Afronomicslaw Academic Forum Guest Lecture Series: Trade Facilitation - The Key to a Borderless Africa

By:

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On the 22nd day of May 2021, AfronomicsLaw Academic Forum held a Guest Lecture titled 'Trade Facilitation: The Key to a Borderless Africa'. The esteemed speakers were Dr Tsotang Tsietsi and Mr Craig Merito, who addressed the role of trade facilitation as a mechanism to enhance intra-African trade. Dr Tsietsi, the first speaker, is a Senior Lecturer at the National University of Lesotho. She holds an LLM from the University of Cambridge and a PhD from the University of Cape Town. Mr. Craig Merito is an international trade expert and consultant with over 25 years of experience. This piece will reflect on the issues raised by Dr Tsietsi before proceeding to those encompassed by Mr. Merito.

Dr Tsietsi began her lecture by clarifying that her analysis was from an academic viewpoint and that Mr. Merito would take a practitioner's perspective.

Following this, she provided historical context to her lecture by explaining that the borders of African States are artificial. They were drawn by the colonial powers at the Berlin Conference and brought about fragmentation between African states.[1] During the colonial era, the economic summit of African states was construed to mean their ability to produce raw materials for the European market [2]. Naturally, this viewpoint left little room for African states to facilitate their best interests from a trade point of view. It stems from the reality that the primordial forms of African states were set on a path to cater for European colonial powers' needs before their own [3]. An effect of this is that African states trade more with non-African countries than with each other. UNCTAD estimates that intra-African trade constitutes less than 25% of African trade[4]. According to Dr Tsietsi, African leaders at independence believed that political and economic integration would improve the economic fortunes of the continent by enhancing intra-African trade. Dr Tsietsi pointed out that greater intra-African trade was also touted as a 'silver bullet' for achieving regional economic integration. It was envisaged that the result would be akin to a 'borderless Africa'. As Dr Tsietsi notes, Regional Economic Communities were thus used as building blocks to form a continental free trade area [5].

However, citing statistical evidence, Dr Tsietsi observes that regional economic integration and intra-African trade have remained inadequate despite these historical aspirations[6]. She argues that a major reason for this is ineffective trade facilitation on the continent. Trade facilitation relates to the policies and processes that concern trade flow logistics through ports[7]. Dr Tsietsi adopted the World Trade Organisation (WTO) definition, which frames trade facilitation as the simplification, modernization, and harmonization of export and import processes[8]. She states that one of the challenges facing intra-African trade is a lack of transparency regarding the forms, permits and processes that traders must abide by. She argues that excessive documentary requirements aggravate this problem. I concur with this view. According to the World Bank, Dr Tsietsi's concerns on transparency are well-founded because traders bear additional trading costs to conform to standards that they are not privy to on short notice, lest their goods are rejected[9]. Naturally, this is a disincentive. Furthermore, informal traders face the brunt of this problem when they seek to join the formal sector[10].

Dr Tsietsi also rightly highlighted human resource deficiencies as a challenge. This challenge has two aspects, the quality and quantity of officials representing the various agencies at the borders of African countries are wanting. The existing few staff members are often not sufficiently qualified in trade-related issues to enable them to expedite services. Dr Tsietsi asserts that this leads to unnecessary congestion at border points, leading to the late delivery of goods. It is noteworthy that there is a nexus between development aid and capacity building exercises as a solution to human resource deficiencies. Additionally, Grainger advances the claim that there has been a progressive increase in development aid for capacity building programmes [11].

She concludes that the above challenges and other difficulties she discussed have dire ramifications for traders, consumers and governments. Traders are often delayed at the border points while attempting to comply with these requirements. She adds that traders are bound by contracts with strict deadlines and make losses whenever they fail to meet these deadlines. Additionally, consumers are negatively affected because this causes shortages in the supply of goods, leading to soaring prices. Further, governments are not spared as corruption is incentivized to circumvent the requirements, leading to a loss of revenue. A solution to this problem lies in utilizing information communication technology (ICT) [12]. Lewis advances the claim that ICT discourages corruption by reducing the interaction between customs officials and traders in customs clearance [13].

Moreover, it simplifies customs procedures, saving time and improving transparency on customs requirements [14]. Notably, Dias observes that the ASYCUDA software streamlines the procedures for cargo control, transit of goods and clearance of goods [15]. Some of the benefits it offers African countries include expediting customs processes and increasing transparency. Also, it enhances the timely and accurate reporting of statistics [16].

Dr Tsietsi rightly observed that there is a lack of political will in Africa to enhance trade facilitation because political players benefit from the inefficiency. Her observations are consistent with the existing literature. For example, Charaf-Eddine and Strauss argue there is collusion between port authorities, controlling agencies, port operators and shippers. These active

measures to discourage trade facilitation preserve the status quo whereby the beneficiaries of inefficiency continue to prosper[17].

Dr Tsietsi observed that a glimmer of hope for intra-African trade lies in the African Continental Free Trade Agreement (AfCFTA). The AfCFTA features flexibility in its provisions. For instance, Article 5 offers special and differentiated treatment for the least developed members on the continent[18]. Therefore, countries that cannot comply with the requirements are given more lenient terms to operate on. Similarly, Dr Tsietsi noted that the World Trade Organisation (WTO) offers benefits to the African continent. For example, it offers trade facilitation, technical assistance and capacity building. Further, she added the WTO also provides special and differential treatment and a monitoring mechanism through the Committee on Trade Facilitation. Notably, Dr Tsietsi asserted a major stumbling block is a deficiency in political goodwill in Africa to enhance trade facilitation.

Mr. Craig Merito addressed trade facilitation from an East African perspective. First, he advanced the claim that under the single customs territory, duties are assessed and paid at the destination partner state while goods are still at the first point of entry. He concluded that this demonstrates increasing trust between countries. To an extent, I do agree with Mr. Merito, but I believe the recent conflicts between Kenya and Tanzania whittle down this argument. The former closed its border to the latter to stem the spread of Covid19. President Magufuli and Tanzanian cabinet members expressed displeasure which was promptly followed by retaliatory measures from Tanzania [19]. Additionally, the Rwanda Uganda conflict demonstrates that maintaining trust in the East African Community is, at best, a delicate balancing act [20].

A second development Mr. Merito enunciated was using a regional electronic tracking system for goods and the use of a single declaration in place of multiple declarations across different border points in the region. The Regional Electronic Cargo and Drivers Tracking System are based in Arusha, Tanzania. It promises to simplify the collection of taxes and enhance cargo handling. It comprises satellites, a monitoring centre and special electronic seals fitted on cargo containers and trucks. Also, it gives the precise location of goods at any time [21]. The AfCFTA will benefit if this proven method is implemented in their customs declaration system over the vast geography of the African continent.

Mr. Merito advanced the claim that East Africa's advantage is one customs law, that is, the East African Community Customs Management Act [22]. Furthermore, he claimed that the EAC has the largest number of one-stop border posts in Africa, and the number will stand at 15 once construction is finalized [23]. Mr. Merito enunciated that East Africa Community (EAC) Regulations provide for Authorized Economic Operator Schemes under which traders who comply with the regulation are given first lane treatment. In the spirit of building upon the successes of regional economic communities, the AfCFTA will yield more efficiency if the EAC model of one-stop border posts is realized.

Dr Tsietsi and Mr. Merito offered a wholesome view of the challenges facing trade facilitation at the African Level and the smaller scale at the EA level. Crucially, some of the challenges faced at the continental level are already being addressed at the EAC level. However, the successes of one regional community are inadequate. Each regional economic community must follow suit and act with a common obsession to realize the success of the AfCFTA. Solving the issues surrounding trade facilitation at the regional level will only strengthen the African Continental Free Trade Area.

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