

NEAR EAST UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
INTERNATIONAL LAW

MASTERS OF LAW IN INTERNATIONAL COMMERCIAL LAW
(LLM)

**ANALYSIS OF INTERNATIONAL TRADE FACILITATION AND LEGAL
FRAMEWORK IN SELECTED SUB-SAHARAN AFRICAN COUNTRIES**

BY
TIMIPRE SADE SIMON

NICOSIA

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NEAR EAST UNIVERSITY

GRADUATE SCHOOL OF SOCIAL SCIENCES

MASTER OF LAWS IN INTERNATIONAL LAW PROGRAMME (LLM)

Thesis Defense

ANALYSIS OF INTERNATIONAL TRADE FACILITATION AND LEGAL
FRAMEWORK IN SELECTED SUB-SAHARAN AFRICAN COUNTRIES

We certify the thesis is satisfactory for the award of degree of master of law in

INTERNATIONAL LAW

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ABSTRACT

Sub-Saharan Africa (SSA) consists of 48 countries with over 12.3% of world population in 2014. Many of the countries in SSA are grouped under the Least Developed Countries in the world and contribute very little to the world's total output. The poor economic contribution of SSA to the total world's output is as a result of weak political culture, corruption, the devastating impact of sickness and diseases especially malaria and HIV/AIDS, inadequate infrastructure, and capital. The study also examined international trade performance in SSA and its contribution to the regions as well as respective countries. Furthermore, legal frameworks in the regions were also looked into, and two types of legal systems are practiced in the region. Two types of systems exist in SSA which includes common law and civil law practiced by English speaking part of the regions and French speaking part of SSA respectively. It was discovered that, the absence of a good legal framework will be a serious impediment to international trade performance and business development in Sub-Saharan Africa. The envisaged legal framework aims at addressing the problems relating to trade. The framework is a comprehensive law which enhances competitiveness in the trade and investment climate by supporting measures to improve the institutional as well as the policy environment for trade and private sector development while taking full account of the social dimensions of globalization. The background information motivated this study with the main objective of investigating the impact of legal frameworks on international trade performance of SSA countries.

It was discovered that international trade facilitation and legal frameworks can play an essential role in not only stimulating economic development in the SSA and in facilitating the integration of the continent into the global economy but also curbing corruption. It is said that international trade facilitation and legal frameworks are to yield positive outcomes which must be incorporated within domestic reforms that seek to create the proper conditions for social and economic development. It was commendable international trade facilitation and legal frameworks strategies some of which have been discussed in this research work and have been taken by customs albeit with much difficulty. The plan of SSA to establish a unified African Customs Authority is a big step forward and can lead to international trade facilitation and legal frameworks, if there is an impressive alteration of customs in order to empower better coordination among all partners in all the partner states.

Key Words: International Trade, Trade Facilitation, Legal Framework and Sub-Saharan African

ÖZ

SahraAltıAfrika (SSA) bölgesinde, 48 farklıülkebulunmaktadırvebölge 2014 yılınınverilerine göre dününüfusunun %12,3'ünü olu turmaktadır. SahraAltıAfrikabölgesindebulunanülkelerinbirço udünyadaki 'En AzGeli mi Ülkeler' grubundayeralmaktadırvebölgelerindününaneconomisinekatkısıçokazdır.

Ekonomikaçıdanazolankatki, zayıfolansiyasikültürün, yolsuzlu un, yıkıcıetkilerbırakanözelliklesıtmave HIV/AIDS gibihastalıkların, yetersizaltyapıvesermayeninbirsonucuolarakortayaçıkılmaktadır. Bu çalı mada, SSA'dakiuluslararasıticaretperformansıvebuperformansınbölgelereve de ilgiliülkelereolankatksıara tırıldı. Ayrıca, bölgedeuygulanan 2 farklıhukuksistemiilebirliktebölgeninyasalyapısıincelendi.

Bölgedekonulan ngilizceveFransızcadillerinegöreumumihukukvemedeni hukukolmakü zere 2 farklıhukuksistemibulunmaktadır.

SahraAltıAfrikabölgesindeiyibiryasalyapınınbulunmayı mın, uluslararasıticaretperformansıvei geli iminecidiorandaengeltekilette iortayaçıkmtı r. Öngörülenyasalyapı, ticareteili kinsorunlarınlealınmasınıamaçlamaktadır. Yasalyapı, ticaretveyatırımortamındakirekabetçili i, kurulu larıngeli iminidestekleyiciara tırmalaryaparaveaynızamandaticaretveözelsektör geli imi içinçevreSSA'dakiülkelerinuluslararasıticaretperformansıüzerindekiyasalyapının etkisiniara tırmakiçinyapılanbuçalı madagereklibilgilerverilmi tir.

Uluslararasıticaretkolaylı mınveyasalyapınıyalnızcaSSA'dakiülkelerinekonomikgeli i minideveküreseleekonomiiçindekikıtarınentegrasyonkolaylı ndade ilayrıcyolsuzlu ue ngelleme de önemlibirfaktöroldu uortayaçıkmtı r. Uluslararasıticaretinkolayla tırılmasıveyasalyapınınolumlusonuçlarvermesi için, toplumsalveekonomikkalkınmayauygunko ullarıortayaçıkaran yurt içireformlarıngerçekle tirilmesigerekti içalı madançıkansonuçlararasındadır. Bu çalı madaealınanövgüyede eruluslararasıticaretkolaylı ıveyasalyapıileilgilistrategijilerz orluklarara mengümrüktenalınmtı r. SahraAltıAfrikabölgesinin, birle ikbirAfrikaGümrükOtoritesikurmaplanıileriyyönelikatılanbiradımdırveuluslararası ticarettekolaylı aveyasalyapıyolaçmaktadır, OrtakDevletleremensuptümortaklararasındadahagüçlükoordinasyonsa lanması, gümrükhukukundaetkilide i ikliklerinmeydanagelmesiilegerçekle ecektir.

AnahtarKelimeler:UluslararasıTicaret, TicaretKolaylı 1, YasalYapıveSahraAltıAfrika

QUESTIONS

3 Research Questions

In the process of analyzing international trade facilitation and legal framework in selected SSA Countries, some pertinent research question was raised. The general question for our study is, can the level of international trade performance in SSA countries be attributable to their legal framework? The sub questions include;

- I. What impact do legal frameworks have in determining the level of International trade performance in Selected SSA Countries?
- II. To what extend is the legal framework affecting developing countries?
- III. What can SSA Countries do to improve their legal frameworks?

Objectives of the Study

The main objective of the study is to evaluate how legal framework influences international trade performance in SSA Countries. The specific objectives of the study are;

- i. To assess the impact of legal framework on international trade performance in selected SSA Countries.
- ii. To evaluate to what extent legal frameworks affect SSA Countries
- iii. To investigate the influence of intellectual property right on international trade performance.
- iv. To examine the impact of trade policies on international trade in SSA countries.

ACKNOWLEDGMENT

I would like to thank God Almighty for his love and grace that saw me through the successful completion of this dissertation.

I would like to express my deepest appreciation to the Dean of International law Asst Prof VolkanGunel, for his continuous patience, guidance and counsel throughout my study in International law. My profound gratitude goes to my supervisor Asst. Prof. Dr. Derya Aydin Okur for her assistance towards my work, she afforded me the opportunity to explore the area of my work in International Trade, and she offered passion to enjoy each progress. Without her support this thesis wouldn't have been a success.

I would also like to thank SengulGoksu for her contributions and logistics. Special thanks go to the entire law faculty members and Near East University.

My sincere thanks go to Francis Ikioda for his love and support through my stay in North Cyprus. I am so grateful for my friends Racheal Aigbe for her warm guidance and counsel towards my stay and study, and also Ukungoh ,didi,Sodienye and Peter Vinje for their contributions throughout my course of this study.

Finally I would like to give special thanks to my parents Mr&MrsEkpete and Mr&Mrs Simon, and also to my lovely big sisters, BelemoEkpete and PriyeEkpete, I couldn't have lived a wonderful life here in the university without your everlasting concern, assistance and love across the Atlantic. I am also thankful for my other siblings, friends and everyone that have been a part of this journey.

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TABLE OF ABBREVAITIONS

SSA.....	Sub-Saharan Africa
EAC	East African Community
ECOWAS.....	Economic Community of West African States
GDP.....	Gross Domestic Product
WTO.....	World Trade Organizations
COMESA	Common Market for Eastern and Western Africa
UN.....	United Nations
OHADA.....	Organization's Pour in Harmonization en Afrique du Droit
REC.....	Regional Economic Communities
CEMAC.....	Central African Economic and Monetary Community
GATT.....	General Agreements on Tariffs and Trade
CLDP.....	Commercial Law Development Program
AGOA.....	African Growth and Opportunity Act
ALI.....	African Law Institute
IP.....	Intellectual property
WIPO.....	World Intellectual Property Organizations
TRIPS.....	Trade-Related Aspects of Intellectual Property Rights
AEC.....	Africa's Regional Economic Communities
IPRS.....	Intellectual Property rights
WIPO.....	World Intellectual Property Organization
SDT.....	Special and Differential Treatment
ICC.....	International Chamber of Commerce
AVC.....	Agreement on Customs Valuation

RKC.....Revised Kyoto Convention

CMAA..... Convention on Mutual Administrative Assistance

NTB.....Non-Tariffs Barrier

CU.....Custom Union

EC.....Economic Communities

WCO.....World Customs Organizations

US.....United States

EU.....European Union

FDI.....Foreign Direct Investments

CMA.....Customs Management Act

SMEsSmall and Medium-sized Enterprises

AU.....African Union

OAU.....Organizations of African Unity

ADR.....American Depositary Receipt

CLDP.....Commercial Law Development Program

ADB.....AsianDevelopment Bank

AGCI.....Global competitive initiative

ACA.....Anti Counterfeit Law

IPE.....International political economy

USAID.....United States Agency for International Development

SADC.....Southern African Development

WCO.....World Customs organizations

MFN.....Most FavoredNation

ICT.....Information and Communication Technology

FTA.....Free Trade Agreement

TF.....Trade Facilitation
WCI.....Western Climate Initiative
ECCAS.....Economic Community of Central African States
ITF..... International Transport workers Federation
IGADD.....Inter-governmental Authority on Drought and Development
CMA.....Customs Management Act
SME..... Small Medium sized Enterprises

CHAPTER 1

1.1 Background of the Study

Sub-Saharan Africa (SSA) consists of 48 countries with over 12.3% of world population in 2014. Also many of the countries in SSA are grouped under the Least Developed Countries in the world and this contributes very little to the world's total output.¹ The poor economic contribution of SSA to the total world's output is as a result of weak political culture, corruption, the devastating impact of sickness and diseases especially malaria and HIV/AIDS, inadequate infrastructure, and capital, Artadi and Sala-I- Martin, (2003).² The SSA is made of regional economic communities³ with the sole aim of an African Integration for the promotion of trade.

Economic growth chapters of SSA countries can be outlined as follows; the first was the post-independence prosperity where some of the SSA countries inherited growing economy from their colonial masters which were characterized by positive growth rates of real GDP and per capita income, the second was the growth episode that started in the early 1970s where most SSA countries had poor economic outcomes that were characterized by negative growth in real GDP per capital, in less favorable terms of trade and the last was between the late 1970 and late 1990s with macroeconomic instabilities in most SSA countries as a result of inefficiency of institutions and management of the various economics, Collier, and Gunning, (1999). There were also periods in which most of the countries were operating import-substitution industrialization strategy (ISI), as well as other forms of trade restrictions, Busari et al, (2005)⁴. This poor economic performance also contributed to poor performance in terms of international trade.

¹ World Population Reference Bureau, (2009)

² The Economic Tragedy of the XXth Century: Growth in Africa", NBER Working Paper, No.W9 865

³ These economic communities include: ECCAS, EAC , and ECOWAS

⁴ Rural Poverty: Evidence from Nigeria", Cost and Benefits of Reforms, Ibadan: Nigerian Economic Society, pp.629-665

International trade performance can be defined as the level in which a country is able to gain from trade with other parts of the world. It can be measured using some indicators such as; the share of trade in the world market, trade balance, percentage of difference categories of exports to GDP, real growth in total trade and trade per capita, World Bank (2010).⁵ Ajakaiye et al (2010) commented on one indicator and they observed that Africa's share of World's merchandise export declined by more than half in 2004. In terms of international trade, SSA countries have performed relatively low. According to World Bank, (2010)⁶, the percentage regions' balance in GDP was very low in 1995 and continues to slowed down to 2008. The negative trade balance for SSA countries was worse than those of other regions as a global average. The ratio of imported products to exported products for the SSA was above those of other regions denoting merchandise trade deficit. As of 2007, the ratio of imported products to exports for SSA countries was 1.90 compared to the world's average of 1.36%, in Latin America and the Caribbean with a percentage of 1.45, Middle East, and North Africa with a percentage of 1.28 and the East Asia Pacific with 1.14 percent. One of the indicators of international trade performance is the performance of a country's export.

A legal doctrine⁷ comes about in a situation when a judge makes a ruling, and a process is outlined and applied and also allows for it to be applied to similar cases. When many judges apply the process becomes established as the de facto method of determining similar situations, Willes et al (2012).⁸ This can be seen to have been crafted by human beings for the reduction of uncertainties in any exchange economic values, Grief et al, (2006).⁹ Studies have shown that most countries in SSA have weak legal frameworks. The values for SSA were lower than the global average

⁵WorldTradeIndicators2009/10

<<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/TRADE/0,,contentMDK:22421950~pagePK:148956~piPK:216618~theSitePK:239071,00.html>>. (Accessed 12th February, 2010).

⁶ibide

⁷ A legal doctrine is defined as a set of rules, procedural steps, test, or a framework established through practice in common law, through which judgments are determined in a given legal case.

⁸ Contemporary Canadian Business Laws: Principles and Cases (9th ed). McGraw-Hill Ryerson.

⁹ Institutions and the path to the Modern Economy: Lessons from Medieval Trade Cambridge: University Press

within the same period, Kaufmann et al (2009).¹⁰ As observed for international trade performance, the legal framework in SSA is not impressive. This is based on the low rule of law and regulatory quality indicators of trade facilitation observed for the SSA, which were worse than the global average and that of other parts of the world.

The absence of a legal framework has been a great weakness to trade and business development in Sub-Saharan Africa and Africa as a whole. This policy acknowledges that there is a lack of coordination among institutions that are involved in international trade. Major difficulties faced by trade performance and development as recognized in the Policy include: conflicting pronouncements, inadequate institutional structure of the Ministry, scattered trade-related policies, rules, poor coordination of past and present trade policies, regulations and practices affecting trade, and the unproductive coordination of various institutions resulting into duplication of promotional efforts and inefficiencies in resource mobilization and utilization. It has also been pointed out that administrative procedures for business remain unnecessarily complex and time-consuming. This has created legal, administrative and operational inefficiencies. Open trade and investment, underpinned by an effective framework of rules and regulations, as well as a coordinated and functioning institutional structure, delivers the best results for trade development. In view of the identified weaknesses, an effective legal and institutional framework is required to implement this policy.

The envisaged legal and institutional framework aims at addressing the following: Enhancing capacity to make and implement trade policy consistent with the country's international, regional and bilateral trade obligations, Seeking more effective coordination among relevant government ministries, departments, agencies and other key stakeholders, Building 'core capacity' to deal with trade issues within a lead institution, Developing 'think tank' capacity at national level to undertake strategic analysis on trade issues, Strengthening export supply

¹⁰ Governance Matters VIII: Aggregate and Individual Governance Indicators 1996-2008, World Bank Policy Research Working Paper, No. 4978.

capabilities through the strengthened policy environment, improved competitiveness of enterprise, increased investment in productive sectors, development of both hard and soft infrastructure, and the exploitation of new trading opportunities, Strengthening of trade support services that ensure trade efficiency through trade facilitation, access to trade finance, access to business information, development of new products, Advising on standards, packaging, quality control, marketing and distributional channels, commercial representation, functional trade promotion organizations, and promotion of trade in services, Creating supportive trade-related regulatory and policy framework that will encourage trade and investment; and in training and human resource development. The framework is a comprehensive law which enhances competitiveness in the trade and investment climate by supporting measures to improve the institutional as well as the policy environment for trade and private sector development while taking full account of the social dimensions of globalization.¹¹ It will have provisions that will address the issues impeding trade development and promotion to enshrine trade development as a priority in law.

The Government wills to comprehensive trade development law that vests the mandate to provide overall trade policy leadership, initiation, and coordination of trade development and promotion, and to oversee the synchronization of all activities and strategies of different institutions and agencies relating to trade development in the State Department responsible for trade. The framework permits the State Department that is responsible for trade with sufficient mandate to formulate policy and give the Department an institutional/administrative structure able to drive trade policy reforms and discharge the functions assigned to the Department through an Act of Parliament.¹²

Implementation of the International Trade Policy will be the responsibility of the State Departments responsible for domestic trade and international trade. The

¹¹Lyakurwa, W.M. (2007) "The Business of Exporting: Transaction Costs Facing Suppliers in in Sub-Saharan Africa", AERC Framework Paper on Export Supply Response Constraints in Sub-Saharan Africa, Dar es Salam, Tanzania, 23rd -24th April.

¹² World Trade Organization, 1999. The Legal Texts – The Results of the Uruguay Round of Multilateral Trade Negotiation (Cambridge: Cambridge University Press).

following functions are envisaged, towards effective institutional support towards implementation of the policy. International trade-related institutional functions includes; coordinating the activities of all export trade development and promotion agencies, Establishing an Export Development Fund to promote export diversification and value addition, Establishing a framework for service sector negotiations and the development of programs for promotion of export of services, including business process outsourcing, Establishing a framework for provision and administration of export finance, export credit insurance and guarantee schemes, Building core capacity and developing think tank capability at national level to undertake strategic analysis of trade issues, Establishing marketing and distribution channels in foreign markets and strengthening of e-business capacity for enterprises, Undertaking research and policy analysis to enhance negotiating and implementation capabilities, Protecting the domestic market from unfair trade practices by the establishment of an effective trade remedy regime, Developing mechanisms for safeguarding sensitive sectors and negotiate appropriate exemptions from tariff bindings and reduction commitments, Expanding capacity for the institutions involved in trade negotiations and facilitation, Developing mechanisms for collection of trade data, including an IT –facilitated information dissemination capability, Ensuring a broad-based stakeholder participation in trade negotiations, Ensuring the domestication of all bilateral and multilateral trade agreements, Enhancing capacity to implement policies consistent with the Country’s international, regional and bilateral trade negotiations, Synchronizing its trade relations with trading blocs to avoid duplicity, unfair competition arising from trade deflation and diversion and increased costs of doing business and establish a framework for the implementation of trade remedy measures that are compliant with the provisions of the World Trade Organization (WTO).¹³

Some countries in SSA have introduced International Trade Development Council. International Trade Development Council is an advisory body whose

¹³ World Trade Organization-WTO (2008) International Trade Statistics, Geneva: WTO.

function is to guide the overall trade policy formulation, provide an effective mechanism for intra-governmental policy coordination of cross-cutting trade issues being undertaken by other departments of the national Government.

Within the recent 5 years, SSA countries have strengthened and becoming welcoming to profitable business. SSA countries have developed modern investments codes and as well recognized that they must provide political micro-economics stability to guarantee an enduring and foreseeable stream of profit, and as a result of the law procedure to safeguard their investment when legally binding issues are in question.

There are various regional activities in the Continent with respect to the law which will in time frame part of the continent-wide strategy. The progress in many regions of SSA is the improvement of blended wear and exchange laws, which will cultivate both intra-African and worldwide trade. Before, numerous SSA has endured obsolete lawful frameworks. Economic gathering within the districts is present during the time spent progressing to incorporate exchange conventions and modernized lawful infrastructure. COMESA was created in December 1994 with 19 members and the aim of creating COMESA was to serve as an organization of free independent sovereign states that agreed to collaborate in developing their natural and human resources for the good of all the people. The main emphasis was on the formation of a large trading economic unit to overcome trade barriers faced by individual states. COMESA main objective was to promote sustainable economic development for its members UN (2016).¹⁴ Also, there is the Organization pour In harmonization en Afrique du Droit des affaires or the Organization of Business law in Africa (OHADA) that was created in October 17, 1993, by 16 west and central African countries. These nations chose to let go the legal frameworks they acquired during their colonization by executing the Port Louise (Mauritius) Treat. The thoughts were to design, implemented and apply through the courts a generous body of uniform business laws. The OHADA courts work with statutes of Uniform Act that

¹⁴ United Nations conference on trade and development statistics database.

directly apply in contracting states and don't require confirmation by the lawmaking body of every contracting state. OHADA is an urgent lawful instrument particularly designed to fill the need for local integration and financial development and also giving a secure lawful environment, OHADA law (2014)¹⁵ There are two main law systems that are practice by SSA countries. They include the civil law and common law.

Common Law is uncodified (meaning there is no complete compilation of the legal rules and statutes and it depends on some scattered statutes, which are legislative decisions). Common law is highly dependent on precedent as maintained over a time through the records the courts of the courts as well as historically documented in a collection of case law known as yearbooks and reports. The applied precedent in the decision of a new case is determined by the presiding judge. Common law functions as an adversarial system, a contest between two contrasting parties before the judge who moderates Baker, (2002).¹⁶

This law system is practiced in the English-speaking parts of Sub-Saharan Africa. The countries practicing this system in SSA are grouped under ECOWAS and these countries include Benin Republic, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Sierra Leone, Senegal and Togo, and EAC (East Africa Community) with six members, and they include the Republics of Burundi, Kenya, Rwanda, South Sudan, the United Republic of Tanzania, and the Republic of Uganda.

Civil law, on the other hand, is codified. Countries that practice the civil law systems have legal codes which are continuously updated comprehensively to specify a wide number of situations that can be brought to court and also the procedure applicable and the appropriate discipline for every offense. Such codes separate the distinctive classes of law: The procedural law sets up how to figure out if a specific activity constitutes a criminal demonstration while the penal law

¹⁵ L'essentiel droits Africain des Affaires ed de s'y a abonner
http://doc.lexn.so/JeDecouvreL'essentielDroitsAfricainsDesAffaires/LP_ESS-DAA.html

¹⁶ An introduction to English Legal History (London)

sets up the proper punishment. The substantive law establishes which acts are liable to criminal or common indictment; the role of the judge in the civil law system is to build up the truths of the case and to apply arrangements of the pertinent code. In spite of the fact that the judge frequently brings the formal charges, inspects the matter and settles on a choice looking into it, he or she works inside a system built up by an elaborate and classified arrangement of laws. The choice of the judge is thus less pivotal in molding common law than the choice of enactment and legitimate researchers, who draft and interpret the code, Dainow J, (1966).¹⁷ In SSA, the civil law system is practiced by French-speaking¹⁸ countries.

The difference in the level of international trade performance between countries or regions would to some extent be predicted upon the strength institutional frameworks, Fosu et al (2006). For example, the nature of legal framework in a country or region can be growth-inducing. The nature of legal framework in many SSA countries has resulted in stating failures such as the collapse of central administration, insecurity of life and properties, uncertainties and low infrastructural facilities. This form of legal disfunctionalities has worked against the region's developmental efforts with respect to international trade performance and economic growth, Ajayi et al (2002). Also in a situation where the legal frameworks are poor or not respected, it could lead to coup plots, violent military takeover as well as ethnic conflicts which have occurred in most SSA countries, and these are indicators of the weak legal framework, Artadi et al (2003). This tends to point the fact that the legal framework in SSA countries may not be very supportive for international trade performance when compared to other regions and the world. Some of the above issues are aggravated by non-resilient financial institutions in most SSA countries, which are essential for providing financial resources for international trade, Papaioannou et al

¹⁷ The Civil Law and the Common Law: Some Points of Comparison," American Journal of Comparative Law, volume 15, number 3 (1966-7), p. 419-35

¹⁸ These countries include: Burkina Faso, Benin Republic, Cameroon, Chad, Central African Republic(CAR), Comoros, Cote d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Niger, Senegal and Togo

(2009). Given the low level of international trade performance and legal frameworks, the basic question is “can there be a link between the legal framework and international trade performance in SSA”? But differently, can the level of international trade performance in SSA countries be attributable to their legal framework? The above questions were major research problems that motivated this study.

Furthermore, trade policies in most SSA countries had been characterized by high tariffs, inappropriate use of export and import licenses, indiscriminate use of import bans and some form of undue government interventions¹⁹. Most of these policy measures have not worked much in enhancing international trade performance. For instance, despite the opportunity of access to the world market, most SSA countries still face a lot of challenges. The membership of World Trade Organization has not resulted in substantial benefit. Another issue commensurate with mentioning is a heavy reliance on exporting primary commodities, which exhibits a major weakness in terms of trade of Selected SSA Countries. For example, raw material and petroleum products account for over 50% of international trade in most SSA countries, and petroleum products alone account for about 95% of Nigeria’s total export, while raw material comprises over 54% and 50% of international trade revenue in Mauritania and Zambia respectively.²⁰ The key problem with this trade structure is essentially the high level of fluctuation that usually characterizes prices of primary commodities at the world market, Hansson et al (1993, 1996, 2003 and 2007). Some of the prominent factors that have resulted in low international trade performance of most SSA Countries include weak legal framework, limited stock of human capital and poor infrastructural facilities.

¹⁹Iyoha et al (2002) Explaining African Economic Growth Performance: The Case of Nigeria”, Report on Nigerian Case Study, African Economic Research Consortium Research -AERC Project, Nairobi: AER and

Aigbokhan et al (2006) “Environmental Issues in Nigeria’s Commercialization and Privatization Policy”, Journal of Social Sciences, Vol.12, No.1, pp.33-48

²⁰Fongue, J. N. (2007) “Raw Materials, Crises and Crises in Africa: Understanding the Economic Dilemma”, in K. Wohlmuth, C. Eboue, A. Gutowski, A. Jerome, T. Knedli, M. Meyn, and T. Mama(eds) Africa –Commodity Dependence, Resource Curse and Export Diversification, Vol. XII, pp.141-170.

In this research, we are going to base our analyses on international trade facilitation and legal framework in selected SSA Countries. The general question for our study is, can the level of international trade performance in SSA countries be attributable to their legal framework? The objective of this research was to evaluate how legal framework influences international trade performance in SSA Countries.

This study is focused on selected countries in SSA. The choice of the countries was basically informed by the availability of relevant data. The countries were made of WTO members and non-WTO members.²¹ This was seen to be useful in order to capture the influence of WTO on international trade performance in selected countries. The countries under the study include Benin, Botswana, Burundi, Cameroon, Gambia, Ghana, Guinea, Kenya, Lesotho, Madagascar, Malawi, Mozambique, Namibia, Niger, Nigeria, South Africa, Swaziland, Tanzania, Togo, and Zimbabwe. The selected 22 countries of the SSA Region represents about 65.056 and 64.02 in terms of real GDP and population size respectively, International Financial Statistics (2008) and United Nation Statistical Division (2009). The period covered by the study was from 2000 to 2010.²²

1.2 Significance of the Study

There has been a lot of research with regard to the role of legal frameworks on the performance of international business across the world. The significance of law environments such as in the effectiveness of monetary and fiscal policies, price stability, secured property right and goods and services and people involved in the international trade that is combined with efficient utilization of resource have been found to exert some degree of impact on international trade performance in some countries. In other words, nature legal frameworks and policies in a region country can determine its economic performance, Temple (1999). This means that when the law of a country is weak, it can lead to the

²¹ World Trade Organization-WTO (2009) International Trade Statistics, Geneva: WTO.

²² World Bank (2010). African Development Indicators 2007, Washington DC: World Bank

occurrence of sub-optimal economic outcomes. There are emerging views in international trade performance and development literature that legal factors play considerable influence by determining international trade performance of regions/countries. Some efforts have been made by examining the link institutions with regions/countries in relation to democracy and economic growth. However, the majority of studies have focused on the relationship between legal framework and international trade facilitation. This is crucial for SSA Countries that usually have lower values in major trade and legal indicators than other regions of the world.

Our study is going to examine the impact of legal frameworks on international trade performance using a sizable panel involving SSA Countries. International trade performance may be too encompassing for general policy direction.²³ This study will observe that grouping total export into manufacturing and non-manufacturing would be general. This is essential in SSA region where non-manufacturing export such as fuel and mining and agricultural export for the bulk of their international trade basket. The study will extend to previous works by cauterizing indicators of international trade performance as total, manufacturing, agriculture, fuel and mining and service export. Hence, it is essential to unbundle both legal frameworks and international trade performance. Thus, this study relates international trade to legal frameworks.

The study will incorporate legal frameworks institutions which were related to the unbundle indicators of worldwide trade performance. The study also becomes significant in filling the gaps in examining international trade performance of SSA Countries with the context of legal frameworks in the region. The focus of this study on international trade performance is based on the relevance of international trade on economics in a globalized world.

²³ World Trade Statistical Review 2016

CHAPTER 2

2.1 Theory of International Trade

There has been a lot of liberalization of world trade in the world economy since 1950 under the auspices of GATT²⁴ and now under the leadership of the WTO, Thirlwall (2000). There have been significant reductions in trade barriers; protectionism remains a main uncertain block in relating emerging nations out of poverty. The growth in international trade and venture, on one hand has let nations to be more interdependent while on other hand has brought about trade clashes, which are more evident and motivating. In every trade agreement, it's often clear that one country can shortage while the other has a surplus. Hence least developed nations to argue that trade with developed countries are biased, while developed countries argue that trading with less developed countries is unsafe due to increased rivalry from low-wage labor. Consultants of international trade theory argue that free trade ultimately benefits all nations that contribute in free trade systems i.e. trade in which products flow from nation to nation with no state interference. Mercantilism was the primary concept in the sixteenth century that depended on the tenet that gold and silver were the principles deciding elements of national riches.²⁵ In this light, the concept of trade was a zero-sum gain in which one nation experienced a benefit whereas the other experienced a deficit. This drove to Adam Smith's concept of absolute and David Ricardo's concept of comparative advantage, both of which showed that exchange is a "positive-sum gain", that is, every one of the nations included advantage. According to Adam Smith's theory, a nation ought to concentrate in the making of those products for which it has absolute advantage trade for goods and services, while comparative advantage theory put forth that two nations can expand the net welfare of purchasers by taking part in exchange.

Every single nation ought to have practical experience in the creating of those goods and services that creates all the more proficiently and less costly and imports the goods that it produces less efficiently and more costly. With this, both nations will have the

²⁴ General Agreement on Tariffs and Trade (GATT), established in 1947.

²⁵ This was to the greatest advantage of a nation to encourage exportation of goods and discourage importation so as to boost the country's national wealth by accumulating gold and silver

capacity to build their joined creation that is the production probability frontier move outward.

There is also the Heckscher-Ohlin concept, which argued that the comparative advantage arises from the difference in factor endowments (resources such as land, labor, and capital) rather than productivity. According to Heckscher-Ohlin theory, Nations will convey and exchange those products that make heightened usage of components that are open locally and the other way around. It can likewise be contended that facilitated commerce is a positive-sum gain.²⁶

Economic development and advancement in a confined economy are constrained by the variable of creation (labor, technology, natural resources, and capital) open in the domestic economy. This has a recommendation on headway, effectiveness, project, and enhancement of capacities as the rivalry is compelled and undertakings concentrated on the little household advertise. Nonetheless, in a capitalist economy, these requirements are less authoritative and economic development can continue quickly.

Universal trade permits allotment of assets far from products that can create more effectively abroad into those goods that can be created more proficiently locally. More competition lets to greater efficiency and also gives access to bigger markets, which brings more speculation, development, and expertise. In this present world, economies are neither thoroughly open nor totally limited to all-inclusive trade. They are some place amidst and all things considered, there is an open door for all nations to benefits through more projecting movement and frankness. Nations have the choice of undertaking headway of their items and organization either singularly and at large on a multilateral or local premise. Opening local markets through multilateral or territorial structure give correspondence or the common and synchronous evacuation of levy obstructions for products and administration between nations. WTO gives multilateral framework and correspondence towards building up an administration for international trade.

²⁶ Edward E., 1995. The Heckscher-Ohlin Model in theory and practice.

2.2 Legal Frameworks

A legal framework for speculation under ECOWAS Commercial Law in Common Law, and Jurisdiction is that branch of law that controls trade, exchange, and commercial business. This is the law of contract, a commercial transaction linking to an Agency, Contract for the sale of goods, insurance, hire purchase and capital market laws; laws that relate partnerships and joint ventures, debt recovery and enforcement, competitions, bankruptcy, arbitration and amongst other.²⁷

The aim of the commercial law is to ensure order and regard for the rule of law in every business transaction and business connections between parties and as well as for the insurance and authorization of their separate rights and commitments thereunder Equity. Primary, the business law goes for advancing equity in business management thereby ensuring that there is abalance of interest by all parties to commercial transactions. There are situations where the court in common law jurisdiction refuse to adhere to strict principles of law and apply the principle of equity. Remedies: Commercial law tries to give suitable remedies for breach of the obligation in any aspect of the law.²⁸ These remedies include anaward of damages, injection, and the order of specific performance, payment of compensation, recession, and insurance. Lawful insurance: certain standards of the agreement have been produced essentially to guarantee that a gathering of thelawful individual is not defrauded or exploited in a contractual relationship as a result of their circumstances. The protected groups include companies, infants, illiterates and many others. Since the advancement of Company law, venture and security law, new principles are being created every now and then in this manner advancing proficiency in the administration of undertakings of corporate and speculation areas of our economies.

The main sources of business law are divided into five: (a) The Received English Law: divided into the doctrine of equity, the common law and the Statutes of general application. (b) The national constitution of a country may contain some obligations and guiding principles on particular organs of government to see to the acknowledgment of

²⁷ Sunday BabalolaAjulo, Sources of the Law of the Economic Community of West African States (ECOWAS)

²⁸ Joseph Dainow, "The Civil Law and the Common Law: Some Points of Comparison," American Journal of Comparative Law, volume 15.

the above-stated objective of the business law. (c) National Legislation or, statutes or Acts of Parliament. (d) Cases law or Judicial Precedents and (e) Delegated enactments for backup guidelines' and directions administering the topic. The auxiliary sources incorporate standard law, principles of universal law and definitive books.²⁹

2.2.1 Commercial Law Development Program (CLDP)

CLDP has been at work for a long period in SSA. Activities of the CLDP have been in both regional and individual country scope. CLDP assisted countries all over West Africa starting from 1990 below ATRIP, a USAID initiative, with improvements in alternative dispute resolution (ADR), judicial ethics, legal case administration, IPR and investment codes, aiming generally at reducing the legal right administrative obstructions to more compelling provincial combination and more prominent monetary development.³⁰

CLDP, in addition, has conducted several activities to present the SSA business sector to the AGOA and has given them the information on how to benefit from their incentivizing provisions.

CLDP, in addition, worked with the SADC with the aim of helping its associates to achieve compliance with their obligation under the WTO related decisions at the fringe appear to wave out the EAC System. The regular use of COMESA founding credentials by the matter of 4 EAC individuals demonstrated that the institutionalization of EAC authentications of source are not applicable- TRIPs Agreement.

Lastly, CLDP has been entrusted to help SSA nations and regions to enhance their IP protection.

CLDP in Africa has gone along way. Below some examples of CLDP in Sub-Saharan Africa,

Kenya

²⁹ International Trade Law includes the appropriate rules and customs for handling trade between countries.

³⁰ African Trade and Investment (ATRIP), (2009) a USAID initiative together CLDP are assisted countries throughout west Africa with reforms in alternative dispute resolution (ADR),

In June 2010, CLDP and the US Department of State Office of IPE held a sequence of meetings in Nairobi with the significant Kenyan agencies affected by the ACA in light of the misunderstanding surrounding the new Kenya ACA, on the foundation of an interagency way to IP administration. The ACA recognized that there was an awesome need to meet and organize with the current Kenyan organizations, nominated by the Anti-Counterfeit law to give IP investigators to the ACA, and asked for USG help to encourage such a workshop.³¹

Nigeria

The CLDP from July 2000 through December 2002 provided training and technical assistance to the Nigerian government to assist their endeavors to set up a lawful structure for the private part, enhance financial specialist certainty, open markets, and bolster assembly equitable foundations. Point by point exercises included support in five segments: (i) regulatory reform and administrative processes, (ii) government ethics, (iii), public procurement (iv) project finance and (v) intellectual property rights. With regards to IP, the activities increased knowledge level and skill of Nigerian intellectual property authorities, legal advisors, and judges and helped with the drafting of TRIPS-compliant trademarks, design, patents and plant varieties legislation. Equally, the program also assisted in developing a legal framework for the creation of a new PPC and furthermore made an inner manual of functional guidelines to the financial related control.³²

Regional Legal Integration

The first ever workshops of law specialists from West Africa together with delegates from territorial intergovernmental associations including OHADA, CEMAC, ECOWAS, and the ADB, to connect a longstanding Anglophone/Francophone and custom-based

³¹ United Nations Conference on Trade and Development (UNCTAD), *An Investment Guide to Kenya: Opportunities and Conditions* (2012); p.19, paragraph 3-4.

³² Ayua, I., *Law and Development in Africa* International Journal on World Peace Vol. 3, No. 1 (JAN-MAR 1986), pp. 71-81.

law/common law separate, work out clashing words and guide away towards legitimate joining for the sub-district was initiated by CLDP.³³

Alternative Dispute Resolution

CLDP worked with intra-territorial ADR accomplices (counting OHADA) in its improvement of an ADR program that looked to regulate the practice and utilization of ADR all through West Africa and to guarantee ADR administrations followed globally acknowledged norms. Thus, Nigeria set up two multi-entryway courthouses and Ghana tried to duplicate Nigeria's multi-entryway courthouse in its Commercial Court.

Model Investment Law

CLDP helped law specialists over West Africa to make laws on model investment. The law expels entangled and discriminatory arrangements found in more seasoned venture codes, and place neighborhood and outside financial specialists on an equivalent balance, and furthermore, incorporates arrangements for straightforwardness.

African Law Institute

CLDP worked with the ADB to set up the ALI, an autonomous think tank and research center and asset focus. The first research of the ALI activity concentrated on the advancement of an orchestrated speculation system in SSA.

African Global Competitiveness Initiative (AGCI)

From 2007 through 2010, CLDP has helped both individual nations and local monetary groups in Sub-Saharan Africa in reinforcing their licensed innovation insurance. Endeavors of CLDP resulted, inter alia, in their triumphs in West Africa.

Arbitration of Intellectual Property Rights (Nigeria, Ghana, Mali, Senegal)

CLDP directed territorial workshops in Nigeria for Nigerian and Ghanaian judges and in Senegal for Senegalese, Ivorian, Togolese, Burkinabe, and Beninois judges, and in Mali,

³³ McCarthy, C.. 2007. Is African economic integration in need of a paradigm change? Thinking out of the box on African integration. In: Bösl, A. et al. (eds.), *Monitoring Regional Integration in Southern Africa*, Yearbook Vol. 6 – 2007. Stellenbosch: Trade Law Centre for Southern Africa.

in order to build a limit and increment the aptitude and learning level of the judges on IP settling within the structure of the WTO TRIPS understanding and other world standards. These workshops brought about expanded casual correspondence between the judiciaries on IP cases, and in addition introducing a summary of legal choices on IP cases.

Regional IP Protection

CLDP led a territorial IP protection workshop in Ghana, with ECOWAS. Delegates from the 15 participating states presumed that IP breach, including falsifying and theft;it's a critical territorial financial advancement issue. Suggestions from the workshop have brought about the accompanying a guarantee with respect to ECOWAS to build up a territorial approach and rules for a more successful execution and authorization of IP rights in the West Africa area. Ghana, Nigeria, and Liberia are in the beginning phases of building up an Inter-Agency Task Force on IP matters inside every Member State. These Task Forces should be in charge of the harmonization of strategies for IP implementation, give a timely trade of data and composed reactions to IP breach at the national level.

2.3 Intellectual Property Right

According to World Intellectual Property Organization (WIPO), Intellectual Property (IP) is defined as the creations of the mind: inventions, names, pictures, symbols and plans utilized as a part of business. IP defines the different sorts of manifestations of the brain with which restrictive rights can be perceived.³⁴These rights allow makers and innovators utilize and manage their items. The reason for these rights is to give a motivating force to advance beneficial development in assorted zones, for example, pharmaceuticals and innovations. Notwithstanding, it can still be imperative to guarantee that these advancements are available to all. IPRs are therefore allowed for a restricted timeframe.

³⁴ World Intellectual Property Organization. www.wipo.int

IPRs have been recognized as part of the infrastructure supporting investments in international trade leading to economic growth.³⁵The improvement of the great strategy of the world has become more complicated particularly in those territories identified with financial aspects and this depends on both hypothesis and proof.

As seen with the situation with trade-related IP with its long history of locally determined savvy IP improvements and the predominance of the legitimate work in advancing and authorizing its guidelines as in common or criminal matter. The focus of the lawful discernment concentrate especially on the property as opposed to on the arrangement perspectives, for example, possession, control and genuine, and furthermore on ill-conceived and access to data. Financial aspects look prevalently on the approach parts of IPR commitment to the likelihood that potential additions and losses of the results from any strategy adjustment which ought to be assessed subjectively and when information can quantitatively permit. The confinement of free development of goods administrations, innovation, thoughts, and individuals either free or open exchange is viewed as being optimal according to economic theory. The area of specialty in which a country performs well and after that exchanging the yield of products and ventures that are not created, delivers as proficiently in that nation can lead to good welfare and human prosperity as per the expansive standard of financial expert. Imposing on IT standards by countries/areas on other local directions, for example, security principles to a degree that they can cause a decrease in the volume of exchange is consequently observed to restrain exchange and to be fundamentally hostile and aggressive. This thusly, implies most business analysts contradict the fenced in the area of protected innovation models and methods in market-opening exchange understandings. Some exchange business analysts trust that the presentation and authorization systems into exchange understandings were and still stay wrong especially in the World Trade Organization, whose individuals are at a wide range of phases of advancement and has the tilted and adjust of favorable position to Countries have pronounced that trade agreements applicable now that incorporate IPR and should be redressed with time as they are seen to have caused an irregularity in the framework. Different theories

³⁵ Braga, P. And Fink, C. (1998), "The Relationship between Intellectual Property Rights and Foreign Direct Investment", *Duke Journal of Comparative and International Law*, 19: 163-187

contended that feeble IPR measures could give a possible outcome of a non-tariff exchange measure that will bring about a less worldwide exchange that would somehow be the situation of an intricate blend of lessened direct outside speculation, less innovation exchange, less joint ventures or permitting understanding and lesser request.

It is important to have a guarantee that the collective and overall enthusiasm for a steady expanding development in innovation, and enhanced prosperity is maintained. Literature proposes that the effect of advancement on IP, imagination, global exchange and on the economy in most parts rely on particular conditions and the specific monetary division and in addition to the IP measures.

The link between IPR and trade gives an impression that it is considerably not strong when analyzing on the basis of observational instead of on hypothetical grounds, it gives an impression that the link between IPR and trade is considerably not strong.³⁶ Other existing support could leave a relationship through the effect of licenses in a couple plainly unmistakable segments; copyright in a few areas and to a lesser expand trademarks. For example, there could be an observational link to reinforced patent security and development in the pharmaceutical and compound parts. An exact link amongst exchange and IP especially as to licenses is additionally clear in the more up to date field of nanotechnology and hereditary designing, and in the more seasoned non-electrical hardware, transportation, and metals segments.

Some variables which can impact the rate of information creation (for example custom exchange and venture approaches, imposed framework, generation motivating forces and rivalry laws) and its appropriation to item plan and creation advances has been confirmed to be more vital than IPRs in stimulating development and commercialization thereby improving the quality and also the volume and estimation of products and enterprises exchanged. The extensive monetary structure strategies noted are likely more vital than IPR appropriate concerning copyright, particularly in the present period of increasing data and learning advancement. In order to bolster copyright assurance irrespective of whether it is of quantitative or subjective nature should be constructed

³⁶Falvey, R. Foster, N., and Greenaway, D. (2006), "Intellectual Property Rights and Economic Growth," *Review of Development Economics*, 10(4): 700-719.

much more in light of wanted results identifying with wage dissemination and on social and social destinations than on simply monetary variables because the relationship between copyright measures and imagination is very weak. Standard copyright arrangements as per the data on businesses may be a hindrance to advancement and inventiveness especially if computerized locks limit access to past programming developments or in the case where the costs of copyrighted products and ventures turn out to be too high for buyers.³⁷ Taking everything into account, the coloration amongst trademarks and by the expansion of classifications of licensed innovation right that guarantees shoppers of the genuineness and security of products and ventures in the commercial center through notoriety and trust to universal exchange that has not been demonstrated experimentally. While the decrease in revenue to the trademark and inquiries of equality become possibly the most important factor. With respect to this connection, there are restricted financial defenses as far as proficiency and intensity are concerned since there is no duration constraints available selectiveness managed by the trademark award.

Despite the previous contemplations, a nation may have convincing financial matters to take into consideration residential IPR changes regardless of whether an immediate or roundabout connection can be made to the volume of universal exchange streams. These financial reasons have in the past been connected to licenses; however, progressively they likewise apply to the copyright of recent times. Despite the fact that reinforcing the IP measure, may still not lead to an expansion of the fares or intermediary products or administrations imports and a good working IP administration could inspire an increase in the innovation centered venture, specifically more imports of new secured products as territorial and worldwide supply chains progress. Vitality, consolidated with the other strategic measures noted, this may prompt to a grander number of joint endeavors and so permitting contract in the nation in inquiries, subsequently, this will lead to economic efficiency and salary development.

Analysts have utilized different commercial pointers to determine where IP laws might change to fortify economies or the worldwide financial framework as an entire.

³⁷ World Bank, 2000. African Development Indicators 2000, World Bank, Washington, D.C.

Measurements utilized by various creators include: speculation and Research and Development consumptions as a rate of GDP; business undertaking uses on innovative work; advanced education uses on innovative work; government uses on innovative work; number of innovative work faculty; the adjust of exchange or wage got from eminences and different installments; the quantity of patent recording; and the volume of copyright or trademarks enrollments held either by occupants or non-inhabitants. The most essential of this is the business parts which are driven by research, and are completely outlined. IPR insurance is vital when joined by other economic approaches and sound controlling practices; in different divisions, salaries appropriation and decency contemplations give off an impression of being more vital than the development or invention induced when restricted market access conceded through IPRs.

2.3.1 The State of IPRs in the SSA States

The intellectual property laws of SSA countries were introduced from the colonizer countries. SSA countries are obliged to adapt to the IPRP standards since most of them are members of WIPO. This creates complications to specific countries due to the modification of national laws to global rules. This rule is not composed decisively for the delivered scholarly efficiency inside a nation. This, therefore, suggests that the IP of these countries focus social IP³⁸ and its often excluded from the intellectual property required to be protected, as a result the trade-related aspect of IP agreement was drafted.³⁹

The agreement takes into consideration the unpredictable standards in the enforcement and protection of IPR and the inadequate multilateral structure of principles, rules, and disciplines required when trading internationally with forged goods and its increased pressure in international economic relations, like the case between Rwanda and Canada AVR drug deal tests which talk about the implication of the 2007 deal on the export of generic antiretroviral (ARV) from Canada to treat HIV/AIDS patients in Rwanda for the

³⁸ For example customized pacesetters such as, musicians and artist

³⁹ This agreement was aimed to address the establishment and applicability of; suitable IPRs, effective implementation measures, multilateral dispute settlements and temporary arrangements.

efficiency of WTO under the agreement on trade-related aspects of IPR1994 for making ARVs more accessible to developing countries by means of compulsory licensing.⁴⁰

A universally accepted framework standard could be a highly required way out to cope with these pressures. Many issues arise in SSA countries due to the lack of a reliable and comprehensible national policy on IP. It is necessary to have a good idea of the difficulties that the SSA innovators face in protecting their work from being unlawfully produced or taken. Some countries are not aware of the suitable rights and are unable to afford the registration fees which sometimes hinder their applications for intellectual property rights.⁴¹ Even though, most SSA countries have taken the steps to make sure legislative compliance with international IPR rules, lawmakers including officials of government and creators of IP may still lack the ability to apply and harness the laws for domestic development and sometimes show a low knowledge of IPR and the consequences of instituting an efficient IP protection system. Very few individuals in Africa have the ability and familiarity to handle IPR specifically with respect to investment, rivalry, trade, and other current factors of globalization. The intellectual productivity might be advanced at the local level, however, could be hindered at the global level since IPs are inadequately protected thus inhibiting them from growing into internationally competitive industries. It is basic that individual nations institute IP laws and strategies that connect property security to other national objectives, for example, exchange, financial development, and competitiveness.⁴²

It is necessary for individual nations to pass IP laws and strategies that connect property security to other national goals, for example, exchange, financial development, and competitiveness. This can only be effective if nations have the required limit as far as legitimate and policy specialists, innovation and infrastructure. It is important to ensure the security of the innovator for advancement and in ultimately trade. In this manner, it is important to assess the present arrangements set up for IPR and also their consequences for the development and exchange. Executing an IPR system requires a reasonable

⁴⁰ A.J.I.C.L. 2009, 17(2), 240-269

⁴¹ The records of IPR are sometimes affected by some other factors such as; lack of infrastructure, bad record keeping and poor technical capacity at IP registries.

⁴² Braga, P. and Fink, C. (2000), "International Transactions in Intellectual Property and Developing Countries. International Journal of Technology Management, 19, 35-56

lawful and approach structure on these rights, a steady foundation for the use of the laws and policies, which comprises of trained staff and office assets required to get the system completely functional. The increased need for the legal and lawful professionals to know about improvements in IP laws and the part of enforcement organizations, like, the police, customs and income experts cannot be over stressed.

2.3.2 Difficulties Encountered with Insecure IPRs in SSA

Innovators are regularly given certain selective rights to leave some of their rightful assets, for example, melodic, literary, discoveries and works of art, expressions and images under IP law. One of the real purposes behind perceiving IP is to advance interests in information creation and business development by setting up selective privileges to use and to trade newly made IP. Studies and development in innovation are typically financially unsafe, costly, and tedious. Without these rights, developments can undoubtedly be taken without remuneration to the pioneers. Producers require suppliers to deliver their fine art and casual deal settings.

In addition, it is also necessary to secure innovative IT, in light of the fact that they are a method for traditional expression since culture plays an important role in every society.⁴³

Globalization and improvement realized social homogenization, which is coordinated by the weights of well-known culture which has prompted to the breakup of some parts of culture. Likewise, less privileged persons may be highly affected since they may manage their living standards through their creativity. The individuals lack a stable income source yet depend on various distinctive works for their income which they highly value. Advancement ought not to discontinue cultural activities since this disintegrates the remarkable angles whereupon a general public is built. In this way, it is necessary to ensure that culture is protected. Inadequately organized IPR may prompt a decrease in the overall earnings. Encroaching on the pertinent property may lead to a deficiency in information regarding the defense system. A case is a theft in motion picture and book businesses in Africa. Studies have shown that Nigeria has a good number of industries

⁴³"It includes imaginative expression (e.g., dialect, oral history, writing and works of art), group practices, and material or manufactured structures, for example, locales structures, historic centers, craftsmanship, and scenes."

which focus on book business. Outside publishers highly dominate publication business in Nigeria (e.g. publishers like Evans, Macmillan, Oxford University Press, Longman, and Heinemann). Of recent in Nigeria, books have been liable to a high rate of piracy. Unlawful production of books is done at secret areas in Nigeria (like the case of Longman books)⁴⁴ and in some cases imported from places such as Asia and freely distributed all through the nation.

2.4 Trade Facilitation

TF does not have a specific acceptable definition. There is a wide range of methods for moving toward the subject, starting from an exceptionally contract center toomuch-expanded points of view. The most commonly used definition of TF is "the improvement and management of universal exchange systems", in which global exchange techniques are the "exercises, performances and conventions required in social events, showing, conveying and dealing with data required for the advancement of merchandise and administration universal exchange."⁴⁵ TF can also be defined as "accelerating the advancement, opportunity, and release of merchandise, incorporating products in travel".⁴⁶ Hence, roughly speaking, trade facilitation refers to reforms aimed at making it easier for traders to move goods across borders, with a specific focus on lowering transaction costs associated with cross-border trade procedures. Other authors like Wilson, Mann, and Otsuki (2003; 2005) see TF as consisting of more than these procedural issues and would include factors such as port infrastructure or general regulatory environment in countries. Both perspectives are courteously summed up by Roy and Bagai (2005), who said that "TF aims to make trade procedures as efficient as possible through the simplification and harmonization of documentation, procedures, and information flows". They add in a narrow sense that addresses the logistics of moving goods through ports or customs. Additional, it encompasses several inter-related factors such as customs and border agencies, transport infrastructure like roads, seaports,

⁴⁴ Recently in Lagos, the managing director of Longman books lost about 50% of its potential revenue to unlawful production of its books

⁴⁵ Michael Engman (2005), the Economic Impact of Trade Facilitation, OECD Trade Policy Papers, OECD Publishing.

⁴⁶ The Doha Ministerial Declaration (WTO 2001)

airports etc. All the above are mean to lower the cost of moving goods between the destination and across international borders.

The main aim of TF is reducing the unreasonable formalities at the fringe. Difficult administrative measures are a major worry to traders since they result in expensive deferrals and overwhelming expenditures. It is still sensible to state that TF consideration has fundamentally expanded recently despite the fact that the main explanation behind it is not clear as duties and other nontariff obstructions to exchange have stepwise been destroyed throughout the year hence expanding the relative cost of having wasteful exchange techniques. At the end of the day, multilateral trade progression is still one of the major reasons that clarify why TF these days is high up on the global motivation.

Many nations have transformed their bureaucratic exchange methods. This implies that with or without a multilateral arrangement on TF, advance is made. The general affirmation of the way of wasteful trade strategies constitute a critical exchange boundary, there is likewise negative advancement where sometimes it turns out to be even troublesome for a broker to send great crosswise over outskirts. This is particularly the case with the many security initiatives that have been introduced since September 11, 2001. This is predominantly to reduce the risk of terrorist attacks, again the delivery chain and it is tempting to make it stricter.

There has been a lot of work in the SSA to facilitate trade and also to provide for special and differential treatment (SDT) of goods entering the region from other countries.⁴⁷ Case law on SDT provisions helps in specifying how SDT provisions in TF agreements can be interpreted and made applicable to dispute settlement mechanism used by WTO. A few cases that could be relevant when interpreting and assessing the degree of legal enforceability of the SDT provisions that are involved in TF agreement are presented below.

⁴⁷ Heinrich Böll Foundation 2005 Global Issue Paper, No. 18: Special and Differential Treatment for Developing Countries Published by the Heinrich Böll Foundation

The vague language in many trade facilitation agreement provisions has led to interpretations that do not call for positive obligations for developed countries. Article 15 of the treaty on anti-dumping has been the theme of a couple of debates. In this article, it is perceived that special respect must be given by a member of developed countries to the exceptional circumstance of members of less developed countries when putting into consideration the use of antidumping measures under this agreement. Conceivable outcomes of valuable cures accommodated by this agreement should be investigated before the application of anti-dumping obligations in situations where they are affected by the fundamental interest of the members of creating nations. Other SDT necessities are observed to be legitimately enforceable, as Article 9(1) of the Safeguards Agreement, which emphasizes that defend measures shouldn't be applied to items from less developed countries provided their shares in the importation doesn't go beyond 3% the importation shares altogether representing not more than 9 percent of aggregate imports of the item concerned.⁴⁸

2.4.1 Inefficient Trade Procedures

Inefficiently trade procedures have to become costly, and with this, it has become more cumbersome due to the costly nature of trade procedure and therefore also costly to traders, which are often referred to as transaction cost. This cost at times is classified as being sunk, fixed or variable cost. It is always important for a trader to get concerning trade strategies required to comply with. It is also very important to make known that those methods may be applicable to both the country importing and the country receiving (destination country). The cost for traders increase with increase complexity in the process. Firms need to pay for this cost only when they view it as one-time sunk cost to enter the marketplace. Each time goods are to go international; every single pertinent methodology must make an agreement. It is always important for a trader to get concerning trade strategies required to comply with. It is also very important to make known that those methods may be applicable to both the country importing and the country receiving (destination country). The cost for traders increase with increase

⁴⁸ Uruguay Round Agreement, Agreement on Safeguard, April 1994, page 89.

complexity in the process .firms need to pay for this cost only when they view it as one-time sunk cost to enter the marketplace. Each time goods are to go international; every single pertinent methodology must make an agreement.⁴⁹

The transaction costs can be divided into the indirect cost (incorporates delays because of wasteful techniques) and direct cost (this incorporates consistency cost connected with providing data and documentation). Another cost may include the variable cost that is a cost that does not depend on the size of the shipment.

2.4.2 Economic Effect of TF

The economic effect of trade facilitation point can be categorized into three general areas; trade, government revenue, and foreign direct investments. Trade has received a lot of concentration from specialists. “New heterogeneous firm trade theory” according to Melitz (2003) and Chaney (2008) would anticipate that a negative effect is given to both the escalated and broad edges of trade. The changes that can enhance the productivity of the procedure ought to prompt both expanded trade streams and fares or import diversification⁵⁰ and also study the hypothetical forecasts making use of different ways to measure and outline TF and hence to approximate its outcomes and on different geographical territories. Although several studies of volume effects have been carried out, few researchers still have impact of TF on the broad edge of trade. In 2011, Persson together with other researchers further illustrated that with a consistent theoretical treatment, the negative effect is more pronounced for differentiated products than it is for standardized products. With a geographical focus on diversification rather than focus on diversification on product and TF can possibly build the quantity of fair markets. The second impact which is on government income and direct foreign investment TF will likewise affect government income positively. Firstly by taking modernization of customs into consideration probably prompt to a more effective collection of exchange expenses. Engman (2005) reviews a few nations’ contextual investigations which suggested that TF positively affects custom income accumulation. Besides, to a certain

⁴⁹ In most cases this agreement does not rely on the volume of the shipment but rather on the nature of rules and procedures to follow.

⁵⁰ Persson, M. (2012). Trade Facilitation and the Extensive Margin. *Journal of International Trade and Economic Development*, forthcoming. DOI:10.1080/09638199.2011.587019

degree, TF additionally expands the estimation of exchange streams, the expense base as well as an increment. Both of these impacts might be especially imperative for creating nations which depend on expenses to raise government income more than well-developed nations. Thirdly, government income may likewise be influenced by changes in the national production in terms of expanded exchange. Beside this, TF can likewise prone to influence outside direct speculation. An earlier effect could be either positive or negative. In most developing nations where exchange strategies tend to be especially expensive, it is more probable that the firm will focus more towards export markets. In this circumstance, wasteful trading techniques increase the cost incurred by a company to export its own product and to receive important intermediaries hence reducing the probability for many other nationalities to locate the firm.

2.4.3 Concrete Example of Reform of what Countries can do to make it easier for goods to cross the border.

Documentation requirement is the first area where these principles are likely to apply. These requirements should be as simple and few as possible and be uniform between the concerned agencies. It is preferable that documents should be similar as possible across countries. The second requirement and procedure make it difficult for traders to freely access the right information publicly. In this manner, laws, methods and different guidelines ought to be distributed. Consequently, a simple TF approach could be the creation of a website so as to make all important data accessible. It is necessary to report wasteful strategies in the entire business chain, beginning with the purchase phase right to the phase where the seller receives the pay, according to Hellqvist M, 2003. This means that a great number of agents are involved.

This, therefore, implies the involvement of a good number of specialists. TF in most cases includes education of both administration and staff (like the customs) with the goal of receiving a better profit.⁵¹ In addition, at least two offices are often included in the chain leading to an increment in the level of collaboration and correspondence between

⁵¹ Morrissey O. (2005) 'Imports and Implementation: Neglected Aspects of Trade in the Report of the Commission for Africa' *Journal of Development Studies*, 41 (4), 1133-1153

these offices which may reduce few difficulties involved such as orchestrating their exercises and necessities. The efficiency of customs clearing can be increased by utilizing control systems based on auditing instead of each shipment control. There happen to be profit in the situation where they address weak infrastructure such as ports and airports despite the fact that they are hardly included in trade facilitation discussions. In addition, they use the available infrastructure such as an increase in opening hours, efficiently even without any physical investment can still lead to some gains.

2.4.4 Measurement of Trade Facilitation

Studies have proven that the main challenges with TF occur due to the fact that, many agree it is a very important topic but it is hard to determine the exact cost that modification can influence. According to available text, one of the most common ways is to depend on the World Bank Database for business.⁵² With the World Bank data available today, researchers encounter a major problem due to lack of time variation.

When doing business internationally, questions often come up such as time, documents and cost required for the exportation or importation of a well-defined standardized good by a hypothetical trading firm.

One other problem with the available data results due to the fact that it is not able to distinguish between good. This can lead to two major problems such as:

1. The researchers depend on differences in cross-section among nations because it indicates that the deferral caused by wasteful trade due to lack of information about how things change over time. This is problematic because it makes a control for unobserved different brands much more difficult. Being unable to examine the circumstance both previously and after the fact change makes a statement about casual links a lot complicated.
2. The value of goods is only marginally affected whereas deferrals in time might be exorbitant to some different products and henceforth the results hence the outcomes of product-specific measures are very useful.

⁵² World Bank Database for business 2011

Another related problem may also be due to the fact that data cannot be separated from various goals and nations. However, the exchange between unique countries may experience very tough procedures as compared to that of other. It could also be wise that data be distinguished from cost in terms of the firm size since greater organizations are in a better position to manage exchange techniques. This data could be obtained by making use of the available data which occasionally include available data about trade procedures. The only setback is that information gotten may only be from one country.

Chapter 3

LEGAL FRAMEWORK FOR INTERNATIONAL TRADE FACILITATION AS RECOGNIZED INTERNATIONALLY

3.1 Introduction

In this chapter, international trade facilitation efforts developed in the SSA and the need for a legal framework to support such efforts will be examined. The position of this research is to prove that a strong legal framework is essential in any international trade facilitation plan. Ensuring legal stability during and after a trade facilitation commitment will safeguard that the outcome of any trade facilitation reforms will have long-lasting effects especially against the backdrop of persistent corruption in the customer department and others in the SSA as well as other parts of the world. Consideration is first drawn to the international legislation that governs trade facilitation and how the same is reflected in the general legal frameworks of the SSA Countries.

3.2 Why a legal Framework?

Customs are at the forefront of agencies that intervene in international trade. Therefore, the customs duties highly influence IT.⁵³ It is generally accepted that a modern customs service has to endeavor for transparency, accountability, predictability, and fairness in its dealings with the international trade community.⁵⁴ Eventually, this calls for the integration of the concept of international trade facilitation in the current customer management. TF does not link traders to businesses and different government institutions but also relies on the circumstance of a nation's framework like streets, ports or customs facilities or a country's human resources, income base, its institutional, and regulatory capacity.

⁵³Widdowson, David (2005) International Trade Facilitation: The Customs Imperative, presentation to the APEC Workshop on the WTO Trade Facilitation Negotiations, Kuala Lumpur, March 2005.

⁵⁴ Peter Baish, Customs and Border Agency Best Practices

Subsequently, customs operation requires a solid and up-to-date legal framework with which duties can be discharged.⁵⁵ Such a framework should be customs related legislation to promote accountability, transparency and predictability (for example timely dissemination of information, advance rulings independent audit and appeal processes), provide for up-to-date customs and measures that also includes risk management, that contain risk management, audit-based control and adequate automation' simplified customs methods, promotes customs integrity and meets international standards. Lack of an effective legal framework that guarantees accountability, transparency, predictable and prompt customs procedures, investors and other business operators will find it highly painstaking to conduct business or invest in a country in this competitive international business environment.⁵⁶ This means that it is of critical national interest for every country to maintain its customs activities, and the high level of effectiveness and efficiency, strengthened by a legal system that meets not just internationally but also accepted standards judged by their straightforwardness in assisting trade.

It is also important to note that it is impossible to form a reasonable judgment of customs efficiency and integrity without a broad assessment of the quality and clarity of the regulations that these officials are obliged to interpret and implement religiously. Unclear, obsolete and ambiguous rules are, at best, reasonable grounds for inefficiency, at worst, breeding grounds for dishonest practices like corruption. Therefore, this calls for a need for a modern legal framework.

3.3 International Regulation of Customs and International Trade Facilitation

Measures

In IT, the most significant inter-governmental organization that build up and control intercontinental ethics and paramount practices for business between nations include

⁵⁵Mikuriya, K. (2005). 'Legal Framework For Customs Operations and Enforcement Issues'. In L. de Wulf and J.B. Sokol (eds) Customs Modernization Handbook. Washington DC: World Bank, pp. 51-66

⁵⁶ Asian Development Bank(2009), Designing and Implementing Trade Facilitation in Asia and the Pacific, November 2009

UN, WTO, and WC.⁵⁷ Important to note is that all member of SSA is members of these International bodies.

In order for international trade facilitation to function and generate the potential benefits, it must be based on globally accepted standards, rules and methods. The main objectives of International Trade facilitation are;

Trade Facilitation is aimed at easing and regulating documents, methods, and operation with a view to harmonization close-by customs and activities as per multilateral attestations; either official or consider business gauges, for instance, prescribed custom and practices of ICC.⁵⁸ By becoming a member of WTO, member states must execute and hold fast to its customs and principles for free and reasonable exchange. The most imperative of these is the WTO Agreement on Customs Valuation (ACV), which mandates that the customs value of the imported goods, the greatest extent possible should be the transaction value. Inappropriately, WTO member has so far failed to reach an agreement on the definition of rules of origin, notwithstanding, efforts undertaken in the WCO since 1995.

Requiring harmonized procedures of origin for thenon-preferential purpose, this measure would go a long way in saving time and cost for traders and customs officers and this provides greater certainty and predictability of trade. A fragment of the July 2004 package of the WTO, the WTO Council decided to commence negotiations on International Facilitation in order to increase the transparency of trade regulations (GATT Article X).⁵⁹ This would also simplify, standardize, and modernize import, export and customs procedures and improve the conditions for transit. (GATT Article VIII and V respectively).

Besides, the rule of GATT's international treaties, values, and prescribed practices are the 'Harmonized System of Nomenclature, the International Convention on Temporary

⁵⁷ Grainger (2008) 2 World Customs Journal 17 at 18

⁵⁸ ICC's Commission on Commission on Facilitation of Trade.

⁵⁹ GATT governed the bilateral trading system from 1948 to 1995, when the World Trade Organization (WTO) superseded it. GATT 1994 constitutes an integral part of the WTO Agreement.

Admission (Istanbul Convention) and the Convention on Mutual Administrative Assistance (CMAA)'.

These techniques administer basic parts of worldwide exchange like standard, good procedures for productive and easy preparing of products and movements, order of products for money gathering utilizing the Harmonized framework, institutionalized exchange measurements, participation, and data trade governs between customs of different nations and regular facilitative treatment of products that travel a nation or district.

Additionally, in the guideline of the customs environment, of precise importance, is the Revised Kyoto Convention (RKC).⁶⁰ This convention reflects the current economic and technological changes necessary for an up-to-date management of customs, compliant to worldwide regulations and practices while also combining good activities of partner states. The RKC provides both the legal framework and a range of agreed on standards that can be used to harmonize customs policies and procedures worldwide. This is a great means for exchange, guaranteeing monetary development and enhancing the security of the global exchange framework. This sets out principles for modern and efficient customs procedures like accountability, transparency, simplification, harmonization, use of information technology, risk management to aid legitimate trade while maintaining effective control, partnership with stakeholders plus government agencies, enhanced security and revenue collection, partnership among the private sector and other customs administrations.

Standard 1.2 of the Revised Kyoto Convention (RKC) talks about that the requirements to be fulfilled in customs formalities to be accomplished for procedures and practices in the Annex and in the Specific Annexes shall be specified in national legislation and shall be as simple as possible.

⁶⁰ The Revised Kyoto Convention was approved by Customs administrators who took part in the World Customs Organization's 94th Session in June 1999. It came into force on February 3, 2006, three months following India's becoming the 40th signatory to the Protocol of Amendment; 61 countries had formally consented to the Convention as of April 2009. (WCO 2006).

Furthermore, the RKC advocates transparency and simplification from the outset which are fundamental principles of international trade facilitation. However, the RKC is a scheme practice for present and effective customs methodall over SSA. Adding to the above, agreements such as those on import licensing, technical barriers to trade, sanitary and phytosanitary measures and pre-shipment also contain a number of provisions relevant to international trade facilitation.

3.4 International Measures Adapted to Combat Corruption in Customs.

In light of the issues postured by defilement, the UN Convention against Corruption which was embraced in 2003, was authorized in December 14, 2005, contains an arrangement welcoming states to observe the mentioned Code and some pertinent exercises of domestic, interregional and multilateral associations.⁶¹With the system of it honestly program, the World Customs Organization has created an Integrity Self-Assessment Guide, a Model Code of Conduct, an Integrity Development Guide, and an Integrity Action Plan, which is tirelessly overhauled. In order to add to the overall attempt, many measures are put in place to improve genuineness in conventions at national and nearby levels, one of the main cases in the Maputo Declaration grasped in March 2002 by Heads of Customs over Africa. Likewise, data on codes of behaviors for clients' authorities embraced in different nations in the Compendium on Integrity best practices, issued by the WCO in May 2005.

In the Model Code of Ethics and Behaviors, which was formed by the WCO,⁶² was main to serve as a principle for these nations.Punishments for resistance ought to be verbalized in the code, institutionalized to relate to the reality of the infringement and bolstered by fitting authoritative and administrative techniques."

The WCO Model code of Ethics and Conduct accommodates penalizing activity for sincereoffenses submitted by customs authorities. It expresses that customs authorities must show their consent to the law. The uncommon duties of customs imply that

⁶¹ Speech by KunioMikuriya, WCO Deputy SG "Trade Facilitation: benefits and capacity building for customs"UNECE forum on Trade Facilitation, 14-15 May 2003, Geneva

⁶² The WCO in it Declaration of the Customs Co-operation Council Concerning Good Governance and Integrity in Customs, perceived additional requirement for the reception of Model Code of Ethics and Behaviors, the Revised Arusha Declaration in June 2003.

offenses identifying with the enactment, or has an enthusiasm for, are respected most gravely when submitted by a customs official. Customs officials who carry out offenses including, precluded drugs, misrepresentation, looking for or tolerating fixes, unlawful importation or exportation of goods will be liable to disciplinary activity, paying little heed to any punishments connected accordingly of the criminal continuing." Other intercontinental innovativeness to reinforce tenets of lead for an open power to customs organization are; Global Forum I on Fighting Corruption (1999), Global Forum II on Fighting Corruption (2001), Global III on Fighting Corruption (2003) and Global Forum IV on Fighting Corruption (2005).

Accountability and Transparency are also reinforced by strong effective guarantees of public access to information. The African Anti-corruption Convention obligates its member states to enforce this right as a critical means of combating corruption.

3.5 Trade Facilitation: Measures adopted in the SSA Legal Framework.

One of the most central pillars of the SSA is cooperation in trade liberalization and development.⁶³ The Community's customs union was considered an appropriate entry level of the integration process that would advance these fundamental pillars. Even though it is preferably an advanced stage of integration that requires an elaborate and functioning legal and institutional mechanism, SSA was not reinventing the wheel as it had been a fully operationalized custom union. Some economic blocs in SSA signed protocols like East African Community (EAC) (March 2, 2004) for establishing the EAC custom Union which commits the states to eliminate Non-Tariff Barriers (NTBs).⁶⁴ Though, despite signing an agreement to eliminate NTBs, they are still applied by member states. NTBs with the EAC context have been categorized under six clusters. These are customs documentation and administration procedures, immigration, quality inspection, transiting, police road blocks and business licensing and registration.

Research shows that while international tariffs have been greatly removed in line with the procedure, NTBs such as those indicated above have not been fully removed and

⁶³ Article 74: EAC Treaty, 2000

⁶⁴ Article 13 of the EACCU Protocol on Non-Tariff Barriers, Section 1 specifies that unless provided for or permitted by the Protocol, each of the three (now five) East African partner states will remove with immediate

they continue to increase the cost of doing business in the region and have negatively obstructed on trade and co-operation. For example, in 2004, the SSA noted that bureaucratic import and export procedures facilitated a non-transparent environment that was rife with corruption. This seriously inhibited formal trade among the economic blocks in SSA countries thus undermining the objectives of the block Custom Unions.

For the SSA Customs Unions to function properly and to be able to realize its objective, it is supported by a well-established legal framework. The Customs Union Protocol provides that the CU shall be managed in accordance with the customs laws of the Communities.

This consist of relevant provisions of the Communities Treaties; Protocol and its annexes, regulations, and directives made by the Council of Minister, applicable decision effect, all the existing NTBs to the importation in their respective territories of goods originating in the other partner state and subsequently not to levy any new NTBs. Additionally, this provides that partner states shall formulate a mechanism for identifying and monitoring the elimination of NTBs made by Economic Communities; Customs Management Act and other Community Act endorsed by African Legislation Assembly.

With respect to the objective under the Customs Union, like the case of EAC set itself to attain a number of objectives far beyond what is ordinarily prescribed in the theory of integration. In addition to intra-trade liberalization and promotion, EAC envisions promoting production efficiency, promotion of local, cross-border and foreign investment, and industrial diversification for economic development.

Trade promotion is one underlying drive of the SSA Customs Union and because of that, ITF is an important factor in the discussions of the SSA Economic Communities. Some fundamental techniques in which TF can be acknowledged have been identified in its law. Examples include: Decreasing the number and volume of the documentation required with respect to trade among the partner states.⁶⁵

⁶⁵ Economic Commission for Africa. 2004. Assessing Regional Integration in Africa. ECA Policy Research Report. Addis Ababa: Economic Commission for Africa.

1. Adopting common standard of documentation and procedures with the SSA where international requirements do not suit the conditions prevailing among partner states.
2. Habitually reviewing the procedures adopted in international trade and transport facilitation with a view to simplifying and adapting them for use by the partner states and
3. Encouraging the development and adoption of common solutions to problems in trade facilitation among partner states.

The CU Protocol in support of the International trade facilitation program further provides for simplification, standardization, and harmonization of trade information and documentation. In doing so, the SSA Economic Communities accepted international standard.

3.5.1 Publication of SSA Customs Laws

Publication and Administration of Trade Regulations set out complete and clear responsibilities for WTO members and also make known the measures and publication type the government must make available to business sectors. In addition, requests in ruling, regulations, and agreements of the laws mentioned above are done in an even, fair and sensible manner⁶⁶ and for justice redress through independent petition instruments.⁶⁷ The aim of this is basically to attain transparency.

Moreover, the RKC similarly set out the establishment for information, decision and ruling provided by customs. They include two standards for information of general request:

- (a) Customs shall ensure that relevant information relating to customs laws is readily available to any interested person.
- (b) When information that has been made available must be modified due to fluctuations in customs law, administrative arrangement or requirements, the customs shall make the revised information readily available sufficiently in advance of the entry into force of the

⁶⁶ Article X:3(a) GATT 1994

⁶⁷ Article X:3(b) GATT 1994

changes to enable an interested person to take account of them, unless advance notice is precluded.

In a struggle to fulfill 1994, GATT Article X and the RKC provision, several of the customs laws, controls legal choices and managerial decision are issued: The Protocol provided for the communication of the customs and trade information among the partner states.⁶⁸Independently, partner states have adopted measures to ensure that information applicable to theregulation of customer is published. For example, the Nigerian Customs provide general information on the Nigerian Revenue Authority Website, in the customs tariff, press release and a limited range of public notices. They participate in exhibitions, seminars, and workshop. Obligatory rules are also issued in particular in the field of tariff classification and valuation.

Some Economic Communities supports publication of the Community's law by providing for the revival of the publication of the Law Reports or of similar law reports such as journal that will promote theexchange of legal and judicial knowledge and also enhance the approximation and harmonization of legal learning and the standardization of judgments of courts within the communities.

The customs law further provides for the publication of the judicial decisions and administrative ruling of general application. The publication consonance the WTO, in Article X GATT provision. In applying this section and the provisions of the schedule and with regard, this shall be taken in the decision, rulings, opinions, interpretation and guidelines given by the Directorate, the WTO or the Customs Cooperation Council.

The Directorate of Corporate Communications and Public Affairs at the SSA Secretariat reported that the Secretary General of the SSA encouraged the Immigration, Police and Revenue authorities at the border posts to be constantly informed on the decisions of the SSA Council of Ministers regarding cross-border trade and movement in order to ensure compliance with and effective application of the decisions with efforts to improve on publication of custom information. The secretary General, in addition, laid emphasis on the fact that SSA was ready to revamp its website so as to make available updated

⁶⁸ General Agreement on Tariffs and Trade 1994

business information on the SSA region and also that publication communications about SSA decisions are improved.

3.5.2 Legal proceedings and appeal

Resolving cases may be done through experienced courts within the partner states and not only administratively. This issue was treated in the RKC.⁶⁹The observation was made that, this important part of TF is catered for in SSA customs law. Cases may be settled authoritatively as well as through skilled courts inside the accomplice states.⁷⁰

In addition, encouraging the arrival of anticipating goods, the consequence of the interest upon the compensation of duty as controlled by the Commissioner or course of action of satisfactory security for the commitment and for any discipline that may be payable as directed by the Commissioner, the officials in this particular viewpoint demonstrated resolved to TF.

Countries like Uganda have enacted a new law on tax appeals with regards to the above which gives a possibility for the Chairperson of Impose Appeals Tribunal to be a judge of the High Court. The requirements for a request are a piece of a number proposition under dialogue towards a WTO Agreement on TF. In a situation where there is disagreement with the customs, recent progress at the WCO, definitely the selection of the system of benchmarks, likewise have an impact on building up the mechanism for change.

3.5.3 Dues and Procedures linked with Importation and Exportation within the SSA

Article VIII of GATT 1994, seeks TF by decreasing non-tariff fees and charges and different methodology particularly when they are connected in a protectionist manner. Fees and formalities as understood in the context of Article VIII, GATT 1994 may also hinder TF within the Community as explained below:

⁶⁹Kafeero, E. (2008) 2 World Customs Journal 63 at 66.

⁷⁰ Section 220:1, EAC CMA, 2004: "...Provided that all proceedings of civil nature shall be filed and determined in accordance with the provisions of the relevant procedural legislation in the Partner States

Some fees and charges such as fees for overtime, license, cautionary visits, customs revenue, and service to the public conon-tariff expenses, charges and diverse system especially when they are associated in a protectionist manner. Charges and formalities as comprehended with regards contained within SSA customs law are qualified as official and may not necessarily hinder TF nor contravene Article VIII, of the GATT.

In General Annex of Revised Kyoto Convention, standard 3.2 of chapter 3, seek to address the issue of charges and fees for additional services.⁷¹ It's required that customs thus charge an expense for procedure outside the designated business hours or out of office.

Though, with attention, those charges, are relative to the estimated cost of the services offered. Official charges and fees mentioned above can be justified. Problems only come in cases of 'non-official' charges and fees taken inform of bribe.

According to SSA law, it's a serious offense for an officer to ask for any payment, reward fee or charge without any lawful claim or entitlement to it.

In the last ten years measures have been put in place to improve the integrity in customs within the SSA in further submission to the WCO's Revised Arusha Declaration on Integrity in Customs. With respect to that, seminars and workshops on integrity have been conducted in partner states by revenue authorities.

An integrity workshop was conducted in Uganda in 2001 to launch new ethics and anti-corruption campaign, in that seminar, an Ethics and Integrity Committee was created in the Uganda Revenue Authority.

Other Countries like Nigeria, Cameroon, and Kenya also organized workshops on integrity in 2005 and, since then, the Revenue Authority started training programs and sensitizations on integrity.

Many countries in the SSA created Anti-Corruption Authorities that were launched at their regional and general level aiming at collaborating in the prevention and combating

⁷¹ Established under the auspices of the Customs Co-operation Council, concluded at Kyoto, 18 May 1973, entered into force 25 September 1974, referred to thereafter as 'Kyoto Convention'

of corruption. This included; the Inspectorate of Government of Uganda, the Prevention and Combating of Corruption Bureau of Tanzania and the Kenya Anti-Corruption Commission with expectations that the Anti-Corruption agencies of Rwanda and Burundi.

3.5.4 Automation, Information and Communication Technology

Automation of custom system provides tools to ease trade procedures. With automation, there's increase transparency in assessing the taxes, duties, and a decrease in customs clearance time which can result in direct and indirect savings for both traders and the government.

It's required according to Chapter 7 of the RKC,⁷² that maximum use of ICT is necessary, inter alia, for powerful clearance measures, uniform use of the customs law, and compelling usage of risk management, proficient income accumulation, successful information examination and effective generation of trade data. As chances for unethical behavior succeed well in places where ineffective and outdated custom practices are used, computerization, automation, the transformation of custom tasks can play a very significant role.

Moreover, many countries in the SSA has been conducting training for Customs clearing agents and a great number of company representatives have been provided with hands-on training. This is in adherence to the Customs Union Law that provides for training facilities and programs on customs and trade. With this training, it was obvious that those clearing agent firms were performing comparatively better than before since their enlightenment of the customs computer system had been enhanced.

⁷² Standard 7.1: Customs shall apply information technology to support Customs operations, where it is cost-effective and efficient for the Customs and for the trade. The Customs shall specify the conditions for its application.

3.6 Trade Treaties in SSA

Trade Agreements within the SSA

Generally, security, financial, and political considerations are the main driving forces behind the world interest in monetary incorporation and Trade agreements. According to the argument by Crawford and Fiorentino in 2005, the augmentation of exchange agreements is compelled by the desire of many countries to gain access to bigger markets either bilaterally or multilaterally markets in the context of the reluctance of WTO individuals to commit to encouraging multilateral progression. Partaking in an RTA has served as a way to keep up markets to get to circumstances where MFN-driven progression has been missing for those member states that consider trade agreements as a supplement to MFN. Naturally, RTAs additionally advance trade progression on numerous fronts by providing member nations a focused desire to progression. In addition, RTAs include issues beyond products exchange and market access (for example, investment, rivalry, and labor standards) as a means to promote regional integration.

The spread of trade agreements in developing countries since the 1990s backed off from the yearning to realize residential exchange changes and adapted towards opening their economies at a commonsense pace to violent progression thereby encouraging their economies to join the world exchanging framework (Crawford and Fiorentino, 2005). Current endeavors by SSA countries to set up regional and sub-regional trade integration activities have focused on uniting intra-Africa RTAs and to build up local trade blocs with America and Asia

Regional Trade Agreements within Sub-Saharan Africa

In Theory Frankel, Stein and Wei (1995, 1996 and 1998) showed that in a world of identical countries (i.e. identical absolute and relative factor endowments), two countries close in distance (i.e. "natural trading partners") do benefit from an FTA more than two unnatural trading partners (i.e. "far apart").⁷³ Within SSA, RTAs have mainly involved

⁷³ P Lamy (2010) „Regional Integration in Africa: Ambitions and Vicissitudes“, address to the conference organized by ASPEN at Annecy on 28 August 2010

countries belonging to a particular sub region (i.e. "natural trading partners") although a few belong to more than one RTA, some of which are across sub-regions. Most RTAs within SSA have been established mainly in line with the objectives underlying the founding of the five main Regional Economic Communities (RECs) that make up SSA. One of the main objectives that have underlined most regional integration efforts that have been championed by the RECs within SSA has been the need to achieve "collective self-sufficiency" for member countries/states through the establishment of single large trading blocs in the form of free trade areas and/or customs unions. Without exception, all the main RECs in SSA namely the Economic Community of West African States (ECOWAS), the Economic Community of Central African States (ECCAS), the Southern Africa Development Corporation (SADC), the East African Community (EAC) and Intergovernmental Authority on Drought and Development (IGADD) have established RTAs in the form of free trade Over the last decade, SSA has seen the emergence of cross-membership RTAs among countries belonging to different RECs in addition to the common markets that have been formed by two or more RECs. Yang and Gupta (2005) describe Sub-Saharan Africa (SSA) as a dense web of RTAs (both FTAs and PTAs), with many countries belonging to more than two RTAs. This has resulted in a complex web of overlapping RTA membership, and although it has created implementation problems for the countries involved there are efforts in place to establish more such agreements. The multiplication of cross-regional RTAs has observed that most SSA nations that belong to cross-continent trade blocs, for example, the EU-ACP and the United States African Growth Opportunity Act (AGOA). In spite of the fact that the multiplication of RTAs in Africa can be ascribed mainly to the urge of SSA nations to build up FTAs or custom unions within sub-areas with the goal to expand trade and fascinate FDI, there is no confirmation of expanded intra-Africa trade in respect to trade compared to trade with developed and developing African countries primarily because most RTAs within the SSA are exceptionally shallow. SSA nations carry on trading more with the EU, the United States and of late Asia more than they do with RTA member countries. Since the signing of the Lomé treaty in 1975 between the EU and ACP nations, the EU, and lately the US, with the aim of advancing financial improvement in less developing countries principally SSA, have likewise led to the use

of RTAs as special access. Despite the fact that it was contended that the genuine aim was self-intrigued market access with no concessions to WTO, the desire was that giving particular market access to the poor developing countries would accelerate the integration of such nations in the worldwide trading framework. Like the case between East Africa; Free Trade Areas and Southern Africa.⁷⁴

Trade Agreements with SSA

Most businesscontracts between SSA nations and non-African nations have been with well-developed nations particularly the European Union and the United States. In the course of recent years, these developed nations gave SSA and other developing nation's preferential market access as one-sided trade inclination plans, two-sided organized free trade agreements or non-proportional agreements. As the two biggest importers of goods from SSA, the EU and United states have a few schemes as well as agreements with SSA nations, the greater part of which are primarily aimed at helping SSA to profit by the increases of international trade encouragement to ensure financial development and poverty reduction? A portion of the few plans set up with SSA incorporate EU and US generalized system of favorites (GSP)), EU's all is but Arms initiative, EU-ACP non-complementary PTA under the EU's Cotonou Agreement and the USAAGOA.⁷⁵

⁷⁴ Int. T.L.R 2000. 6(5), 153-160. This case talks about impetus behind the creation of the COMESA and major provisions of COMESA Treaty signed at Kampala in 1993 and rectified in December 1994.

⁷⁵ U.S. Trade and Investment Relationship with Sub Saharan Africa: The African Growth and Opportunity Act and Beyond Updated January 25, 2008

CHAPTER 4

WEAKNESS OF THE SSA LEGAL FRAMEWORKS SUPPORTING INTERNATIONAL TRADE FACILITATION

4.1 Introduction

This chapter will discuss International Trade Facilitation measures adopted by the Economic Unions in the Sub-Saharan Africa in line with the international instruments and highlights and steps so far taken to encourage integrity in the region. It also examines the weakness with the SSA Customs law structure and the problems generally restricting the full realization of the potential benefits of International Trade Facilitation and the fight against corruption, especially in the Customs Department.

4.2 Weakness of the SSA's Legal Regime Governing International Trade

Facilitation

Many of the SSA countries are members of the World Trade Organization (WTO) and World Customs Organization and are then mandated to fulfill with international standard, principles standard and principle regulation trade within this Organization. The regulations, recommendations, and guideline of the WTO and WCI raise accountability, transparency, predictability and uniformity throughout the trade transaction process. The fundamental principle includes harmonization of law and regulations, simplification of administration and commercial formalities, procedures and documents, and standardization of means which is very important.⁷⁶

The truly facilitation environments is therefore very necessary to provides decrees and principles that govern the outgoing and incoming of products and services and provides inter alia, a sufficient and cognizant specialist structure for the fundamental trade related organizations, plainly determined direction and systems that give a reason for a satisfactory harmony amongst assistance and vital control needed for general wellbeing and welfare.

⁷⁶ NCTAD, Trade Facilitation Handbook Part II, Technical Notes on Essential Trade Facilitation Measures, 2006.

The way to lawfully involved in present day risk administration methods using specific assessments and post-discharge reviews to achieve their particular missions, an industrious situation of collaboration and procedural soundness with the other government offices with control and obligations to the helpful and consultative air of discourse between organizations, the global exchange group, and the national assembly to finish objectives and reduce blockades.⁷⁷

In the case of EAC to incorporate provisions that advance trade facilitation in the customer laws of the region, it is evident that there are still inefficiencies in trade administrative procedures that increase the cost of trading in the EAC and the SSA as a whole. The practicality and implementation of the provisions of the EAC customer laws are yet to be realized. Recent studies by BAFICCA⁷⁸ revealed that traders in the East African Community (EAC) are still faced with several hurdles. These range from excessive bureaucracy, outdated or sometimes, non-existent regulations, non-harmonized codes, procedures, and documents both at a national and regional level which will continue to create confusion making it more attractive for traders to pay bribes in order to expedite the trade process and escape this predicament.

In addition, complications in the administrative procedures and lack of adequate information and awareness on trade requirements, reforms, and regulation by the traders are still serious impediments prevalent in the EAC. These impediments disable traders from meeting some of the requirements forcing them to either pay bribes or engage in informal trade both of which add to transaction costs.⁷⁹

4.3 Publication and Transparency

In 1994, article X of GATT makes available the publication of trade-related agreement, regulations, rulings and laws very accessible, and restrains from enforcing measures of the application prior to their publication; and administration. It further states that institute of trials or procedures for the inter alia, fast analysis, and adjustment of administrative

⁷⁷ Peter Baish, Customs and Border Agency Best Practices

⁷⁸ BAFICAA 2006, Customs and Business in Africa: A better way forward together.

⁷⁹ East African Community, East African Business Council (EABC), Monitoring Mechanism for Elimination of Non-Tariff Barriers in EAC under the GTZ Project of “Support of Regional Business Organizations in East Africa.

actions that relate to customs matters. The general aim is to achieve transparency. It's worth noting that efforts have been made toward the publication of many of the relevant customs laws. Furthermore, provisions of Article X of GATT 1994 are still far from being thoroughly observed within the SSA. Key documents required for the operations of the CU have been posted on the websites and are also available with the relevant authorities and offices of the partner states. With information on the websites, one would imagine this being the best way of making information available to the public.

A minority of people in the SSA is computer literate or can afford internet services to access this information. Also, it is widely understood that many people in Africa, like other developing countries, are still grappling with illiteracy which impedes them from being able to read or even understand the complicated customs procedures. Furthermore, many countries in SSA are still dogged with inefficient electricity or power supplies. Since the new technology of computer is supported by electricity power, this makes it difficult for business people to rely on the websites as a source of information. The BAFICAA report of 2006 revealed that within Africa, Côte d'Ivoire and Senegal were the only countries where customs used the website.⁸⁰

Additionally, there has been observed that publication of information is not carried out promptly in the SSA as required by Article X of the GATT 1994. For example, while the customs laws formally came into effect in many SSA in January 1st 2005, it was a month later that Uganda applied the law. Remarkably on this issue, the Commissioner General of the Uganda Revenue Authority clarified that Uganda would wait for a month and the transitional period would be used for publicity and distribution of the new law to customs staff, importers, and clearing agents. The publication problem becomes even acute with respect to the manner of publication and the delivery of the published laws. Whereas laws passed are formally published like in the East African Community Gazettes, the problem remains on whether the stakeholders and potential stakeholders have access to the gazette. For instance, it was noted during a seminar held in Dar

⁸⁰ BAFICAA 2007, Customs Procedures still a challenge: A better way forward together.

EsSalam that no well-bound copy of the EAC Customs Management Act (CMA) had been produced.

Although with the availability of information on the EAC Customs Union, instrument among businesses is rather low, worst and unavailable.⁸¹ This was an observation by some companies in Burundi, Rwanda, and Uganda. Kenyan businesses commented that relevant information in hard copies, soft copies or publications may be difficult to find and the information desks established for this purpose. Distribution of information on news rules and regulations governing trade procedures, therefore, remain very poor across member states and inside them. A few dealers are not mindful of some of the choices made at the EAC Council, for example, the new travel directions. At borders, customs regularly don't have the most recent mandates and structures from their income specialists, and truck drivers may not know the directions particular to their load. This heightens the need for SSA to come up with strategies for outreach to the business community in the region.

The above-selected examples given show the challenges in the implementation of Article X: 1 of GATT 1994 and how it's dishonored within the EAC. All exchange related understandings, directions decisions and laws which influence Customs' conditions, procedures, and methods should be distributed and made effectively and efficiently accessible. Similarly, information must be accessible as well as be straightforward and effortlessly available to small and Medium-sized enterprises (SMEs).

4.3.1 Language

Successful trade requires an effective and easy language of communication. For example, English is the official language of communication in the EAC while English and French are mostly used in the ECOWAS because some of the member states are English-speaking like Nigeria and Ghana with other like Cote d'Ivoire and Senegal are French speaking. Most of the laws in EAC or ECOWAS are available in English or French- and this is a problem because not all the stakeholders know English or French.

⁸¹ Cyril C., Charles S., Amos B., (2014) "Trade Facilitation in EAC Customs Union: Its Achievement and Implementation in Tanzania", Journal of Economics and Sustainable Development, Vol.5, No.25

There are a few merchants who take part in intra-East and west Africa trade, even in Kenya, Nigeria, Ghana, Senegal etc. In this case they find it difficult to comprehend the Legal and administrative texts written in French or English. There is widespread concern that the Mechanisms and the language used to explain issues concerning goods and trade regulations in the EAC and ECOWAS are not simplified enough to be understood and made useful to small indigenous traders. The problem is worse in countries coming out of war situations like Burundi where the government systems are focused on early stages of post-conflict recovery.⁸² Burundi and Rwanda have for long also had French as their Official language. The problem of language is also faced in parts of the Eastern Democratic Republic of Congo, currently a key player in EAC trade. Kiswahili, Yoruba Ibo etc. They are the most highly used languages in the EAC and ECOWAS regions and the world, therefore, is a very big contribution to Trade Facilitation if Customs laws were translated into some of these languages.

4.3.2 Lack of enough Consultation with the Private Sector

Consultative and feedback mechanism are fundamental factors of trade facilitation because they enhance the predictability of the regulatory environment, improve public confidence and support, increase the prospects of compliance and provide a tool for improving regulatory quality.⁸³ When there is a lack of proper communication between customs administration and businesses, it hinders successful customs reforms. There should be the timely provision of information, ideally with a consultation before changes are implemented. As would be anticipated, most custom organizations think that it could be risky to support genuine talk with business, and the association is generally unfriendly since consistency with “customs law” and techniques is regularly not at will. This affiliation implies that adjustments in custom systems or enactment are generally made abruptly without meeting or discussion with the organizations

This poses a real setback in the trade facilitation process especially in the execution of new customs information technology systems if it is done without satisfactory external

⁸² World Bank, Non-Tariff Measures on Goods Trade in the EAC, Synthesis Report, September 2008

⁸³ Hamilton BA , Cross Border Trade in East African Countries: Shared Issues and Priorities for Reform, Report presented under the Business Climate Legal and Institutional Reform Project (BizCLIR), June 2009.

and international consultation especially from the private sector which is the major shareholder. For example, Kenya's experience in July 2005 with the implementation of "SIMBA 2005", an important portion of the private sector was discovered not well prepared due to interruption of business and benefits. Many clearing agents had not paid the imperative expenses for internet access training. Most employees of the clearing operators' associations did not have the capacity and knowledge to utilize personal computers and technology. So naturally, it was exceptionally troublesome for the greater part of the clearing specialists to adjust to necessities for the trade of electronic data with customs while learning essential data innovation aptitudes. The most imperative lesson that ought to be learned is to contribute and build up the attitudes of the staff of organizations if traditional mechanical advancements are to lead better-quality levels of TF.

4.3.3 Legal Proceeding and Appeal

It is crucial for affected traders to have recourse to an independent appeal mechanism for review, and where appropriate, for the modification of administrative action. Effective administrative appeal procedures can provide traders faster and cheaper means to deliver solutions than courts. GATT X-3 provides for the formation of an administrative or judicial body independent of enforcement agencies for rapid reviews and amendment of administrative actions that link to customs matters.

Contrary to international best practice, the CMA lacks a well-established appeal system and as a result, many nations depend on local tribunals in order to resolve disputes,⁸⁴ as a consequent of this, many goods remain stuck at the border due to the reluctance of the state to release them under bond, pending resolution of issues. Often, traders suffer from high storage charges due to difficulties to raise sufficient funds which thereby cause their products to remain in customs custody.

⁸⁴ Section 230 required aggrieved parties to appeal to their state tribunals as provided for in section 231 which provides that each Partner State will handle its own tax appeals tribunal for purposes of hearing appeals against decisions of the Commissioner made under Section 229

4.3.4 Automation and Use of Information and Communication Technology

In the article X of GATT of 1994, it seeks transparency, Accountability and predictability through automation of the process. To effectively practice customs procedures for the exchange in the majority of the economic communities in SSA, many of them have opted to use ASYCUDA, a widely used IT system in Africa that provides the fundamental automation resources for statistic generation and better risk management. Some countries like Kenya have chosen to operate on a much less effective SIMBA IT 2005. Though SIMBA IT 2005 and ASYCUDA are basically interoperable, these systems are still faced with compatibility and integration issues hence issuing a unique ICT system in SSA regions would be a better solution.

4.4 Unofficial Fee

Many African countries who are partner states to the WTO signed a “WCO Arusha Declaration”. This declaration is the central focus of the world’s approach to increase honesty in customs and prevent the rate of corruption⁸⁵ which is still rampant within the economic communities in SSA like the EAC and ECOWAS. Worse still, some stakeholders in the region seem to be so much used to corruption that they consider it normal. Such unofficial fees are not only contrary to international principles; but also increase the cost of trading thereby hindering intra-continental trade.

4.5 Legal Framework

The legal frameworks in SSA consist mainly of; the Treaty for the establishment of economic blocs like EAC, CEMAC, ECOWAS, and SADC; the protocol, the Customs Management Act (CMA) which was enacted by some blocs like EAC on 16 December 2004, governs the administration of Customs, including administrative and operational matters. Each of the EAC member states, with the exception of Burundi now operates under the EAC 2005 CMA.

One of the reasons in favor of using Revised Kyoto Convention (RKC) and WTO standard in the customs act is compatibility with customs laws in the region and around

⁸⁵ Non-official fees and expenses incurred at various levels of trade are some examples of these acts if corruption.

the world. Harmonized customs laws promote harmonized customs procedures and harmonized procedures mean lower transaction costs, faster clearance time, greater efficiency and higher returns for business engage in trade.⁸⁶

The CMA like EAC represents an important effort to harmonize customs practices in the region but unfortunately, it does not fully align with WCO Revised Kyoto Convention, which lays out the key legal components of a modern customs operation.⁸⁷

Some of the slow pace in developing and implementing regulation of the CMA has resulted in continued inconsistencies in border practices throughout the region. Ambiguous provisions resulted in excessive officer discretion, particularly with respect to penalties. For example, because the CMA provides only for the maximum amount of penalties, in practice fines often prove excessive and vary widely within the region. This creates an environment rife with corruption as trades try to steer clear of the penalties by paying bribes. In Kenya for examples, penalties ranging from US\$250 to US\$2000 for inadvertent errors were repeatedly cited during the BizCLIR diagnostics.

4.5.1 Legal Aspects of Economic Integration in Africa

In order to understand Africans regional integration, it is very complex to analyze their legal status before examining the relationship – the relational framework– between them due to the number of integration actors. According to Opong, the legal status of the RECs within the AEC, and the AEC within the AU is perhaps one of the greatest mysteries about Africa's economic integration.⁸⁸ However, the concept of legal personality for international institutions is crucial, because it allows an institution to stand by itself, to assume obligations and dispose of rights that are distinct from its members. This process involves consultation of several legal documents in order to decrypt how these actors relate one to another. The Abuja Treaty and the CAAU, as well as the different founding treaties of the RECs and a special Protocol signed by the OAU / AU and the RECs, contain all provisions that shed some light on the complex

⁸⁶BizCLIR 2008, Best Practices Report on Modernization of the Customs Code by CreckBuyonge

⁸⁷ Africa Business Forum, BAFICCA, 2007 Report

⁸⁸Opong, R. F. 2011. Legal Aspects of Economic Integration in Africa. Cambridge: Cambridge University Press. At 2

nature of legal relations, seen the case between African Union, African Economic Community and the Africa's Regional Economic Communities.⁸⁹

On the other hand, the analysis in this shows that the existing relational framework in Africa does not allow to effectively and coherently govern the relationships between the different institutions that are mandated with the continent's integration. Thus, reforms for a more effective and coherent structure of Africa's integration players and their relations are highly recommendable.

4.6 Procedures and Formalities

Separately from the provisions of Article VII:1(c) of the GATT of 1994, it should be noted that the WTO Revised Kyoto Convention could contribute a lot to ITF through its key norms, and practices that add to the modifications and harmonization of custom conventions and frameworks. These customs and systems incorporate the least intercession, institutionalized and low demands, and the utilization of hazard administration, audit based control, detachment of discharge from clearance, most extreme utilization of data and communication technology, particularly those methodologies that have been made easy for approved traders, and working together with different organizations and remote partners.

In the case of EAC regarding simplification, harmonization and standardization of procedures still leave a lot to be desired. Many of the Council of Minister of the Sub-Saharan meet and resolve on how to make custom documentations, conventions and techniques easily comprehensible at the borders. Numerous member countries have embraced donor-funded customs modernization programs, yet the focus and purpose of such national activities remain to a great extent awkward over the region. Arranged upgrades in regulating fringe posts are becoming very slow for the mostly bilateral, multilateral and with fairly shifting outcomes to date. Duplication of the process increases the fiscal expenses and time wastage and also opportunities for dishonest conduct as there are many assertions of unfair treatment and corruption.

⁸⁹ A.J.I.C.L. 2010, 18 (1), 92-103.

This case is on complex relationship between AU, AEC, and its influence on successful economic integration

It has been reported that within the EAC, there are Alternating frameworks of imported declaration, payment of pertinent obligation rates, and standards connected in addition to the restricted working house to the custom posts. Prolonged procedures in addition to limited information available to customs official with related decisions at the fringe appear to wave-out the EAC System. The regular use of COMESA founding credentials by the matter of 4 EAC individuals demonstrated that the institutionalization of EAC authentications of source has not been practical. In Kenya, for instance, customs officers at the fringe intersections were conveyed, in most case to keep applying national tax obligations, directions, and systems long after pertinent standards were fit by the Council of Ministers.

It is pertinent that administrative procedures and customs documents should be simplified. A report of EABC in 2008 border survey revealed that a substantial amount of unrecorded trade goes in all border.⁹⁰ Trade with US\$31.6m annually goes unrecorded in the East African Countries, and this is fueled by export/import restrictions on food stuff, tariffs on exporting countries products and the inability of cross-border traders to meet the requirement of the customs declaration form, which is considered complicated. This underscores the need to expedite the use of simplified certificate of origin and customs declaration forms.

The above weaknesses not only defeat the customs union trade facilitation agenda that advocates simplified customs procedures at the border crossing and the application of harmonized documents to eliminate duplication and delays but are also contrary to the international customs standards of the WTO and WCO to which all partner states are members.

4.7 Competence of Managerial and Operational Staff

The Competence of Managerial and Operational Staff in the ACU its assistant states agreed by customs associations and pay experts that trader should undergo the required

⁹⁰ Allan, R.N. (2004) "International Trade in Fruits and Vegetables: Barriers to Trade, WTO Proposals for Reform and Modelling Alternative Outcomes", Centre for Applied Economics and Policy Studies, Massey, New Zealand.

and uniform preparation so as to enable them to get working capabilities allotted by customs as a condition in order to permit them.

African customs are trusted to be highly accountable due to the number of significant laws they maintain. Instead, the level of cleaned philosophy and guideline of the customs encourages that address exporters and dealers do not organize the doubts from African customs authorities. This twisted connection allows the customs to control the laws and the frameworks, which goes for threats to merchants in order to assist the costs for individual transportation or to extend income to get to the set target. These are detrimental to the business people.

Furthermore, Moreover, in some member countries, merchants don't have the right to use clearing agents from their own nation and are required to employ agents from the nation of the port area who tend to be costly. For instance, Ugandan merchants are not allowed to clear products from Kenya with Uganda-enlisted clearing agents. In some areas, the integrity of clearing agents is questionable. In Burundi and Rwanda particularly, the absence of limit of clearing agents obstructs their good exchange, since the affirmation procedure takes long, owing to unfamiliarity with the use of the ASYCUDA system. As well, this is owed to having limited familiarity with customs procedures and regulations.

4.8 Main Implementation Challenges

The stability of a legal environment is the basis for any transaction, between businesses, public and private entities in a trading community. The more specific issues relating to the law in support of international trade facilitation has been examined; however, in many cases, it is not so much the lack of law that hampers the free flow of goods and services, as the lack of enforcement and implementation.⁹¹ Consequently, many provisions of the laws contain references and commitments to resolving trade issues, regulatory problems or customs facilitation, there are often simply not enough resources at hand to tackle the challenges in practice.

⁹¹Diodorus Buberwa Kamala, The Achievements and Challenges of the New East African Community Cooperation, an open lecture May 3, 2006

4.9 Cost of Implementing International Trade Facilitation Measures

The presentation and execution of TF measures have involved expenses in at least one of the accompanying regions: new direction, institutional changes, preparing, gear, and framework. Among cost segments, gear and framework might cost high in some situations despite the fact that training still remains the most important factor to be considered as ITF is fundamentally about changing an outskirts office methods for working together. Since most of the EAC, ECOWAS, CEMAC etc partner states are LDCs, these costs pose a very big challenge to the international trade facilitation program and unless assisted, the full implementation of the TF agenda may still be far from being realized.⁹²

⁹² Allan, R.N. (2004) "International Trade in Fruits and Vegetables: Barriers to Trade, WTO Proposals for Reform and Modelling Alternative Outcomes", Centre for Applied Economics and Policy Studies, Massey, New Zealand

Chapter 5

CONCLUSION AND RECOMMENDATIONS

From the above discussion, there is no doubt that international trade facilitation and legal frameworks can play an essential role in not only stimulating economic development in the SSA and in facilitating the integration of the continent into the global economy but also curbing corruption. However, if international trade facilitation and legal frameworks are to yield positive outcomes, it must be incorporated within domestic reforms that seek to create the proper conditions for social and economic development. It is clear fortifying trade in every SSA nation is of high significance to the administration and hence advances are made toward creating full grown, send out situated businesses despite the fact that the Sub-Saharan African nations at the provincial level remain submerged in counter-gainful practices, and lacking consideration is paid to the points of interest of reinforcing their aggregate exchange positions.⁹³ This not only hinders economic development in the region but undermines the very spirit of regional cooperation.

It is important to note that reducing border corruption is very challenging because it is resisted by the officials who have a direct stake in the 'corruption income'. However, efforts to contain corrupt tendencies must be strengthened by the government because of corruption costs, both the direct and indirect, increase the cost of trading and hamper the development of an economy.

Much commendable, international trade facilitation and legal frameworks strategies some of which have been discussed in this research work have been taken by customs albeit with much difficulty. The plan of SSA to establish a unified African Customs Authority is a big step forward and can lead to international trade facilitation and legal frameworks but this can only be possible if there is a good understandable on how to improve the customs laws for better management by interested parties in the member nations. It can also be advisable that such change takes advantage of the different TF

⁹³ Board on Tariffs and Trade, undated. Review of Customs Tariff Policy with respect to Agricultural Products.

related tools like the Revised Kyoto Convention which is the blueprint for any customs reform.

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