nigeria is facing. So, the border closure is not just about the rice industry.

The closure of borders has generated a mixed set of positive and negative outcomes depending on who one asks. The unequal distributional consequences of the border closure are most acute in the context of informal cross-border trading. For most rice producers, the border closure has boosted rice production and therefore deeper profit margins for them. For consumers of rice, it is a different reaction as the price paid for imported rice is more

expensive. Arguably, one unintended distributional consequence of the border closure is "to enrich farmers, while making ordinary Nigerians poorer as the prices of locally produced food items skyrocket."[3] But in the unusual times we find ourselves, that is the COVID-19 pandemic, farmers are also facing the unintended distributional impact that consumers are priced out of their rice produce.

Experts have different opinions on the closure of Nigerian land borders. Disagreeing with the approach to the closure of some land borders, Dr. Olu Fasan points to the legal implications of the measure by Nigerian government under the international trade agreements that Nigeria is a signatory. He opines that Nigeria is "trampling upon the world order". In his view, Nigeria is not ready for a rule-based trade regime because of long-standing "reputation for blatant violation of international rule of law, for acting with impunity in breach of its international legal commitments." Similarly, Nonso Obikili, an economist argues that the border closure is symptomatic of the Nigeria's old habits to avoid having to coordinate trade policies with the rest of West Africa. Yet, other commentators such as Amaka Anku, argues that the border closure was necessary to enforce rules-based trade in Nigeria.

While scholarly debates remain important for deepening our understanding of the various socio-economic impacts of the border closure, Nigeria, with coordinated corollary action from the ECOWAS Community must address the issues at the root in a more sustainable measure. Retaliatory actions will only create pain and strain international economic relations among the ECOWAS Community Member States. The move towards an ECOWAS Common Trade Policy agreed to by all ECOWAS Community members would also be a very good complimentary step.

So, what is the way forward for Nigeria?

Coherent and Robust Regional Trade Policy

The blatant admission by the Federal Government of Nigeria that the AfCFTA may cause Nigeria nightmare because of poor policies is perhaps the most obvious signal to the predicament of the government and the vacuum that

currently exists in developing a dynamic trade policy. Nigeria must urgently move beyond archaic import prohibition as a trade policy instrument. While the Nigerian Office for Trade Negotiations (NOTN) 2017 Nigerian Annual Trade Policy Report (NAPTOR) was an excellent step in the right direction, it is not enough. As such, in the spirit of the legal reform proposals that the CLRNN inaugural conference demanded, I urge the Nigeria government to develop and adopt a coherent and robust regional trade policy that will be updated from time to time to reflect the realities of the day.

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[1] "Foot-Soldiers" as used in this bog refers to the other category of actors outside of the core public figures.

[2] The late Chief Chinedu Osakwe is one of the most recent examples of the type of intellectuals I have in mind.

[3] The COVID-19 pandemic has led to further unreasonable increase in the price of food in Nigeria.

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