

TOWARDS ECONOMIC INTEGRATION IN AFRICA: REFLECTIONS ON THE IMPLICATIONS OF NIGERIA'S BORDER CLOSURE*

Abstract

The Closure of Nigeria's land borders has raised concerns about the country's amenability towards the ECOWAS' Economic Integration treaty and the recently signed African Continental Free trade Agreement (AfCFTA) which permits free movement of people and goods across west Africa. Trading under the AfCFTA framework was slated to start in July 2020. Yet developments suggest many African countries like Nigeria are worrisomely unprepared to implement their AfCFTA commitments because of their Economic peculiarity. The leadership of Nigeria explained that the partial border closure was due to massive smuggling and illicit activities especially of food and poultry products taking place at the borders. This is seen to contravene the objectives of the AfCFTA which is to promote not only free trade but legal trade of quality made-in-Africa goods and Services and also encourage healthy competition among member states. The trade trajectory in West Africa is such that Nigeria is perceived as a dumping site for all goods made in Africa, this is validated by the World Bank's report which estimated that 80% of imports into Benin Republic, a neighboring country to Nigeria are destined for Nigeria. The paper sets to examine the legal and socio-economic implication of Nigeria's border closure on Africa's Economic Integration and understand whether Nigeria's Protectionist stance has defied the bed rock of free trade. The paper will also showcase the need for economic balance in the implementation of economic integration policies. The paper will employ a desk-based research methodology to ascertain and discuss the extant threat of border closure in a consuming country like Nigeria if any.

Keywords: Economic Integration, Border Closure, ECOWAS,

1. Introduction

Over the last thirty years, Regional Integration has been spreading everywhere including across Africa where they have been practiced.¹ In August 2019, President Muhammadu Buhari ordered the closure of Nigeria's land border with Benin republic, preventing the import of goods. According to him, it is part of an effort to tackle smuggling and associated corruption but to also spur Nigeria's domestic agricultural industry.² In furtherance to this achievement, Nigeria On October 14, 2019 further ordered closure of all Nigeria's borders with other countries, Niger, Cameroon, Togo, and Chad for same reasons.³ Border closures are not new in Africa,⁴ but Nigeria's actions raise unsettling concerns about the seriousness and prospects of regional integration in Africa owing that Nigeria's border restrictions came three months after it signed the African Continental Free Trade Agreement whose major aim is to promote intra-Africa trade which is abysmally low at 16%.⁵ The action is considered a major blow to integration efforts as it shows how unprepared African countries might be for free trade. It also raises questions as to the benefit of the border closure to Nigeria considering the economic shock that greeted traders and communities due to the unexpected nature of the

* By Lilian Onyinyechi UCHE, LLB, LLM, Doctoral Scholar, University of the Western Cape, Research Fellow, Nigerian Institute of Advanced Legal Studies, Lilianuche1@gmail.com

¹ Jaime de Melo and Yvonne Tsikata, Regional integration in Africa : Challenges and prospects; Oxford *Handbook of Africa and Economics*, vol 2: Policies and practices, (Oxford 2014.)

<<https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199687107.001.0001/oxfordhb-9780199687107-e->> Accessed 20 December, 2020

² John Campbell, Buhari Orders Land Borders Closed in Long-Running Effort to Boost Rice Production, (*Centre for the Study of the Economics of Africa*), (October 17, 2019,) <https://www.cfr.org/blog/buhari-orders-land-borders-closed-long-running-effort-boost-rice-production>> accessed 12 January, 2021.

³ Basil Anthony Abi, 'Economic Implication of Border Closure', (21 January 21, 2020), <http://cseaafrica.org/economic-implications-of-the-recent-border-closure/>> accessed 21 December, 2020.

⁴ Daniel Mubere, Why African nations close borders: Nigeria, Sudan, Rwanda, Kenya, Eritrea, *Africa news*, (Africa 9 October, 2018), <<https://www.africanews.com/2019/10/18/why-african-nations-close-borders-nigeria-sudan-rwanda-kenya-eritrea/>> accessed 10 December, 2020.

⁵ Tahiru Azaavieele Liedong, 'Nigeria's border closure has implications for Africa's economic integration' *The Conversation* (27 October, 2019 9.57am SAST), <<https://theconversation.com/nigerias-border-closure-has-implications-for-africas-economic-integration-125592>> accessed 13 January,, 2021

action. It has also been adjudged to have tremendous economic impact on regional, bilateral and Continental agreements signed by Nigeria with other countries.

2. Conceptual Clarifications

Regional Economic Integration (REI): it is a concept and a phenomenon that has been around for hundreds of years.⁶ Some economists define REI as 'state of affairs or a process involving the combination of separate economies into larger economic regions.'⁷ This could include all measures that aim at abolishing discrimination among the member countries of the unit, with the formation and application of coordinated and common economic policies to achieve various economic and welfare objectives. In some literature, the concept is used interchangeably as economic regionalism or economic union. Economic Integration is aimed at encouragement of exchange of goods and factors between members of the group and is done by designing and implementing a set of preferential policies with a regional grouping of countries.⁸

Economic Integration also encompasses free movement of people and services. The agreement establishing the AFCFTA provides that in order to deepen economic integration of the continent a single market will be created for goods and services facilitated by movement of persons.⁹ Its agreement also explains free movement of services to include permanent establishment of business in another member states and temporary provision of cross-border service. In Estonia for instance, it is a general rule that goods that have once been lawfully placed in the internal market of the European Union can move freely in the market.¹⁰

Border Closure: Border closure is the limiting of movement of people and goods between different jurisdictions with limited or no exceptions. Borders can be open or and closed based on: entry status, entry duration, entry qualifications, entrant rights and obligations, and entry quotas.¹¹ Border closure is not new to Nigeria as it was reported to have been done in 1984, 2006¹² and more recently in 2019. The reasons however may differ which shows that it is within the powers of a nation to close its borders for various reasons. Closure of a countries border is usually on the basis of National security or national defense. It encompasses the security and defense of a nation state, including its citizens, economy, and institutions, which is regarded as a duty of government. This was explicitly demonstrated in Sudan's border closure against Libya and the Central African Republic and Kenya's suspension of cross border trade with Somalia both for security reasons.¹³ It was also demonstrated in health crisis situation between Rwanda and Democratic Republic of the Congo in response to Ebola outbreaks and the most recent all over the world was in response to the COVID-19 pandemic. The recent border closure in Nigeria which is the focus of this paper was a policy statement fully implemented in August 2019 by the Federal Government of Nigeria through the Nigerian Customs services entrenched in the circular reference No. NCS/ENF/ABJ/058/S.24 dated 20th August 2019.¹⁴

⁶ Schiff, Maurice and Winters, L. Alan. *Regional Integration and Development*, The World Bank, 2003.

⁷ Balassa, B, 'The Theory of Economic Integration. (Kyklos 1961a) 14: Richard D. Irwin, 'Towards a Theory of Economic Integration' (Kyklos 1961b)14, 1-14.

⁸ Van Ginkel H. and Van Langenhove L, 'Introduction and Context' in Hans van Ginkel, Julius Court and Luk Van Langenhove (eds), *Integrating Africa: Perspectives on Regional Integration and Development*, (UNU Press 2003), 1-9.

⁹ Agreement Establishing the African Continental Free Trade Area, General Objectives of the AFCTA, Article 3, <<https://www.tralac.org/documents/resources/cfta/1963-agreement-establishing-the-afcfta-consolidated-text-signed-21-march-2018/file.html> >accessed 26 January, 2021

¹⁰ Republic of Estonia, Ministry of Economic Affairs and Communications, Free movement of goods, <https://www.mkm.ee/en/objectives-activities/internal-market-european-union/free-movement-goods>

¹¹ Smith, Rogers. *Citizenship, borders, and human needs*. (University of Pennsylvania Press 2013)

¹² Musa Godwin Omale, John Funsho Olorunfemi and Femi Ola Aiyegbajeje (2020) Legal viable options to incessant closure of Nigeria's international borders, *African Identities*, 2020, <https://www.tandfonline.com/doi/full/10.1080/14725843.2020.1828037>> accessed 10 January, 2021.

¹³ Independent.ng,news correspondents, Impact of Border closure on Nigeria' Economy, (Nov 24, 2019) <<https://www.independent.ng/impact-of-border-closure-on-nigerias-economy/>> accessed 12 January, 2020.

¹⁴ Nigerian Customs Service Circular Reference Number NCS/ENF/ABJ/058/S.24 dated 20TH August, 2019 titled Closure of North Central Borders.

3. Prospects and Challenges of Economic Integration in Africa

Integration between member states has both its advantages and disadvantages. The advantages fall into three categories: trade benefits, employment, and political cooperation. Employment opportunities improve because trade liberalization leads to market expansion, technology and cross-border investment while Political cooperation among countries improve because of stronger economic ties, which provide an incentive to resolve conflicts peacefully and leads to greater stability.¹⁵ More specifically, economic integration typically leads to a reduction in the cost of trade, improved availability of goods and services, a wider selection of them, and gains in efficiency that lead to greater purchasing power.¹⁶ Despite the benefits, economic integration has its own disadvantages such as trade diversion and erosion of national sovereignty. Diversion of trade is a situation where trade can be diverted from non-members to members, even if it is economically detrimental for the member state and Erosion of national sovereignty involves the powers and authority exercised by a country with a higher economic rate leading to unhealthy competition in tradable goods. Also, lack of adequate complementary policies and institutions may lead to inefficient outcomes. For instance, policy barriers at the border may offset the gains of transport infrastructure cooperation.¹⁷

Different theories have been used to analyse regional integration in Africa and as such different perspectives of the challenges and prospects of regional integration in Africa have been raised from them. Regional integration is one of the cornerstones of the EU's development and international cooperation policy and is an area where the EU is seen as having a real added value and know-how in its cooperation with African, Caribbean and Pacific countries.¹⁸ The 11th European Development Fund (EDF) regional programming process was heavily influenced by several critical appraisals of the EU's approach to supporting regional integration. Several reports¹⁹ identified constraints outside the direct control of the European Commission, such as delays in negotiating Economic Partnership Agreements (EPAs), a lack of managerial capacity among regional organisations (RO's), overlapping memberships, and a lack of progress in implementing regional agendas at a national level. The reports also pointed to various management problems at the EC (such as a lack of a strategic vision, a lack of appropriate governance structures for managing regional cooperation, weak coordination of national and regional programming, and weak monitoring systems).²⁰

A study conducted by UNCTAD²¹ raised some arguments for integration by focusing on the developmental potentials which can be exploited. The first argument is that Integration is a means that enables developing countries to achieve economies of scale through larger regional markets which reduces total production costs per unit for existing industries and make possible the establishment of

¹⁵Will Kenton, Economic Integration, Reviewed by Gordon Scott, <<https://www.investopedia.com/terms/e/economic-integration.asp#citation-2>> Updated 29 January, 2020, accessed 12 January, 2021.

¹⁶ Ibid

¹⁷ The World Bank, Regional Integration, <https://www.worldbank.org/en/topic/regional-integration/overview>> accessed 31 January, 2021.

¹⁸ Alisa Herrero and Cecilia Gregersen, Prospects for supporting regional integration effectively An independent analysis of the European Union's approach to the 11th European Development Fund regional programming, A discussion paper No 192, June 2016, <<https://ecdpm.org/wp-content/uploads/DP192-Regional-programming-in-the-11th-European-Development-Fund.pdf>> assessed 4 March, 2020.

¹⁹ European Court of Auditors, Effectiveness of EDF support for regional economic integration in East Africa and West Africa. Special Report No 18. Luxembourg, 2009<http://www.eca.europa.eu/Lists/ECADocuments/SR09_18/SR09_18_EN.PDF> accessed 21 January, 2021.

European Commission. 2011a. 10th EDF performance review. Commission Staff Working Paper. SEC (2011) 1055 final. (Brussels, 8 September 2011). <<http://edz.bib.unimannheim.de/edz/pdf/sek/2011/sek-2011-1055-en.pdf>,> accessed 12 December, 2020.

Mamaty, I. and others, L'Appui à l'intégration régionale en Afrique: Quels enjeux pour les partenaires au développement? Direction Generale de la mondialisation, du développement et des partenariats, Ministère des Affaires Etrangères. (June 2012.) http://www.diplomatie.gouv.fr/fr/IMG/pdf/Integration_Afrique_BD_cle0edb4e.pdf> assessed 4 April, 2020.

²⁰ Alisa Herrero and Cecilia Gregersen, Prospects for supporting regional Integration effectively, An Independent analysis of the European Union's approach to the 11th European Development Fund Regional Programming, (June 2016) <<https://ecdpm.org/wp-content/uploads/DP192-Regional-programming-in-the-11th-European-Development-Fund.pdf>> accessed 12 December, 2020.

²¹ UNCTAD, Trade Expansion and Economic Integration among Developing Countries, TD/B/65/Rev. 1, New York 1971, pp. 6-10.

industries which would not be viable under the conditions of small national markets. Though this argument seems particularly relevant for African countries, several questions arise, for example the additional transportation costs, the administration costs in large-scale plants and the problem of reaching agreements with regard to location.²²

Border Closure: Gains and Challenges

Over the course of history, there have been restrictions with movement across borders in different regions of the world for one reason or the other.²³ In August 2019, Nigeria went from partial to total closure its land borders to trade in goods, explaining that it wanted to put an end to smuggling, particularly of frozen rice or chicken from Benin, which crosses the border illegally. That is not to say that importation and trade of other goods through other mediums were not closed.²⁴ This act was adopted to respond to trade/economy-related concerns which are not entirely new because countries have been known to shut their borders to build the conditions of economy regionally and internationally by reducing transnational and trans-boundary movement of people.²⁵ President Muhammadu Buhari noted that the closure has saved the country millions of dollars, curtailed importation of drugs and proliferation of small arms and helped in achieving food security²⁶ While border restriction in Nigeria has been justified as a tactic to curb smuggling of goods of which the country wants to internally increase production, such as cars, clothes²⁷, rice and poultry goods there are also challenges associated to its closure/ restriction.

Gains of Border Closure

Domestic enhancement of industries: it is believed that the border closure step taken by the Federal Government is to stimulate growth of local manufacturers. There is however, a consensus that the Nigerian manufacturing sector is grossly challenged being that it contributes only between 8 to 9 % of GDP which falls below performance of double- digit expectation of the 2014 National Industrial Revolution Plan.²⁸ But more recently, economic analysts have pointed out the cost benefits arising from the border closure noting that Nigeria has witnessed an astronomical rise in the number of corporate and private companies that are setting up mills, integrated mills and small mills. Also, there is exponential growth in the number of farmers and local production of rice and poultry products in the various areas which suggests that a certain unemployment gap has been filled, jobs have been created and the country's GDP increased.²⁹ The Governor of Central Bank noted that the border closure has rejuvenated the Country's economy and created employment opportunities.³⁰ It has also encouraged responsible policies for the usage of home grown goods and materials such as the executive order on local content.³¹

Furthermore, in the absence of these visible achievements, the protectionist economic policy provides that restricting imports from other countries through methods such as tariffs on imported goods, import

²² Ibid

²³ Suhauna Hussain, October 9, 2018 The Closing of an International Border: A Brief History *The Centre for Public Integrity*, (October, 2018) <<https://apps.publicintegrity.org/abandoned-in-america/border-closing-history/>> accessed 7 December, 2020.

²⁴ Interview conducted on an anonymous customs officer

²⁵ African Review of Business and technology, Nigeria restates the reasons for border closure, Tuesday, March 10, 2020, <https://www.africanreview.com/manufacturing/industry/nigeria-restates-the-reasons-for-border-closure>> accessed 12 February, 2020.

²⁶ ibid

²⁷ Samson Adenekan, Border closure yielding positive results for Nigeria — (Emefiele October 28, 2019) <https://www.premiumtimesng.com/news/359966-border-closure-yielding-positive-results-for-nigeria-emefiele.html>> assessed 12 December, 2020

²⁸ Business Day, Pros and Cons of border Closure, (Nov 25, 2019), <<https://businessday.ng/editorial/article/pros-and-cons-of-border-closure/>> accessed 14 December, 2020.

²⁹ Ibid

³⁰ Ibid

³¹ Standard Organisation of Nigeria (SON), Executive order on local content boost patronage of Nigerian goods and Services, (September 1, 2017) <<https://son.gov.ng/executive-order-on-local-content-boost-patronage-of-nigerian-goods-and-services>> accessed 10 December, 2020.

quotas and a variety of other government regulations protects the domestic companies.³² Therefore, protectionist proponents in Nigeria have argued that shutting the borders and restricting imports gives local manufacturers the space to scale, sell and make profit. According to them, It also reduces the level of unfair competition they face and increase their competitiveness. This position was exemplified by citing the cement industry in Nigeria as a success story of protectionism. In summary the protectionist is of the school of thought that the closure enables firms to achieve economies of scale and protect infant industries, especially in Nigeria where unverified data show that one out of every three firms dies within three years after set-up.³³

Rapid jump starting of local economy/ Economy boost: The closure of Nigeria's land border has impacted positively in different areas of the economy, there was a recorded boost in government revenues because more duties are being collected on the increased volume of goods entering the country legally through the ports. For instance, the Minister of Information and Culture, Alhaji Lai Mohammed, explained that since the border closure, the country has recorded over 30 per cent increase in revenue with the Nigerian Customs recording daily revenues of between N5bn to 8bn compared to the N4.5bn it recorded daily before the closure.³⁴ This shows that most of the domestic products brought into Nigeria prior were being smuggled into the country leading to evasion of duty payment by the importers. Nigeria is a predominantly import based economy and a key player in the international trade market, with an average of USD\$52.3Billion in imports yearly. The Nigerian Customs Service (NCS) is vested by law, with the powers to collect and manage the applicable duties, taxes and levies imposed on goods and items imported into the country, as well as protect the integrity of the country's territorial borders from smuggling activities.³⁵ The act provides that all items imported into the country, for use in Nigeria, are subject to an import duty fee, save for where this is waived.

It serves as check on capital flight: This is a phenomenon characterized by largescale exodus or large outflows of financial assets and capital from a nation due to events such as political or economic instability, currency devaluation or the imposition of capital controls resulting in negative economic consequences to the country.³⁶ In this case Nigeria saved millions of dollars that would have been used to import goods causing a downward slope in foreign exchange request thereby strengthening the economy.³⁷ For instance, Data from the National Bureau of Statistics (NBS) and Central Bank of Nigeria (CBN) showed that Nigeria recorded food imports of an average of N1.92 trillion per year and N1 billion every day from 1990 to 2011.³⁸ From 2016 to the first half of 2019, Nigeria spent N54.51 trillion importing manufactured goods, mostly food, and agricultural goods. Within the period, agricultural goods import gulped N38.24 billion while manufactured goods import gulped 19.51bn.³⁹

It reduces and checks dumping: Nigeria is an import dependent country with the importation financed mostly by its crude oil exports.⁴⁰ This has therefore positioned Nigeria as a victim of dumping of goods from both developed countries and its neighbors owing to the ratification of numerous free movement

³² Paul Krugman, Robin Wells & Martha L. Onley, *Essentials of Economics* (Worth Publishers, 2007), 342-45

³³ 'Our Reporter', 'Pros and Cons of border Closure' *Business day* (Nov 25, 2019), <<https://businessday.ng/editorial/article/pros-and-cons-of-border-closure/>> accessed April 14, 2020.

³⁴ Jideofor Adibe, The Politics of Border Closure, *The Cable News* (December 05, 2019,) <<https://www.thecable.ng/the-politics-of-border-closure>> accessed March 3, 2020

³⁵ Customs and Excise Management Act (CEMA) Act Cap C45 LFN 2004 and other supplemental regulations Section 37.

³⁶ Corporate Finance Institute (CFI) , Capital Flight, Overview, Impact, and How to Prevent, <<https://corporatefinanceinstitute.com/resources/knowledge/economics/capital-flight/>> accessed 12 December, 2020

³⁷ African Review of Business and technology, Nigeria restates the reasons for border closure, (Tuesday, March 10, 2020)<<https://www.africanreview.com/manufacturing/industry/nigeria-restates-the-reasons-for-border-closure>> accessed 12 February, 2021.

³⁸ Femi Adekoya, The Guardian Business, Nigeria, others can stop \$35b yearly food import with better land governance' (4 December, 2019) <https://guardian.ng/business-services/nigeria-others-can-stop-35b-yearly-food-import-with-better-land-governance/>> accessed 29 January, 2021.

³⁹ Ibid.

⁴⁰ According to the Nigeria's Economic Summit Group (NESG) as at march 2019, Crude oil still accounts for 82%of the Country's exports. See NESG, Foreign Trade Alert' (March 2019) <<https://nesgroup.org/doc/foreign-trade-alert-march-2019/>> accessed 24 January, 2021.

treaties. This is clearly evidenced in the famous koko incident of 1988.⁴¹ Many sectors of the economy are not spared in this menace from the textile companies⁴² to the steel sector that never worked due to initial importation of substandard steel equipment,⁴³ and the automotive industries that are still grappling with survival because of uncontrolled importation of new and used vehicles.⁴⁴ One can argue that owing to the Treaties on free movement of goods and persons signed by Nigeria and even the most recent AfCFTA, how can a predominantly import nation like Nigeria be free from dumping? Article 17 of the agreement establishing the AfCFTA on anti-dumping and countervailing measure gives a clear answer to this question. The article provides that state parties to the protocol should apply their anti-dumping and countervailing measures.⁴⁵ The implication of this provision is that, countries must take steps to prevent dumping in their states.

It reduces proliferation of arms and checks illegal crosses: According to Chuma Okoro, Nigeria is a destination of smuggled arms. This is caused by criminal activities, revolts, religious crisis, communal conflicts, social agitations, insurrection, terrorism, insurgency, riots, militancy, electoral violence, political violence, social unrest, ethnic violence, cross border smuggling, porous borders, black marketeering, Privatization of security, insecurity and economic crisis constantly experienced in the country.⁴⁶ These crimes have however been sustained due to the constant supply of arms smuggled into the country through the porous borders. The violation and abuse of the ECOWAS Treaty on movement of goods and people, among several infractions have posed grave threats to the peace, stability and economies of member states and Nigeria has been more on the receiving end. The closure of Nigeria's border on the basis of crime was first demonstrated in August 2003 when Nigeria closed its borders against Benin Republic for a week following a confrontation between Nigeria and Beninese governments precipitated by the harbouring of a suspected Nigerian criminal in Cotonou.⁴⁷

Reduction of foreign population to reduce stretch of facilities and infrastructure: There has always been a considerable migration of persons in the West Africa sub- region as a result of economic, social and political problems. Africans have through the ages moved across what is now known as

⁴¹Stephanie Buck 'Toxic Colonialism at its Worst' *Timeline* (26 May, 2017, <<https://timeline.com/koko-nigeria-italy-toxic-waste-159a6487b5aa>> accessed 15 January, 2021. The dumping of electrical and electronic equipment waste is on the increase. An estimated 500 containers, each carrying about 5000,000 used computers, fridges, air conditions and other electronic equipment, reportedly enter Nigeria's ports every month. These dumped products cause health and environmental hazards as most of them are no longer in serviceable conditions. See shola Lawal, Nigeria has become an E-waste Dumpsite for Europe, US and Asia', TRT World 15.02.2019, <https://www.trtworld.com/magazine/nigeria-has-become-an-e-waste-dumpsite-for-europe-us-and-asia-24197>> Accessed 14 August 2020.

⁴² Textile materials was on the Central Bank of Nigeria (CBN)'s import ban list of 41 items and thereby disqualified from accessing the official foreign exchange market to finance their importation. CBN (TED/FEM/FPC/GEN/01/010), 'Inclusion of Some Imported Goods and Service on the List of Items not Valid for Foreign Exchange in the Nigerian Foreign Exchange Markets', 23.06.2015:<<https://www.cbn.gov.ng/Out/2015/TED/TED.FEM.FPC.GEN.01.011.pdf>> accessed 15 January, 2021, 'Reviving Nigeria's Textile Industry', *Leadership* (editorial), 07.03.2019, <https://leadership.ng/2019/03/07/reviving-nigerias-textile-industry>> accessed 5 January, 2021.

⁴³ As of March 2019, Nigeria produced 0.11% of global steel and imports 5m tonnes annually. See, 'Nigeria Produces 0.11% of Global Steel and Imports 5m Tonnes Annually', *Proshare Nigeria*, 19.03.2019: <https://www.proshareng.com/news/Commodities/Nigeria-Produces-0.11Percent-of-Global-Steel-Imports-5m-Tonnes-Annually/44470> (accessed 29.04.2019). Upon completion the Ajaokuta steel complex, it is expected to create employment for millions of Nigerians, stimulate the local automobile industry, achieve self-sufficiency in steel and make Nigeria a regional hub for mining and allied industries. 'Ajaokuta: Last Chance for Targeted Sale', *Ministry of Mines and Steel Development*, (15.08.2016) <<https://www.minesandsteel.gov.ng/2016/08/15/ajaokuta-last-chance-targeted-sale/>> accessed 21 January, 2021; Ocheri C, et al, 'The Steel Industry: A Stimulus to National Development', *Journal of Powder Metallurgy & Mining*, vol. 6, issue 1, 2017, p. 5.

⁴⁴ Examples of shut down plants include: Anambra Motor Manufacturing Limited (ANAMMCO), Steyr Nigeria Limited (SNL), National Truck Manufacturing (NTM) Leyland Nigeria Limited (LNL); Cornelius O. A. Agbo, 'A Critical Evaluation of Motor Vehicle Manufacturing in Nigeria', *Nigerian Journal of Technology*, Vol. 30, No. 1, March 2011, p. 1-2.

⁴⁵Article 17 of the AfCFTA

⁴⁶ Chuma -Okoro H. 'Proliferation of small Arms and light Weapons in Nigeria: Legal Implications in Law and security in Nigeria' in Epiphany Azinge and Fatima Bello (eds), *Law and Security in Nigeria* (NIALS Press 201) 255-317.

⁴⁷ The case involved the assassination of one of then-Nigerian President Obasanjo's nieces in a carjacking in Lagos. The carjacking ring stole cars in Nigeria and took them to Cotonou. The head of the carjacking ring, Tidjani Hamani, a Niger national, was based in Cotonou, where he was released by the Benin judiciary after having been arrested.

international boundaries as cattle rearer's, traders, invaders or refugees.⁴⁸ An investigation carried out by THISDAY revealed that porous Nigerian borders, which are not effectively manned by immigration leads to the influx of about 700 young, uneducated and unskilled boys in the south western Nigeria weekly from Mali, Niger, Togo and Senegal and take up mainly medial jobs like polishing shoes, operating commercial motorcycles, hawking cheap goods and others.⁴⁹ Security experts and officials of the Nigerian immigration services (NIS) said the infiltration of these illegal migrants who are unskilled and largely uneducated constitute not only security threats to Nigeria,⁵⁰ but also overstretches the already stretched facilities and infrastructure. Therefore, a major argument in favour of border restriction is that it enables the country to maintain its distinct liberal culture, prevent domestic wages from falling due to the influx of foreign produced goods, reduction in the destruction and over burdening of public welfare and goods and prevention of foreign unknown crimes from infiltrating the country.

Checks smuggling: According to the Major Oil Marketers Association of Nigeria, 10- 20% of Nigerian subsidized fuel is smuggled abroad. This means that Nigerian subsidized fuel has been illicitly smuggled out of Nigeria to other neighboring countries leading to the country's increased debt profile on borrowed funds.⁵¹ Since the border closure, reports suggest that the delivery of fuel in Nigeria has dropped by 20% and sales by 12.7%. This suggests that the demand for fuel in Nigeria is high because some of it is bought and smuggled out.⁵² The closure also led to a recorded boost in government revenues because more duties are being collected on the increased volume of goods entering the country legally through the ports.⁵³ Nevertheless, the closure of Nigeria's borders has raised a fundamental question as to whether such decision goes against the regional and continental efforts at ensuring regional integration. It also throws up of issues of legality or otherwise of that decision of government despites being signatory to some human right treaties and such others that encourage free movement of persons and goods and also discourages trade barriers. These issues will be examined in the following subheads.

Challenges of Border Closure

Violation of right to freedom of movement: When borders are closed, people are forbidden from making willing, mutually-beneficial trades with one another. It also amounts to a violation of a right to freedom of movement and association.⁵⁴ In the case of Nigeria's border restriction, it questions the validity and essence of the ECOWAS Treaty which permits the free movement of people and goods across West Africa. It was learnt that many travelers were stranded, following the sudden closure of the busy Seme-border and Idiroko borders which separated Nigeria and neighboring Republic of Benin.⁵⁵

Increased cost in goods: as the closure commenced and many commonly used imported products could no longer gain access into the country, the prices began to hit the roof. The prices of food consumed by ordinary Nigerians went up. Some specific food items such as frozen foods were reported to have gone up by 65%.⁵⁶ The fall in the supply of rice led to food price inflation, which impacted strongly on

⁴⁸ Okunade Samuel Kehinde, Perspectives on illegal routes in Nigeria, African research Review, An International Multi-Disciplinary Journal Ethiopia, AFRREV VOL.11 (2), Serial No. 46. April, 2017: 14-24 pg.15.

⁴⁹ Chinedu Eze, Nigeria: Undocumented Immigrants As Security Threat, *This Day* (Lagos 2019). <<https://allafrica.com/stories/201908160035.html>> accessed 13 January, 2021.

⁵⁰ *ibid*

⁵¹ Linus Unah, Nigeria border closure causes economic shock 2, DECEMBER, 2019, <https://africanbusinessmagazine.com/region/west-africa/nigeria-border-closure-causes-economic-shock/> Accessed April 14, 2020.

⁵² Tahiru Azaaviele Liedong, The Conversation. Nigeria's border closure has implications for Africa's economic integration, October 27, 2019, 9.57am SAST, <<https://theconversation.com/nigerias-border-closure-has-implications-for-africas-economic-integration-125592>> Accessed 25 January, 2021.

⁵³ Jidefor Adibe, The Politics of Border Closure, *The Cable News* (December 05, 2019), <<https://www.thecable.ng/the-politics-of-border-closure>> accessed 14 January, 2021

⁵⁴ Jason Brennan Many Arguments for Closed Borders Have Scary Implications, Tuesday, February 16, 2016, <https://fee.org/articles/many-arguments-for-closed-borders-have-scary-implications/> assessed 2 march, 2020

⁵⁵ Anna Okon, Emerging gains and losses of Nigeria's border closure. *Punch Newspaper* October 15, 2019. <<https://punchng.com/emerging-gains-and-losses-of-nigerias-border-closure/>> accessed 12 January, 2021

⁵⁶ *Punch Newspaper*, Emerging gains and losses of Nigeria's border closure. *Ibid*

consumers. The price of foreign parboiled rice went up by 29.9% percent from N17,000 to N22,000 and this left many people questioning the wisdom in shutting the borders against rice imports when the country has not been able to produce enough to meet local demands. It is recorded that the volume of rice production in the country is put at 3.7million tons per annum, while consumption is almost 7milliontonnes. This wide gap between production and consumption was filled with imports.⁵⁷

Crash in informal trade: Another major disadvantage is the negative effect it had on informal trade that takes place across the land borders. It is almost impossible to estimate the value and volume of the informal trade that takes place across the land border since there is no available data but without doubt, this will run into several millions of naira on a daily basis providing several thousand with a daily means of livelihood. The importance of this informal trade must not be underestimated as it is the major source of funds for many and the Federal Government is not able to provide enough jobs or opportunities to reduce the adverse effect of the land border closure.

Lack of Competition: There is an assumption that Nigeria will automatically become prosperous by closing its borders to other markets, in furtherance of the policy of import substitution. The composition of this trade barrier is to enable the local industries to grow, 'protected' from outside competition. But research shows that when this policy was operated in the 1950's in Latin America, the industries in these 'protected' countries grew for a short period, there was lack of competition which meant that the industries became inefficient and fell behind the rest of the world.⁵⁸ Also, because imports were very expensive or even unavailable, their costs of production rose as they were stuck using old technologies and producing goods that few people wanted, exports fell and, in many cases, the industries – usually run by friends of the president – had to be subsidised by the state in order to keep them afloat.⁵⁹ A typical example is the South African Airways which is always in business rescue. i.e a successive recipient of bailouts.⁶⁰

In essence, there are both advantages and disadvantages to Nigeria's land border closure. It is difficult to ascertain which outweighs the other.⁶¹ However, the duty of every government is to secure and safeguard its land borders and their inability to effectively do this should not result in a measure with adverse effect on the citizenry especially with no palliative or prior information to prepare them adequately for the closure.

4. Economic Integration versus Border Closure

Africa's Economic integration agenda and the phenomenal closure of border by Nigeria raise serious and important questions on the readiness, seriousness and prospects of regional integration in Africa in the light of the many regional treaties signed by it. This section will discuss and analyse the Socio-economic, legal and political implication of Nigeria's border closure. In doing this, it will examine some regional instruments such as the revised Treaty of the Economic Community of West African States, the recently signed African Continental Free Trade Agreement (AfCFTA) to ascertain the extent to which the phenomenon of border closure promotes or demotes, encourages or discourages, associates or disassociates, is for or against the actualisation of the AfCFTA Agenda.

Political implications: The increasingly interdependent world and the need for a better living condition have prompted the need to see that states can no longer exist in isolation hence the reason for regional and international agreements. The dilemma however is how far they have to shed their ability to control and dictate the internal affairs of their countries in favour of the international and regional agreements that they have

⁵⁷ Ibid

⁵⁸ Michael E. Porter, The Competitive Advantage of Nations, International Business, *Harvard business Review*, From March–April 1990, Issue <<https://hbr.org/1990/03/the-competitive-advantage-of-nations>> accessed 12 December, 2020.

⁵⁹ ibid

⁶⁰ Xolisa Philip, South Africa's SAA has another headache: A growing salary bill, *The Africa Report* (November 27, 2020), <https://www.theafricareport.com/52340/south-africas-saa-has-another-problem-a-growing-salary-bill/>>accessed February 8, 2020.

⁶¹ Philip Oguntoye, Border Closure: Impact on the Nigerian Economy, *Business Day*, (Jan 20, 2020), <<https://businessday.ng/opinion/article/border-closure-impact-on-the-nigerian-economy/>> accessed 18 January, 2021.

voluntarily entered into.⁶² Theoretically, Nigeria and all the countries sharing border with her with the exception of Cameroun are all members of the Economic Community of West African Countries (ECOWAS); in which case, the citizens of these countries are to enjoy freedom of movement and trade liberalization.⁶³ Nigeria is therefore seen as playing politics with the border closure because of its enviable population and economic stands, which has led to the border nations misconstruing the prolongation of the border closure as an economic blockade of the affected countries, and a bad precedent which other African countries may choose to emulate in future.

Socio-Economic Implications: Border closures have both positive and negative consequences for the economy of the country and neighboring countries, especially informal markets. The Closure of the Nigeria-Benin border has particularly affected the informal traders at the border lines which are mainly Beninese as the two economies are closely intertwined.⁶⁴ Indeed, this informal trade generates substantial income and employment in Benin, and Benin's government collects substantial revenues on entrepôt trade goods imported legally and either legally re-exported to Nigeria, or illegally diverted into Nigeria through smuggling.⁶⁵ This means that Benin republic was enriching itself at the expense of the Nigeria's economic growth. A major question which this paper has successfully brought to the fore is whether the obvious benefits from the border closures such as increased revenue to the government are enough to offset some of their deleterious impact on the informal sector, which at 65 per cent of the country's GDP, is the largest in sub-Saharan Africa? For example, and as earlier stated, official inflation figures rose in October to 11.6 percent year-on-year, driven by food prices, which jumped to 14.1 per cent during the same period to an 18-month high. It is therefore estimated that an average Nigerian spends about 60 per cent of his/her wage on food. Regardless of the above, a country can close its borders in response to issues that borders either on security or economic development for the protection its citizens. This is presently demonstrated all over world in response to COVID-19 pandemic.⁶⁶ The Closure of Nigeria's land border was predicated on the need to grow and protect its economy, through the development of local industries. For a country like Nigeria whose level of industrialization is at an all-time low, there are more gains in closing the borders so as to give room for local manufacturers to grow.

This article argues that economic integration agreements have not favoured Nigeria for the following reasons; firstly, the structure of the Nigerian economy is typical of an under-developed country. The primary sector, in particular, the oil and gas sector, dominates the gross domestic product accounting for over 95 percent of export earnings and about 85 percent of government revenue between 2011 and 2012. The industrial sector accounts for 6 percent of economic activity while the manufacturing sector contributed only 4 percent to GDP in 2011.⁶⁷ This means that Nigeria relies mostly on imported products. Due to the above perceived challenge, countries target Nigeria as their primary market for their products and this has greatly hampered the growth of its indigenous industries. Part V Article 19 of the AFCFTA provides for preferential safeguards which ultimately mean that state parties can apply safeguard measures to situations where there is sudden surge of a product imported into a State Party, under conditions which cause or threaten to cause serious injury to domestic producers of like or directly competing products within the territory.⁶⁸ Article 24 also provides that state parties can impose

⁶² Mwanawina, Ilyayambwa. 'Regional Integration versus National Sovereignty: A Southern African Perspective.' *Verfassung Und Recht in Übersee / Law and Politics in Africa, Asia and Latin America*, vol. 44, no. 4, 2011, pp. 465–481. *JSTOR*, <www.jstor.org/stable/43239617> accessed 11 February, 2021.

⁶³ ECOWAS treaty on Trade Liberalization

⁶⁴ Stephen Golub, Ahmadou Aly Mbaye, and Christina Golubski, The effects of Nigeria's closed borders on informal trade with Benin (Tuesday, October 29, 2019), <https://www.brookings.edu/blog/africa-in-focus/2019/10/29/the-effects-of-nigerias-closed-borders-on-informal-trade-with-benin/#_ftn1> assessed 20 January, 2021.

⁶⁵ Ibid

⁶⁶ Philip Connor, More than nine-in-ten people worldwide live in countries with travel restrictions amid COVID-19, (April 1, 2020) <<https://www.pewresearch.org/fact-tank/2020/04/01/more-than-nine-in-ten-people-worldwide-live-in-countries-with-travel-restrictions-amid-covid-19/>> accessed 30 January, 2021

⁶⁷ L.N Chete, and others, Industrial Decelopmenet and growth in Nigeria: Lessons and Challenges, Leraning to Competet, Working Paper No.8 https://www.brookings.edu/wp-content/uploads/2016/07/12c_wp8_chete-et-al-1.pdf> accessed 20 January, 2021.

⁶⁸ Part V, Article 19, Trade Remedies, Agreement Establishing the African Continental Free Trade Area

measures for protecting infant industry on a non-discriminatory basis. This suggests that countries can take appropriate measures as it deems fit to protect its domestic industries.⁶⁹ Secondly the free movement of people and trade going on along Nigeria's land borders, enabled by its porousness led to 20% Nigerian subsidized fuel smuggled out of the country.⁷⁰

Legal Implications: Nigeria is signatory to several international and regional treaties that border on Free trade and transboundary movement of persons. In discussing this, the ECOWAS Treaty, its revised Treaty and the AFRICAN Continental Free trade Agreement (AFCFTA) will be examined against the National Laws of Nigeria.

ECOWAS Treaty: The Revised Treaty of the ECOWAS, which came into effect on 24 July, 1993⁷¹ governs trade relations among the ECOWAS Member States.⁷² The Revised Treaty aims at promotion of co-operation in trade, customs, taxation, statistics, money and payments.⁷³ Essentially, it promotes trade liberalisation scheme, by removing tariff and non-tariff barriers in order to establish a free trade area i.e. the Community. Article 3, Paragraph 2(d) of the Revised Treaty, which is geared towards the establishment of a common market through trade liberalization by abolition of customs duties on imports and exports among member states, establishment of free trade area, adoption of a common external tariff and a common trade policy vis-à-vis third countries; removal of obstacles to the free movement of persons, goods, services and capital, and also to ensure the right of residence and establishment. In spite of the above provisions, Article 41 of the treaty permits quantitative restrictions or prohibition on community goods by member states after fulfilling certain conditions, which includes notification of such intention to the Executive Secretary and to other member states;⁷⁴ and the restriction will be on the basis of applying of security laws and regulations; (b) the control of arms, ammunition and other war equipment and military items; (c) the protection of human, animal or plant health or life, or the protection of public morality; (d) the transfer of gold, silver and precious and semi-precious stones; (e) the protection of national artistic and cultural property.⁷⁵ Nonetheless, the Treaty is clear on the fact that a member state cannot rely on the exceptions where its sole intent is to frustrate free movement of goods.⁷⁶ Clearly there is no friction between this treaty and the Nigeria's land border closure as the provision of the treaty has validated the action of the Federal Government of Nigeria.

African Continental Free Trade Agreement (AFCFTA): The African Continental Free trade Agreement creates a single market for goods, services, facilitated by movement of persons in order to deepen the economic integration of the African continent.⁷⁷ The AfCFTA is intended to eliminate trade barriers among members of the African Union. The Agreement to create the AfCFTA is designed to progressively eliminate tariff and non-tariff barriers to trade, and establish co-operation on investment, intellectual property rights, enhance the competitiveness of the economies of State Parties within the continent and the global market; promote industrial development through diversification and regional value chain development, agricultural development and food security; and resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration

⁶⁹ Article 24, Ibid

⁷⁰ Tahiru Azaaviele Liedong, The Conversation. Nigeria's border closure has implications for Africa's economic integration, (October 27, 2019, 9:57am SAST), <<https://theconversation.com/nigerias-border-closure-has-implications-for-africas-economic-integration-125592>> accessed 25 December, 2020.

⁷¹ Economic Community of West African State (ECOWAS) Treaty <https://www.ecowas.int/ecowas-law/treaties/> accessed 16 December, 2020.

⁷² The 15 Member States include Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, The Gambia, Ghana, Guineas, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

⁷³ Articles 33 to 53 of the ECOWAS Revised Treaty

⁷⁴ Article 41 Para 3 of the Revised ECOWAS Treaty, 1993

⁷⁵ Article 41, Para 3 (a-e) n 36

⁷⁶ Article 41, paragraph 5 of the Revised ECOWAS Treaty

⁷⁷ Nigeria signed the African Union Summit in Niamey, Niger In July 7, 2019.

There are 8 RECs in Africa, i.e. the ArabMaghreb Union (AMU/UMA); ECOWAS; the East African Community (EAC); Intergovernmental Authority on Development (IGAD); the Southern African Development Community (SADC); the Common Market for Eastern and Southern Africa (COMESA); the Economic Community of Central African States (ECCAS), and the Community of Sahel-Saharan States (CENSAD). [9] CFTA - Continental Free Trade Area available online at <https://au.int/en/ti/cfta/about> accessed 12 January, 2021.

processes.⁷⁸ Currently, 54 countries have signed the Agreement while only 27 countries have ratified it.⁷⁹ It is however clear that the Agreement's provisions are geared towards the promotion of intra African trade, elimination of border barriers and the creation of the world's largest free trade area, but not at the expense of the interests of the State Parties. Article 26 of the Protocol on Rules and Procedures on the Settlement of Disputes (annexed to the Agreement) permits its State Parties to take certain restrictive measures to ensure compliance with their own local laws. Article 27 of the same Protocol allows restriction for security reasons. Article 4 of the AFCFTA clearly provides that the protocol on competition will be an integral part of the AFCFTA agreement, emphatically emphasizing the need to adopt regional and even continental market governance approaches to ensure that restrictive or anti-competitive practices that have cross-border effects do not erode the benefits of AFCFTA. This implies that Competition law is an essential component of market and, overall economic governance as also implied by the agreement. Flowing from the above premise, the AFCFTA in encouraging the elimination of trade barriers also advocates for healthy economic competition among member countries. In addition, the agreement allows State Parties to apply preferential safeguards for the protection of their domestic markets.⁸⁰ But it provides that any state that intends to take a restrictive action (such as closing its borders) will be required to give a pre-closure notification to the AfCFTA Secretariat.⁸¹ Clearly, the provision of the AfCFTA on healthy competition amongst member countries has validated Nigeria's border closure. However the absence of pre-closure notification and the untold hardship the closure has brought to operators of informal businesses and the informal sector that operates around the border is against the spirit and letter of the free trade agreement.

Customs and Excise Management Act 2013: This Act empowers the Nigerian Custom service to restrict movement of goods in and out of Nigeria. The powers as provided for under section 18 of the Act empowers the Minister to make regulations restricting the importation or exportation by land or inland waters of all goods or of any class or description of goods to such hours and such approved routes as may be prescribed by the regulations.⁸² It also provides for the appointing places for the examination and entry of and payment of any duty chargeable on any goods being imported or exported by land or inland waters. This section also provides consequences in case of contravention.⁸³ However the present border restriction in Nigeria is a pronouncement of the President by virtue of his Executive powers provided for under the 1999 Constitution of Nigeria.

5. Conclusion and Recommendations:

It is no doubt that Nigeria as a sovereign country has a right to do all it can to protect itself from smugglers, and to allow its perceived national interests to drive its policy options. It is also no doubt that the concerns about the impact of smuggling on local production and industries are legitimate. The question however which this paper has tried to answer is whether border closure is the most appropriate instrument for dealing with the problem and whether Nigeria violated Treaties or bilateral agreements by implementation of a border closure. The paper concludes that the land border closure does not violate the foregoing provisions of the ECOWAS Revised Treaty, the WTO's GATT and the AfCFTA Agreement to the extent that the closure was made for security reasons and for the protection of the domestic markets, amongst other reasons.⁸⁴ However, requisite notice must have been given to the relevant body and the affected states before the closure can be effected in accordance with the extant

⁷⁸Article 3 of the Agreement Establishing The African Continental Free Trade Area,

https://au.int/sites/default/files/treaties/36437-treaty-consolidated_text_on_cfta_-_en.pdf accessed 12 January, 2021

⁷⁹ These 27 countries have deposited their instrument of ratification as required under the Agreement. Nigeria, Benin and Cameroon have signed the AfCFTA but are yet to deposit their instrument of ratification. [8] [10]Article 27,

⁸⁰ Article 19 of the Protocol on Trade in Goods (annexed to the Agreement) provides that: State Parties may apply safeguard measures to situations where there is a sudden surge of a product imported into a State Party, under conditions which cause or threaten to cause serious injury to domestic producers of like or directly competing products within the territory. [11]

⁸¹ Article 17 paragraph 2 under part IV of the AfCFTA provides as follows: Each State Party shall notify, through the Secretariat, in accordance with this Agreement, the other State Parties of any actual or proposed measure that the State Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other State Party's interests under this Agreement.

⁸² Section 18 (1) (a)

⁸³ Section 18 of the Customs and Excise Management Act.1959, Cap 84

⁸⁴ Article 17 and 18 of the AFCFTA

trade agreements. Nigeria's land borders are reported to have been used as thoroughfare for smugglers and the government has repeatedly noted that there is a need to checkmate illegal activities and importation of contraband goods. As such, the land borders had to be closed to develop a strategy on how to curtail same. Both the AfCFTA and the ECOWAS protocol on trade liberalization contain a number of provisions that are in support of border closure for the sake of protection of infant Industries, checking smuggling and national security. The paper also established that Africa's desire for regional economic integration and to achieve the goals of integration has not been matched by the required sacrifice and commitment to propel such efforts. Issues of power politics, state sovereignty and parochial interests of African governments are critical issues in the discourse. Consequently, these issues have constantly provided the bases for frequent debates and deliberations on the African Union-led integration process. However, the paper recommends that government rethinks its border policy to sufficiently address the causal factors for irate smuggling and dwindling national productivity. Also, other methods could be used to respond to border smuggling, including provisions to strengthen customs cooperation and trade facilitation. Nigeria also should move away from a heavy reliance on physical monitoring of entry points to technology-driven monitoring.