

NAVIGATING CUSTOM, EXCISE AND TAXATION BOTTLENECKS TOWARDS IMPROVING TRADE IN AFRICA.

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Abstract

The revenue generated from customs, excise and taxation by African States has always been one of the major sources of income powering the economy of the States. African States have by inconsistent policies, and instability of governments, continued to change their various State policies on foreign trade which in most cases impact negatively on other African States. Africa has through its unions, like the AU, its regional unions like the ECOWAS and SADC tried to resolve issues associated with foreign trade in respect of custom, excise and double taxation. The most recent being African Continental Free Trade Area (AfCFTA). This trio of Customs, Excise and Taxation hamper free trade. AfCFTA which aims at resolving these challenges is already facing issues of sovereignty and municipal laws. This paper examined the main hindrances and bottlenecks to free trade caused by Custom, Excise, and Taxation and proffered solutions. It proposed strategies for policy harmonization, institutional capacity building, transparent enforcement, infrastructural development and avoidance of political interference in trade policies without adequate notice and legislative approvals by the Executive arm of government. The methodology used in the paper is doctrinal. An acceptable customs, excise duties regulations and taxation regimes must be adopted for African trade amongst African States as this will no doubt improve investments and reinvestment in Africa and which will ultimately result in more revenue and other incidental benefits for Africa.

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1. Introduction

Custom, Excise and Taxation are primary ways through which the government generate revenue. The revenue generated from Custom and Excise are oftentimes called duties. Custom and Excise duties become payable to governments of various States only when Nations trade amongst themselves or on particular commodities. Taxation is a domestic means of revenue generation by government. Taxation applies to all income earning citizens including those involved in international trade.

It is safe to state that Trade is indispensable because it ensures the economic growth and development of any Nation, African States inclusive. It is with this understanding that Africa must trade with its sovereign units that in the year 2021, Africa heralded the introduction of African Continental Free Trade Area (AfCFTA)². It is hoped that the launch of AfCFTA would boost trade, lift people out of poverty and increase incomes by creating a single continental market for goods, services and capital.

How has trade improved amongst African States with the introduction of the African Continental Free Trade Area (AfCFTA)? How has Customs, Excise and double taxation on goods fared since then? Are there bottlenecks threatening full realization of the spirit and intents of AfCFTA? This paper examines these challenges, their impact on intra-African trade and multinational corporations, and possible reforms.

² It is a trade agreement among 54 of 55 African Union nations to create the world's largest free-trade zone by eliminating tariffs and non-tariff barrier, fostering intra-African trade, and promoting economic integration and structural transformation across the continent.

2. Conceptual Clarifications of Keywords

2.1 Customs: Customs refers to the government agency and legal framework regulating the import and export of goods.³ It is an authority or agency responsible for collecting tariffs and for controlling the flow of goods, including animals, transports, personal effects, and hazardous items, into and out of a country⁴. Traditionally, Customs has been considered as the fiscal subject that charges customs duties⁵ and other taxes on import and export. In recent decades, the views on the functions of customs have considerably expanded and now covers three basic issues of taxation, security and trade facilitation. Each country has its own laws and regulations for import and export of goods into and out of the country, enforced by their respective customs authorities. It should be noted that some goods may be restricted or forbidden entirely. A wide range of penalties are faced by those who break these laws. It plays both fiscal and protective roles: collecting duties and safeguarding domestic industries. In Africa, customs regimes are often characterized by inefficiency, corruption, and excessive bureaucracy, which hinder the free flow of goods.

2.2 Excise: Excise duties are indirect taxes⁶ imposed on specific goods produced within a country, such as alcohol, petroleum, and tobacco.⁷ This list may also include luxury products. It also be said to be any duty on a category of goods that is normally levied by a government at the moment of manufacture for domestic consumption. This makes excise different from a sales tax or value added tax which are levied at a point of sale or from customs duties which are levied on

³ WTO, Trade facilitation agreement (2017)

⁴ www.en.m.wikipedia.orgaccessed on 11/09/2025

⁵ This refers to tariffs

⁶ Meaning that the producer or seller who pays the levy to the government is expected to try to recover their losses by raising the price paid by the eventual buyer of the goods.

⁷ OECD Consumption tax trends in Africa (2021).

goods when they cross a designated border⁸. Excise is tax that relates to a quantity, not a value as opposed to the value added tax which concerns value of a good or service. Excise is designed to generate revenue and regulate consumption. In fact a legislative arm of government may use it to discourage consumption of products it considers to have a negative influence on the Society. In Africa the inconsistent application and frequent changes associated with Excise duties create uncertainty for businesses.

2.3 Taxation: Taxation involves compulsory levies by governments on individuals and corporations.⁹ Tax has been variously defined however as a compulsory contribution to the support of government, levied on persons, property, income, commodities, transactions and so on, at a fixed rate most proportionate to the amount on which the contribution is levied¹⁰. In the letters of Black's Law Dictionary, tax is defined to mean 'a charge by the government on the income of an individual, corporation or trust, as well an estate value of an estate or gift. The objectives of assessing tax is to generate revenue to be used for the needs of the public¹¹. Aside from dictionary definitions, writers have also attempted to define the subject tax. C. S. Ola defined tax as: The demand made by government of a country for a compulsory payment of money by the citizens of the country¹². M. T. Abdulrazaq in defining tax stated that they are levied by a public body and that they are intended for public purpose¹³. While Oluwole Akanle stated that "Tax can be defined as a compulsory levy imposed on a subject or upon his property by the

⁸ www. En.m.wikipedia.orgaccessed on 11/09/2025

⁹ J Ssewamala, taxation challenges in sub-saharan African (2020)¹⁴ african journal of law and economics 113.

¹⁰ Oxford Advanced Learner's Dictionary, (6th Ed.) New York: Oxford University Press (2000), p.1227

¹¹ Black's Law Dictionary, (6th Ed.), (U.S.A: West Publishing Co. 1990 P. 1457).

¹² Ola, C. S. (1979) Income Tax Laws & Practice in Nigeria. (London) Macmillan Publishers Ltd. p.11.

¹³ Abdulrazaq M. T. (2005): Nigerian Revenue Law (Nigeria) Malthouse Press Ltd p.6.

government having authority over him or the property.”¹⁴ The courts have also attempted to define the subject tax. In the Australian case of **MATTHEWS vs. CHICORY MARKETING BOARD (V)**¹⁵ the court held that: “A Tax is a compulsory exaction of money by a public authority for public purposes, or taxation is raising money for the purpose of government by means of contribution from individual persons.” Also in the American case of **UNITED STATES vs. BUTLER**¹⁶, Justice Roberts defined tax in the following words, “A tax, in the general understanding of the term and as used in the constitution signifies an exaction for the support of the government”. While taxation underpins state revenue, problems such as overlapping jurisdictions, multiple taxation, and weak enforcement plague African regimes. Double taxation, in particular, is a major concern for multinational corporations operating across borders.

3. Methodology and Theoretical Lens

This paper adopts a doctrinal method, relying on statutes, treaties, policy documents, judicial decisions, and scholarly writings.

4. Appraising the common Bottlenecks associated with Custom, Excise and Taxation in Africa.

Government interference is one of the major bottlenecks faced by Custom, excise and taxation in Africa. The government often interferes with its own established procedures and regulations. In essence, the same body that formulates these rules frequently disrupts their proper implementation and execution, thereby undermining the effectiveness of the regulatory framework. These bottlenecks manifest in several ways and they affect the ease of doing business which often

¹⁴ Akanle, Oluwole: (1991): Tax Law and Tax Administration in Nigeria (Lagos) Nigerian Institute of Advanced Legal Studies. Pg. 1

¹⁵ 173 us 509 (1899) pg. 515

¹⁶ 2279 us (1936) at pg. 61.

occasion delay in shipments, increasing cost of clearance etc., which are amongst the policies that discourage foreign investment. The appraisal shall be random amongst African states.

4.1 Customs

4.1.1 Existence of Multiple Agencies at the Ports:

a. In Nigeria, for instance, at the Ports we have the Nigerian Ports Authority (NPA), for port management, Nigerian Customs Service (NCS) for trade facilitation and border control, The Nigerian Maritime Administration and Safety Agency (NIMASA) for Maritime safety, the Nigerian Police Force (NPF) for law and order, the Department of State Services (DSS) for intelligence. The National Drug Law Enforcement Agency (NDLEA) for drugs control, the Port Health services for public health, the National Agency for Food and Drug Administration and Control (NAFDAC) for safety of food and drugs entering and leaving the country and, Standard Organization of Nigeria (SON) for standardization of manufactured goods. Also at the Nigerian ports is the Nigerian Immigration Services (NIS) for the movement of people in and out of the Ports. The Nigerian Shippers Council (NSC) is also found at the Nigerian ports whose role is to oversee the implementation of the Nigerian Port Process Manual (NPPM).¹⁷

b. In South Africa, we have the Transnet National Ports Authority (TNPA) a State-owned enterprise SOE that functions as the landlord and administrator for South Africa's commercial ports, Transnet Port Terminals (TPT), is a division of SOE Transnet, TPT is the operator of the port terminals, handling cargo, containers, bulk goods, and vehicles. South African Maritime Safety Authority (SAMSA) is the agency responsible for ensuring maritime safety and protecting the marine

¹⁷ The various Acts establishing these Agencies of government requires them to be present at the Nigerian Ports.

environment. It oversees the safety of all vessels entering and departing South African ports. South African Revenue Service (SARS), is responsible for all customs and excise duties on goods being imported and exported through the ports. SARS handles inspections and ensures compliance with trade laws. Border management Authority (BMA), is a new agency established to unify and streamline border management functions, including those at seaports. It replaces the previously fragmented approach where multiple departments managed border control. Department of Home Affairs (DHA), this department now integrated into Border Management Authority's functions, has historically been responsible for immigration services, processing the entry and departure of all persons and managing visas at ports of entry. Department of Transport (DoT) is responsible for national commercial port policy and overarching legislative framework for the ports. The Port Regulator of South Africa, this independent entity oversees the activities of the TNPA, monitors operations, handles complaints, and regulates port tariffs to promote efficiency and fair competition.

c. In Ghana we have Ghana Ports and Harbours Authority GPHA which is the central statutory corporation responsible for the governance, maintenance and operation of all seaports in Ghana, including the major ports of Tema and Takoradi. Its duties include Developing and maintaining port infrastructure, ensuring the smooth functioning of port operations and managing conservancy services and security within the ports. Ghana Maritime Authority GMA, it is an agency that monitors, regulates, and coordinates activities within Ghana's maritime industry. Their function include ensuring safety of navigation and implementing shipping laws, fulfilling international flag state and port state responsibility. Overseeing the training, recruitment, and welfare of Ghanaian seafarers. Ghana Revenue Authority (GRA) The GRA's Customs Division operates at the ports to

assess and collect duties, taxes, and other levies on imported and exported goods. They are responsible for trade facilitation and revenue mobilization. Ghana Shippers Authority GSA, Is an agency that protects and promotes the interest of shippers (importer and exporters). The GSA's role at the port include, helping to formulate policies to address challenges shippers face, analyzing maritime trade and logistics to advocate for improved port services. Ghana Investment Promotion Centre (GIPC) it is not a direct a port operator, but plays a role in attracting investments to Ghana's port infrastructure and logistics sector. They provide information and support for businesses looking to operate in Ghana. Ghana Police Service and Ghana Armed Forces; security personnel are stationed at the ports to ensure safety and prevent illicit activities. The Armed Forces may also assist during maritime search and rescue operations. National Security operative are involved in port activities to manage national security interest. Food and Drug Authority (FDA) is responsible for ensuring the quality, safety, and efficacy of imported food, drugs and other regulated products that pass through the ports. Environmental Protection Agency (EPA) works to prevent marine pollution and ensure the protection of the marine environment in Ghana's port areas. National Intelligence Bureau (NIB) provides intelligence to ensure the security of Ghana's ports. Other agencies include Volta Lake Transport Company (VLTC), which is a subsidiary of Volta River Authority (VRA) manages Ghana's inland ports and is involved with transport logistics connected to the main seaports. National Insurance Commission, regulates marine insurance policies and claims related to cargo and shipping activities. Ghana Standards Authority (GSA) ensures that imported goods meet national and international standards.

4.1.2 Delay in Cargo Clearance: Excessive Documentations plays a major role in delaying cargo clearance in Africa. Excessive documentation is already alluded to above because the multiple agencies of government listed above in our specimen countries, require one form of documentation/clearance or the other which create significant delays and create opportunities for corruption. Whilst in Nigeria, delays in cargo clearance are largely due to bureaucracy and the overlapping functions of regulatory agencies. Again, the use of manual clearance processes in some ports despite claims of automation occasions delay. Government's frequent policy changes without notice for example import bans and foreign exchange FX restrictions create uncertainties for traders and occasion delays. In South Africa, Port inefficiencies and prolonged customs procedures are exacerbated by state controlled port programme. In South Africa customs procedures are centralised under South African Revenue Service (SARS) but inefficiencies have not ceased. The South African customs procedure is said to be over regulated and rigid as the checks cause long processing times and it affects perishable goods. The slow adoption of digital systems, although efforts are on the way through the Customs modernization programme. Strikes and labour union disputes often driven by government policies, delay cargo handling and customs operations. In Ghana the introduction of new systems like UNIPASS¹⁸, Ghanalink¹⁹ without stakeholders consultation has caused disruptions in customs clearance. High import duties and levies, often arbitrarily adjusted by government decisions, increase costs and clearance delays. Overlapping roles between the Ghana Revenue Authority (Customs Division) and other regulatory bodies create confusion. Though customs procedures are digitized they are often undermined by manual overrides and

¹⁸ Refers to the integrated Customs Management System (ICUMS) , a single -window technology used by the Ghana Revenue Authority (GRA) to manage and streamline cross-border trade. The system was implemented in 2020 to to replace multiple vendors and simplify import and export processes at Ghana's ports.

¹⁹ This is a prominent company that provides trade facilitation technology and customs solutions in Ghana.

interventions. Ghana's customs procedures are hindered by inconsistent government policies and lack of coordination among agencies.

4.1.3 Multiple Free Trade Zone²⁰ (FTZs): In Nigeria, for instance, there are over 40 approved FTZs even though only few are functional. Ghana also has a multiple FTZs under the Ghana Free Zone Authorities (GFZA). South Africa operates under special Economic Zones (SEZs) framework which is managed by the Department of Trade, Industry and Competition (DTIC). Multiple Free Trade Zones create a number of bottlenecks for customs operations in some African States such as overlapping jurisdictions, which creates the bottlenecks of different FTZs governed by different regulatory bodies such as customs, FTZ authorities and in some cases ministries thereby causing conflict and confusion. There is also the issue of Weak Customs oversight, custom officers often lack full access to FTZs operations, creating gaps in monitoring and enforcement. The FTZs also abuse their privileges in the sense that goods meant for export are diverted into domestic market duty-free leading to revenue losses. There is also the challenges of inconsistent regulations. FTZs may operate under different set of rules, complicating customs compliance and enforcement. Smuggling and fraud is also a challenge in the sense that the FTZs can become routes for illicit trade due to lax controls and poor coordination with national customs.

4.1.4 Porous Borders²¹: The challenges of porous borders include inadequate boarder infrastructure which makes it difficult for customs agents to inspect or scan all entries effectively. There is also the challenge of under-staffing and

²⁰ Free Trade Zones are special economic areas where goods can be imported, stored, manufactured, or re-exported without the intervention of customs authorities or payment of duties, unless the goods enter the domestic markets.

²¹ Porous Borders refer to weakly controlled or poorly monitored border areas that allow unauthorized movement of goods and people across national boundaries.

corruption, this is evident as border posts are undermanned or compromised, letting illegal goods pass through. We also have the informal trade routes, thousands of unofficial entry points exist, especially in rural areas. It should be noted that the challenge of porous borders leads to smuggling of goods across the borders and under-declaration²². The effect of porous borders are much, and this impacts on the government revenue negatively, it undermines local industries, counterfeit drugs could come in, arms and weapons which pose security risks are brought in etc. As for under declaration, goods are often labeled under lower tariff category, under invoicing showing less than the actual value etc.

4.1.5 Rent Seeking²³: This is essentially a new term for corruption and economic sabotage. This is a bottleneck in customs operation in Africa and has endured because the importers and the traders see results from engaging in rent seeking as their goods are cleared faster and they are encouraged to pay the facilitation fees and simply spread the cost on their products. This bribery in form of facilitation fee occasions delay at the ports because it creates a two track system of those ‘who paid’ and those ‘who did not pay’ ‘the legal’ or ‘corrupt path’. Which invariably delays the clearance for those who do not pay. Rent seeking also manifests in under-invoicing done with the collusion of customs officials where importers are helped to reduce duty payments causing loss of revenue. Ghost waivers or exemptions occur where officials issue fake or unauthorized waivers for a fee, distorting the market. There is also the practice of deliberate document misplacement where custom officers ‘lose’ documents of importers to pressure them into paying bribes. Rent seeking can also occur where rent is extracted by

²² This involves falsely reporting the value, quantity, or description of imported good to reduce or avoid taxes.

²³ Rent seeking is when individuals or groups attempt to gain economic benefits through manipulation or exploitation of the system especially government institutions without creating any new value. In context of customs this typically involves government officials or custom agents demanding bribes or facilitation fees to speed up or bypass normal procedures. It also relates to importers or businesses offering bribes to under-declare goods, avoid duties, or obtain waivers or permits they are not eligible for.

deliberate delays by officers until bribes are offered. It should be said that rent seeking thrive for various reasons including weak enforcement, lack of internal audits and accountability, complex and opaque procedures makes it easier to manipulate the system for bribes, low salaries for officials encourages need for extra money, political interference due to political patronage and the culture of impunity.

4.1.6 Political Duty Waivers²⁴: This is a bottleneck in customs administration as goods that are ordinarily supposed to be invoiced are exempted from duties for political gains. Many of these waivers are not publicly disclosed. In some African Countries, powerful elites and politicians benefit disproportionately from these kinds of waivers. Some African countries demonstrate a greater commitment to adhering to established import regulations than others. Some of these waivers are occasioned by intense lobbying by politically connected industries. These waivers lead to loss of revenue, unfair competition, policy inconsistencies which weaken and undermine institutions such as Customs and Tax authorities.

4.2 Excise:

Excise duties are crucial for revenue generation and public health control in some cases²⁵. The implementation in many African countries is plagued by bottlenecks that reduce efficiency, encourage smuggling, and generally affect legitimate businesses. May I state that most of the bottlenecks that affect Customs in Africa also affect Excise as such we may not be elaborate on them. Common Excise bottlenecks across Africa include:

²⁴ Political duty waivers refer to the exemptions from customs duties or taxes granted based on political discretion, rather than economic merit or standard legal frameworks. The waivers are typically issued by governments to favoured individuals, companies, sectors or foreign partners for political, diplomatic, or strategic reasons.

²⁵ Excise duties are often levied on specific goods such as alcohol, tobacco and luxury items

4.2.1 Policy Instability: In most African States there are frequent changes in excise rates/duties and the goods liable to excise duties. These changes in most cases are done without consultation with stakeholders. As is with the case of customs, it is usually through presidential orders, ministerial directives and in some cases administrative memos from trade or finance ministries. At the risk of sounding hasty, I will say that frequent and unpredictable changes in trade policies and tariffs with a legislative backing and adequate notice to the public and stakeholders will continue to harm developing economies and hamper trade.

4.2.2 Weak Institutions: Most African States have weak compliance mechanisms which make it difficult for the local producers to be monitored and properly documented especially the informal and small scale operators. The States are limited in digital tracking of excisable goods through the supply chains. The institutions are understaffed, untrained in some cases and in most cases lack infrastructure to do carry out their responsibilities. These issues invariably make enforcement difficult.

4.2.3 Lack of Public Awareness: This is a bottleneck, in the sense that many businesses are unaware of excise regulations or see them as unfair which lead to poor compliance. The cumbersome and complex registration requirements with the Customs and the numerous documentations also contribute to non-compliance by the traders.

4.2.4 Divergent Excise Structures within Regional Blocs viz: ECOWAS²⁶ and SADC²⁷: The ECOWAS and SADC are regional blocs in Africa who aim to promote economic integration, intra-regional trade, and harmonize excise duties structures across member States. However divergent excise structures across

²⁶ Economic Community of West African States

²⁷ Southern African Development Community

member States create serious bottlenecks, distortions and opportunities for tax evasion and smuggling. These bottlenecks include lack of harmonized excise rates which makes it possible for traders to exploit lower tax countries to import or produce their goods. The different tax bases and classifications of products also create a bottleneck by undermining efforts at achieving a common market within the regions. The manufacturers also are more likely to operate in regions with weaker enforcement mechanisms and high exemption rates. High and inconsistent excise duties discourage domestic industries and investments.

4.3 Taxation Bottlenecks

Tax is at the heart of revenue generation for the States. It aides national development. In most African States the taxation system is faced with structural, administrative and policy bottlenecks. These bottlenecks limit the effectiveness of the system and reduces revenue, burden formal businesses, encourage tax avoidance and evasion and discourage investment. I will look at some taxation bottlenecks in context of my paper thus:

4.3.1 Double taxation: This occurs when the same income transaction or entity is taxed in two or more jurisdictions. This is usually once where income is earned and again where it is received or repatriated. In Africa, the absence or weakness of bilateral tax treaties between countries create major taxation bottlenecks that discourage cross-border trade, investment and regional economic integration. The none existence of these double taxation treaties lead to no legal relief from double taxation forcing businesses to pay tax in both source and residence countries thereby reducing profits. It creates uncertainty for investors because the absence of such treaties make tax planning difficult and investors will no doubt avoid high risk jurisdictions. It also becomes a deterrent to intra African trade companies as they will avoid expanding regionally due to tax inefficiencies. The fear of double

taxation can also lead to informal or illegal avoidance as businesses may resort to informal transfer pricing or underground remittances.

4.3.2 Overlapping tax regimes: this occurs where there is an overlap and conflict between taxes imposed by federal, state and local governments in a Country. This creates confusion for the taxpayers, increases the cost of compliance, deter investment and sometimes leads to legal disputes and multiple taxation on the same income or activity. This is often occasioned by jurisdictional conflicts resulting in who has the right to collect certain taxes such as VAT²⁸ and stamp duty. Lack of clarity and predictability discourages domestic and foreign investment. Many African countries use both residence-based and source-based taxation, leading to overlap.

4.3.3 Lack of Comprehensive Double Taxation Treaties

Unlike Europe, where tax treaties are widespread, African countries have few Double Trade Treaties with each other. Lack of these treaties create uncertainties for investors and traders.

4.3.4 Inconsistent National Tax Laws

In African countries, different corporate tax rates, excise rules and VAT regimes across Africa result in multiple taxation on goods and services moving across borders²⁹

5.0 AfCFTA on Trade Interventions in Africa

The Africa Continental Free Trade Area (AfCFTA) is an attempt made by the African Union towards smooth trade in Africa. The AfCFTA is an ambitious economic project aimed at integrating the African continent trade-wise. It seeks to

²⁸ Value Added Tax

²⁹ African Development Bank (AFDB) African Economic outlook 2023

establish a single liberalized market for goods and services, promote free movement of people and investments and deepen economic integration in Africa.

The AfCFTA Agreement explicitly provides that its purpose is to create a single continental market for goods and services, with free movement of persons and investments, thereby paving the way for the establishment of a continental customs union.³⁰

It commits States Parties to progressively eliminate tariffs and non-tariff barriers on goods, liberalize trade in services, and cooperate on investment, intellectual property rights, and competition policy.³¹

AfCFTA requires Member States to remove tariffs on 90% of goods traded within Africa over a phased period, while sensitive products are given longer timelines and some “exclusion lists” are permitted.³² This demonstrates a legal commitment to free trade in goods, though with transitional flexibility.

The AfCFTA Protocol on Trade in Goods recognizes that tariffs are not the only obstacles to trade. It establishes mechanisms to identify, monitor, and eliminate Non-Tariff Barriers³³ (NTBs) such as excessive customs procedures, licensing requirements, and quotas.³⁴ This provision strengthens the legal basis for a genuinely free trade regime.

³⁰ African union agreement establishing the African continental free trade area (2019) art 3

³¹ Ibid art 4

³² Ibid art 5 and annex 1 (schedules of tariff concessions)

³³ It means any obstacle to international trade that is not tax or duty on imported or exported goods, they include regulations, standards or administrative procedures designed to restrict imports or favour domestic production such as quotas, health and safety rules, complex licensing systems, or custom delays. They are used by countries to protect local industries from foreign competition and influence trade flow.

³⁴ AfCFTA, protocol on trade in goods annex 5 (non-tariff barriers)

Free trade under AfCFTA is safeguarded by rules of origin to ensure that only products substantially produced or transformed within Africa enjoy tariff preferences.³⁵ This prevents “trade deflection”³⁶

AfCFTA is not limited to goods. The Protocol on Trade in Services mandates progressive liberalization of services trade across Africa. Priority sectors include transport, communications, financial services, tourism, and professional services.³⁷ This extends the principle of free trade to the services sector, which is a major driver of modern economies.

Free trade under AfCFTA is supported by a rules-based dispute settlement mechanism, modeled on the WTO system.³⁸ This ensures that Member States comply with their obligations, thereby maintaining trust in the free trade regime.

While AfCFTA’s position is pro-free trade, it recognizes the need for safeguards and flexibility recognise Least Developed Countries (LDCs) who are given longer periods to implement tariff reductions,³⁹ States may apply temporary safeguards to protect infant industries or in cases of serious balance of payments difficulties.⁴⁰

Thus, AfCFTA promotes free trade, but in a progressive and balanced manner, taking into account varying levels of economic development among African States.

³⁵ AfCFTA protocol on trade in goods annex 2 (rules of origin)

³⁶where goods from non-African countries are routed through one Member State to unfairly gain duty-free status

³⁷ AfCFTA protocol on trade in services art 3

³⁸ AfCFTA Protocol on rules and procedures on the settlement of disputes art 4.

³⁹ African union agreement establishing the AfCFTA (2019) art 7.

⁴⁰ Ibid art 9 and annex 4 (trade remedies).

5.1 The Position of AfCFTA on Customs

a. **Simplification and Modernization of Customs Procedures:** AfCFTA recognizes customs administration as a major bottleneck to intra-African trade. It therefore requires State Parties to simplify, standardize, and modernize customs procedures in line with international best practices, such as the WTO Trade Facilitation Agreement.⁴¹ This includes the adoption of transparent, predictable, and efficient procedures for clearance, release, and movement of goods across borders.⁴²

b. **Elimination of Customs Duties on Intra-African Trade:** The Agreement requires the progressive elimination of customs duties (tariffs) on 90% of goods traded between Member States.⁴³ By lowering tariff barriers, AfCFTA places customs administration in a facilitating rather than restrictive role.

c. **Rules of Origin:** AfCFTA establishes a continental framework on rules of origin to guide customs authorities in determining which goods qualify for preferential treatment.⁴⁴ These rules prevent trade deflection and ensure that tariff preferences benefit African producers rather than third-party states.

d. **Cooperation among Customs Authorities:** The Agreement promotes customs cooperation and mutual administrative assistance, requiring States to collaborate in information exchange, joint training, and the fight against smuggling, fraud, and under-invoicing.⁴⁵ This harmonization is essential to achieving uniform implementation.

⁴¹ African union agreement establishing the African continental free trade area (2019) art 4

⁴² AfCFTA protocol on trade in goods (2091) art 29.

⁴³ Ibid art 2 and annex 1 (schedules of tariff concessions)

⁴⁴ AfCFTA protocol on trade in goods, annex 2 (rules of origin)

⁴⁵ Ibid art 31.

e. **Trade Facilitation Measures:** AfCFTA obliges Members to adopt trade facilitation measures, including: risk management systems, advance rulings, pre-arrival processing, and use of information technology in customs clearance.⁴⁶ These measures align with global standards and aim to reduce delays, corruption, and inefficiencies at African borders.

f. **Transit and Cross-Border Trade:** The AfCFTA Protocol on Trade in Goods also deals with goods in transit, requiring States to grant freedom of transit to goods passing through their territory and avoid unnecessary restrictions or duties.⁴⁷ This is crucial for landlocked countries in Africa.

g. **Safeguards and Exceptions:** While AfCFTA promotes customs liberalization, it allows States to apply trade remedies (such as anti-dumping, countervailing, and safeguard measures) administered through customs authorities.⁴⁸ States may also restrict imports temporarily to protect infant industries or address balance-of-payments difficulties.⁴⁹

5.2 AfCFTA's Position on Excise Duties

a. **Non-Discrimination in Excise Duties:** AfCFTA requires Member States to apply national treatment in taxation, meaning that imported goods from other African countries should not be subjected to higher excise duties than similar domestically produced goods.⁵⁰ This prevents the use of excise as a protectionist tool.

⁴⁶ Ibid annex 4 (trade facilitation)

⁴⁷ Ibid art 28.

⁴⁸ AfCFTA protocol on trade in goods annex 9 (trade remedies)

⁴⁹ Ibid art 26.

⁵⁰ African union agreement establishing the African continental free trade area (2019) art 4(2)a

b. Excise Duties Are Not Tariffs: Excise duties are considered internal taxes, not customs tariffs. Thus, AfCFTA does not prohibit excise duties outright but regulates them to ensure they are applied fairly and consistently.⁵¹

c. Transparency in Excise Regimes: AfCFTA obliges States to ensure transparency and publication of all trade-related laws, including excise taxes, so businesses can predict costs and avoid arbitrary taxation.⁵² Lack of transparency in excise regimes has historically created uncertainty for investors and traders.

d. Prohibition of Disguised Trade Restrictions: AfCFTA prevents States from using excise taxes as a disguised restriction on intra-African trade.⁵³ For example, a country cannot impose excessively high excise duties on imported beverages while giving tax breaks to local producers, as this would undermine the principles of the agreement.

e. Flexibility for Public Policy Objectives: AfCFTA recognizes that excise duties may be applied for legitimate policy objectives, such as protecting public health (e.g., on tobacco), the environment (e.g., carbon taxes), or raising revenue.⁵⁴ However, these must be non-discriminatory and consistent with AfCFTA obligations.

f. Potential Harmonization in the Future: Although AfCFTA does not yet establish a continental excise framework, its long-term goal of a customs union implies eventual harmonization of excise regimes, similar to the EU model.⁵⁵ This would prevent trade diversion caused by differing national excise systems.

⁵¹ AfCFTA, protocol on trade in goods (2019) art 2(2)

⁵² Ibid art 29n (transparency)

⁵³ Ibid art 25 (non-tariff barriers)

⁵⁴ AfCFTA agreement establishing afcfta (2019) art 26 (general Exceptions)

⁵⁵ Ibid art 3©(long-term objectives of establishing a customs union).

5.3 Double Taxation in Africa and Its Effect on Trade

Double taxation occurs when two or more states impose taxes on the same income or transaction.⁵⁶ For example, A company based in Kenya exporting goods to Nigeria may pay corporate tax in Kenya and also be taxed on profits in Nigeria. Cross-border workers and service providers may face personal income tax in both their home and host countries.

Causes of Double Taxation in Africa include, Overlapping Tax Jurisdictions in that many African states use both residence-based and source-based taxation, leading to overlap. Lack of Comprehensive Double Taxation Treaties (DTTs) unlike Europe, where tax treaties are widespread, African countries have few DTTs with each other. This creates uncertainty for investors and traders. Inconsistent National Tax Laws thus different corporate tax rates, excise rules, and VAT regimes across Africa result in multiple taxation on goods and services moving across borders.⁵⁷

The effects of Double Taxation on Trade in Africa include Increased Cost of Doing Business it raises the overall tax burden on companies engaged in cross-border trade. This discourages investment in regional value chains. Reduced Intra-African Trade, Businesses prefer trading with external partners (Europe, China, USA) who have clearer tax treaties, instead of dealing with the uncertainty of double taxation within Africa.⁵⁸ Capital Flight: To avoid multiple taxation, investors often structure their businesses through offshore tax havens (e.g., Mauritius), which drains capital from Africa.⁵⁹ Distorted Competition: Local firms face higher effective tax rates than multinationals with complex tax planning strategies, undermining fair competition. Weakening of AfCFTA Goals: AfCFTA seeks to promote a single

⁵⁶ Brian j Arnold, international tax primer (3rd edn, Kluwer law international 2016)

⁵⁷ African development bank (AFDB) african economic outlook 2023

⁵⁸ UNECA intra-african trade report 2022

⁵⁹ OECD revenue statistics in africa 2022

continental market, but without addressing double taxation, trade liberalization will remain incomplete.⁶⁰

Efforts to Address Double Taxation in Africa: Bilateral Double Taxation Treaties (DTTs): Some African countries have signed tax treaties, but coverage remains patchy.⁶¹ African Tax Administration Forum (ATAF): Encourages harmonization of tax policies and treaty negotiations.⁶² AfCFTA Protocol on Investment (2023): Provides a framework for tax cooperation to avoid double taxation.⁶³ OECD Inclusive Framework & UN Tax Committee: Some African states are adopting global tax standards (e.g., BEPS) to limit tax conflicts.

6.0 OVERCOMING THE BOTTLENECKS ASSOCIATED WITH CUSTOMS AND EXCISE

6.1 Infrastructural Development: A look at the bottlenecks outlined above some of which includes the existence of multiple agencies at the Ports, delay in cargo clearance and rent seeking are bottlenecks that can be resolved and curbed with the building of the necessary and right infrastructure. This can be achieved by building or acquiring, fully automated ports. The States must reduce to the barest minimum physical contact of Port Users with the different agencies at the ports. Africa must begin to invest in technologies that do not require human interface at the ports in order to promote its trade. Automation of the ports will take away discretion which is what the different agencies at the ports deploy in form of rent seeking which invariably leads to the delays occasioned at the ports in clearing of goods.

⁶⁰ African union agreement establishing the afcfta(2019@) art 3

⁶¹ African tax administration forum annual report 2022

⁶² Ibid 21

⁶³ African union afcfta protocol on investment art 27

African States must prioritize investment in advanced industrial scanners capable of simultaneously scanning the entire contents of 40-foot containers and seamlessly transmitting the data to an integrated computer system. This system would instantly analyze and classify the goods and accurately determine the applicable duties payable for immediate assessment. This system will reduce the number of agencies and the manpower deployed by these agencies to the ports. It will address delay in time taken for clearance and will reduce rent seeking.

6.2 Political Duty waivers and policy instability: African Nations must take their economic survival serious. Granting of duty waivers to political associates and supportive governments and benefactor business associates and partners will only continue to impoverish African states. African States must separate its economic survival from mere political survival of its leaders whose tenure of office is most temporary. African leaders must think of their nations first before they grant political waivers. These waivers often undermine local industries, as they struggle to compete effectively with imported goods, which are typically cheaper due to the waivers granted. This creates an uneven playing field, ultimately weakening domestic production and adversely impacting the growth and sustainability of local industries.

The frequent policy changes in terms of ban on certain classes of goods including food and drugs, and the increase in duties by the African states without notice, and often without legislative approvals greatly affect trade and African States must address this fast or it continues to hamper our trade because importers are unable to plan for their businesses.

6.3 Porous Borders: African states must clearly demarcate their borders and ensure they are adequately secured with sufficient, well-trained personnel to maintain effective control and oversight. Where multiple border points exist, it

may be necessary to permanently close certain crossings, while strategically upgrading those with significant trade potential through automation to enhance efficiency and security. Trade will not improve by lip service and beautiful ambitious agreements like the AfCFTA. Trade and the ills preventing same will not go away without being practically and tactically handled by African leaders. A coordinated collaboration with neighbouring customs agencies can help to tackle smuggling provided the neighbouring customs agencies do not sabotage the coordinated collaborations.

6.4 Strong Institutions: Trading at the scale Africa wants involves building of strong institutions. The era of appointing strong and disciplined individuals ‘a strong man’ to head customs and other agencies that have representatives at the Ports with the aim that corruption will cease must end. Appointing politicians to head critical agencies of government that are represented at the ports without the ultimate aim being to build the institution will not lead Africa far. Institutions must be built. A Strong man cannot build an institution but people with character and culture can. There must be a culture and custom of doing the right thing. New entrants to the customs and other trade related agencies must know the minimum standard of behavior expected of them. The Customs and other trade agencies must have a laid down system for tracking the financial behavior of their staff. Proceeds from rent-seeking staff are rarely concealed, as they inevitably leave a traceable trail. What is often lacking, however, is the political will and institutional commitment to diligently follow that trail and hold the perpetrators accountable. Building institutions require funding and employment of qualified personnel and training them overtime, Africa must be ready for this.

7.0 CONCLUSION

As I begin to conclude on this topic, I must point out that apart from the challenges and bottlenecks AfCFTA faces in relation to customs and excise stated in the course of this paper there are other challenges the implementation of this beautiful and ambitious agreement called AfCFTA will continue to face. Sovereignty is one challenge hindering African Trade which implementation of AfCFTA will continue to battle with. This agreement will work when African Nations are willing to relinquish their firm control on their borders, harmonize their trade municipal laws and fiscal policies as it relates to trade. AfCFTA, promotes a single continental market, but the States are reluctant to surrender powers over customs, excise and taxation most likely because these are key sources of revenue and political control. AfCFTA, promotes and requires countries to align tariffs, excise duties and customs regulations but many states resist it because it is seen as surrendering part of their economic sovereignty. Protection of Domestic Industries and the need to safeguard infant industries is also a major concern for a lot of African Nations.

Secondly, is the question "Are African Nations Willing to Trade"? African countries have always been willing to trade, both within the continent and externally. However, historically, *intra*-African trade has been very low, hovering between 15–18% of total African trade, compared to 60% in Europe and 40% in North America.⁶⁴ This indicates that while African nations trade, they trade more with the rest of the world than among themselves. The fact that 54 out of 55 African Union Member States have signed the AfCFTA Agreement, and 47 have ratified it as of 2024,⁶⁵ is clear evidence of willingness to trade within Africa. The

⁶⁴ UN economic commission for Africa (UNECA), Intra-African trade report 2022

⁶⁵ African union status of afcfta ratification.

near-universal participation shows a strong collective commitment to deepen integration and reduce barriers. Then comes the next question “Are They Willing to Trade Freely”? While African nations are willing to trade, their willingness to trade freely is more cautious. Many countries requested longer transition periods before eliminating tariffs, particularly Least Developed Countries (LDCs).⁶⁶ Member States were allowed to keep 7% of goods as “exclusion lists”, which will not be liberalized at all.⁶⁷ Some States are protective of sensitive sectors such as agriculture, textiles, and infant industries.⁶⁸ This shows that while there is a political appetite for freer trade, States are not yet fully comfortable with completely free trade. AFCFTA reflects this mixed reality thus: On one hand, African States have shown clear willingness to trade by joining the agreement and launching tariff reductions. On the other hand, their reluctance to trade completely freely is seen in gradual liberalization schedules, exclusion lists, and persistent non-tariff barriers.

Africa must invest in Africa because it has for decades been heavily dependent on foreign direct investment (FDI) from Europe, America, China, and other external actors.⁶⁹ While such investment brings capital and technology, it often leads to capital flight,⁷⁰ dependence on external markets, and vulnerability to global shocks.

In contrast, intra-African investment⁷¹ promotes sustainable growth, economic self-reliance, and regional integration. Africa stands to benefit by investing in Africa in terms of Job Creation because Domestic investments circulate wealth locally and generate employment.⁷² Also, Africa can benefit from Regional Value Chains for

⁶⁶ African union agreement establishing the African continental free trade area (2019) art 7.

⁶⁷ Afcfta protocol on trade in goods annex 1

⁶⁸ World bank, the African continental free trade area: economic and distributional effects world bank 2020

⁶⁹ UNCTAD world investment report 2023

⁷⁰ In terms of Profit repatriated abroad

⁷¹ Africans investing in Africa

⁷² UNECA economic report on Africa 2022 investing in Africa’s transformation (UNECA 2022)33

example, African cocoa can be processed into beverages within Africa instead of being exported raw. Trade can lead Africa to reduced dependence and less reliance on foreign aid. Trade can help Africa achieve Political Integration and foster stronger Economic ties within AU and regional blocs.⁷³ For Africa to invest in Africa, African leaders must be ready to mobilize capital by strengthening African financial institutions like the African Development Bank (AfDB) and Africa Export-Import Bank (Afreximbank). African leaders must develop incentives that will attract African diaspora capital to be mobilized back into the continent. To increase the volume of trade in the continent.

Thank you for listening.

⁷³ ECOWAS, SADC, EAC