Advocating for a concise trade-based anti-money laundering legal and regulatory framework under African Continental Free Trade Area

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Introduction

Trade-based money laundering activity has become a new frontier in the laundering of illicit financial flows (IFF).It is estimated that billions of dollars are moved from the African continent through IFF annually thereby creating multiplier effects on the economies globally. This blog post attempts to examine briefly trade-based money laundering under the African Continental Free Trade Area (AfCFTA) and the need to have a strong and coherent legal and or regulatory framework within the free trade area to combating trade-related laundering of illicit funds that may ensue upon full implementation of the

Agreement. The question begging for an answer is: what is trade-based money laundering of illicit funds?

Trade-based money laundering: An Overview

Trade-based money laundering simply means the intentional and deliberate act of manipulating the international trading system to launder illicit funds. It means the process of misrepresenting the price, quantity, and quality of goods and services to laundering of illicit funds. It must be stated that the purpose of laundering illicit funds is to conceal their origin from possible suspicion, arrest, and conviction. Launderers over the years have developed methods and or means of concealing the identity of the proceeds of crimes using smuggling, smurfing, physical movement of cash, cyber-laundering, the use of gold and other precious metal to launder illicit funds. Trade-based laundering of illicit funds is presently used as a new frontier in the laundering of illicit funds through activities such as under-and over-invoicing of goods and services, over- and under-shipment of goods and services, falsification of the descriptions of goods and services and multiple invoicing of goods and services.

Even though trade-based laundering of illicit is a criminal offense, it is triggered by some predicate offences. In other words, there cannot be the occurrence of trade-money laundering without the existence of one or more predicate offences. According to the Financial Action Task Force (FATF)' 40 Recommendations on combating money laundering, member countries are to designate predicate offences for the offence of money laundering. These predicate offences include drug trafficking, human trafficking, fraud, prostitution, insider trading, sex trade, environmental crimes, kidnapping, murder to mention but a few. Of all of these offences, drug trafficking ranks as the offence with the highest proceeds globally. For instance, it is one record that Mexican drug cartels through the use of trade-based laundering of illicit funds launder about US$40 billion annually.

The question to further ask is, upon the full implementation of the African Continental Free Trade Area (AfCFTA), would the rate of trade-based laundering of illicit funds increase, and if yes, what are the attendant effects? Are there workable solutions for curbing it? **African Continental Free Trade Area (AfCFTA) & trade-based money laundering (TBML): An Appraisal** The

AfCFTA is a regional economic integration scheme with the goal of liberalizing trade in goods, services, people, and capital. It is a sui-generis form of a free trade area in the sense it is more encompassing than the classified and general form of free trade area that only provides for liberalization in goods and services. It came into operation on the 30th of May, 2019 upon reaching the required number of states for its ratification. Thus far, 55 member states of Africa had signed the Agreement establishing the regional economic block while 27 had ratified it and become party states to the agreement.[9]

It is common knowledge that a new initiative brings with it challenges and shortcomings. One of the likely challenges that AfCFTA may have is the possible increase in trade-based money laundering of illicit funds. It is a fact that upon the full implementation of AfCFTA, there will be an increase or a likelihood of an increase in the capital movement within Africa and a massive increase in trade transactions between African states and the rest of world in general. This has a greater tendency of creating a good platform for entities that engage in the laundering of illicit funds obtained through drug trafficking, kidnapping, human trafficking, embezzlement, fraud, bribery, corruption, and murder through the use of TBML mechanism. How ready than are the African states in combating trade-based laundering of illicit funds that will or has the likelihood of ensuing upon the full implementation of this agreement?

Article 36 of the United Nations Convention against Organised Crime (Palermo Convention) provides that every regional economic organization should be a signatory to the Convention provided that at least one of the member states of such organization had signed the Convention any period from 12-15 December, 2000 at the Palazzi di Guistizia in Palermo, Italy and thereafter at the United Nations Headquarters in New York until December, 2002. It is on record that most African contracting states to the AfCFTA Agreement had signed or ratified the Convention within the period allowed by the Convention. Therefore, bringing AfCFTA within those regional economic organizations required to be signatories to the Convention.

The next question to ask is: has the leadership of the African Union or the Committee on the implementation of AfCFTA signed, ratified and or submitted instrument of accession as stated by the Convention before AfCFTA came into

force on the 30th day of May 2019 or any period so soon thereafter?

In the meantime, there is no scintilla of evidence or document to show that the leadership of the African Union or the Committee on the implementation of AfCFTA has deemed it fit to sign, ratify and or deposit any instrument of accession at the appropriate venue required by law. If this has not been done, it shows that the Agreement establishing AfCFTA has not complied with the letter of the Convention and so, it will not benefit from the anti-money laundering provisions contained in the Convention.

There is no provision of the Agreement that regulates trade-based laundering of illicit funds that is likely to arise upon the full implementation of the free trade area. The effects of laundering such as an increase in crime and corruption, undermining of the financial markets, and unfair competition would likely be the day-to-day occurrence within the free trade area.

It is recommended that there should be strong and coherent anti-money laundering legal and or regulatory framework within the free trade area that will regulate trade-based laundering that may ensue upon its full implementation.

It is also recommended that the leadership of the African Union should sign, ratify or submits the instrument of accession to be a part of the Convention. It is further recommended that there should an enforcement committee or agency that will see that the proposed legal and or regulatory framework is complied with and sanctions meted to erring party states.

Having strong and coherent anti-money laundering legal and or regulatory framework within the free trade area that will regulate trade-based laundering that may ensue upon its full implementation is not enough if it is not coupled with political will on the part of the member states.

In conclusion, for the objective of AfCFTA not to be defeated through the menace of trade-based laundering of illicit funds, African member states must be proactive to ensure that all necessary measures and regulations are put in place in combating TBML that may ensue therefrom before AfCFTA comes into

full implementation.

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