

## NEED FOR ESTABLISHMENT OF A SINGLE INSTITUTION AS A PARADIGM SHIFT FOR AFRICA'S TRADE GROWTH<sup>1</sup> \*

### Abstract

*The jurisprudence of living in a world without poverty is one of the biggest legal assignments to be resolved by the global community. A world without poverty evidently is one of mankind's elusive dreams and its realisation posed a danger to human race. After independence, most countries in Africa had relied on foreign aid from Overseas Development Assistance (ODA) for their economic development but later realised that road taken is a thorny one. In the mid 90s the quest for trade in place of aid became rife amongst African states. The papers sets out to examine some basic rules of World Trade Organisation (WTO) and their effect on African trade; the paradox that more than any other continent, Africa is blessed with natural resources and ought to be a role model of human and economic development to other countries such as China, India and South Korea, but she remains poor in terms of human, economic, and institutional development. The paper finds that African trade growth experience is characterised by heavy debt burden, institutional decay and trade subservience under the rules of GATT as annexed to World Trade Organisation. The paper thereafter concludes that Intra African Trade Agreement and African Continental Free Trade Areas recently signed is not the solution to Africa's trade growth as only a case of an old wine in new wine bottle. The paper concludes by suggesting that the solution to Africa's trade development and growth lies in the establishment of a single umbrella trade organisation.*

**Keywords:** Poverty, Foreign Aid, WTO Rules, Overseas Development Assistance, Economic Growth

### 1. Introduction

Legal frameworks for economic cooperation had existed in Africa for years both at the sub-regional level for economic advancement. Thus, there are organisations such as the Southern African Development Association (SADC),<sup>1</sup> Eastern African Community (EAC), Economic Community of West African States (ECOWAS), Common Markets for Eastern and Southern Africa (COMESA) and recently, the Harmonisation of Commercial Business Laws in Africa (OHADA). While it is conceded that the legal and regulatory frameworks of NEPAD and intra African trade reflected interconnected dynamism of options for Africa's development pathways, a number of ways, NEPAD, Intra-African trade Agreement; African Continental Free Trade Areas (AfCFTA) and sub-regional organisations' treaty do not represent a single trade institution for all of Africa. The legal frameworks are in piecemeal as they do not operate from a single legal document in their approach to solving Africa's economic and trade problems in their various regions. These legal frameworks do not constitute or operate as a single legal architecture for a trade institution for the continent. This paper contends that some of the ideas contained in the legal framework of the regional organisation may serve as precursors to trade cooperation within the African region but they nevertheless have intention to condense their agreements into the formation of a single trade institution for the entire continent of Africa.

This paper sets out to examine some existing challenges and barriers to formulating an effective law on the formation of a single umbrella Economic Trade Organisation for the continent of Africa. It paves a way for an approach to a single trade institution on the continent, based on the fact that Africa is a major player on the international community especially in this era of globalisation and yet has little to show in the area of the standard of living of her people. Among major concerns regarding the establishment of a single trade institution is that Africa needs to industrialise, grow a robust balance of payment, and upgrade her trade deficit at the World Trade Organization (WTO) as well as impact on the living standard of the people as a matter of urgency. Also, important is the global recognition of the special needs of Africa and other developing countries by the WTO which led to a partial amendment of GATT rules to include 'Special and Differential Treatment (S&DT)' but the SDT has failed to promote trade and economic development through trade in Africa. This failure led to questioning Africa's membership at WTO as well as her economic development.

### 2. Africa and the Deficit of World Trade Organisation

Development as a concept in modern political economy has been regarded as a problem in search of practical solutions. This is because; the concept of development has different meanings to different people depending on their

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<sup>1</sup>\*By Daniel Idibia OBIDA, PhD Student, Department of Jurisprudence and International Law, Faculty of Law, University of Lagos, Nigeria. Email: danielobida@yahoo.com

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understanding and economic capabilities. Africa is endowed with immense wealth of natural resources.<sup>2</sup> Africa sought to be given the opportunity to prove that she can equally measure up in trade but was limited by the Rules of WTO which later assumed name of WTO and which came into being since 1947, a period when most African countries were still under the burden of colonialism. The problem of African trade was multiplied when Most Favoured Nations, (MFN), rules of Quantitative Restriction, Non-discrimination rules, Special and Differential Treatment rules which were initially thought by Africans to be favourable to promote their trade development fettered her trade growth initiatives. As a result, the need to solve development problems in Africa was expanded to provide a single legal framework for all African states. Network of Partnership for African Development (NEPAD) adopted in 2001 by the OAU's 37<sup>th</sup> Summit and ratified by the AU in 2002 at its first summit pledged to eliminate poverty and achieve a sustainable path of growth on the continent.<sup>3</sup> NEPAD came too late as a lot of damage in development terrain had taken place in Africa. The expectation at the establishment of NEPAD is anchored on the recognition that African countries have the primary responsibility for improving economic and social conditions in the continent. Sequel to the above is the principle that critical reform was necessary for Africa to achieve a successful economic cooperation and development, improves quality of living standard of her people and good governance.

NEPAD came into being on the realisation that foreign aid and free trade have failed the continent as they have not yielded the desired goal of economic freedom and human development needed to propel trade growth of African produce. Intra-African trade was another initiative by African leaders to boost African trade. The continental free trade arrangement has also come to stay. However, the lack of trade opportunities for self realisation in Africa resulted in heavy debt, deaths, human suffering, unintended emigration, brain drain of our people, deprivation, loss of human dignity and hope.<sup>4</sup> The problem is so heightened that one may starkly jest that 'we can no longer speak of development in Africa but only of arenas of competitive atrocities'<sup>5</sup>of economic burden. It is unimaginable that the whole global development communities are wrong about the same ideology of African Economic development. Or can it be correct to say that the whole idea about development of African continent have been wrong since the beginning of foreign Aid intervention; notwithstanding the impressive fight against poverty such by the World Bank, the United Nations, the Bill Gates and Rockefeller foundations, aid from Overseas Development Assistance (ODA) and other economic policy experts? The international community has sought for different methods of aiding Africa but most of the steps have failed. For instance, the proposal by the international community that industrialised nations contributes 0.7 percent of their GNP since 1968. There has been a renewed call on develop countries to devoting of 0.7 percent and need of their GNP for Overseas Development Assistance (ODA)<sup>6</sup>. Since the proposal was made, only a few countries are currently meeting the target such that the average ODA level is far from the target.

The question therefore is what exactly is it like to live in a world without poverty;<sup>7</sup> is it even possible to live in a world without poverty? Opinions are divided on this debate. M. Yinu views poverty in a different perspective.<sup>8</sup> He

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<sup>2</sup>Jonas Obonye, 'The Quest to Achieve African Renaissance: Reflections on NEPAD' [2012] (3) (2-7) *The Journal of Pan African Studies*.

<sup>3</sup>Saleh M. Nsouli ; Norbert Funke, 'The New Partnership for Africa's Development (NEPAD): Opportunities and Challenge' [2003] pp.3-7 *IMF Working Paper*. <[www.imf.org/external/pubs/ft/wp/2003/wp0369/pdf](http://www.imf.org/external/pubs/ft/wp/2003/wp0369/pdf)>accessed on July 26, 2019.

<sup>4</sup> UNCTAD, 'Foreign Direct Investment in Africa'[1999] p.1 <<http://www.unctad.org/en/doc /poiteitem1501.pdf>. accessed 7April, 2017

<sup>5</sup>The above comment is credited to W Soyinka in 'A continent's unequal dialogue' (2009) T Davie Memorial lecture. He further stated at that lecture that he does not hear the annunciation of a renaissance, nor read the flickers of its regenerating fires on our ever-receding horizons'.<sup>4</sup> He concluded that it is time Africa to begin 'to stare into the cold eyes of statistics' and tackle its problems with increased vigour and determination.

<sup>6</sup>PetterHeller, and Gupta, S., 'Challenges in Expanding Development Assistance' (2002)<<https://www.imf.org/external/pubs/ft/pdp/2002/pdp05.pdf>>accessed on 22 May, 2015

<sup>7</sup>Nancy Prolman, 'So What Does A World Without Extreme Poverty Actually Look Like?' (2015) p.8 <https://www.globalcitizen.org/en/content/so-what-does-a-world-without-extreme-poverty-actua>. (accessed on May 9,2017) Natalie Prolman, is the Director of Campaigns & Events at Code REDD, an environmental NGO promoting forest conservation through the UN envisioned REDD+ mechanism. In her view of a world without poverty and inequality, she states.

she has a solid understanding of the steps that need to be taken towards achieving this goal - like improving access to education for the 58 million children in the world who are out of school; ensuring that all people have adequate water and sanitation systems because 1 billion people suffer the indignity of open defecation and too many lack basics like clean water; fighting for gender equality as girls and women are essential to building healthier and more sustainable communities.

said it is possible that the problem of poverty in Africa may be such that the people of the so-called underdeveloped world have been systematically betrayed by technocrats in charge of global development agenda.<sup>9</sup> The world is imbalanced as a few people lives in luxury while billions are in misery, deprivation and despair. There are divergent opinions as others believed that Africa should be left to take up the challenges of developing their economic destiny.<sup>10</sup> No country likes to be poor; J. Brewer<sup>11</sup> explained that a world without poverty from the anthropological perspective and posits that during the last 25 years, Africa has received millions of dollars as development aid and yet, the future of economic development in Africa is gloomy notwithstanding the participation of most African countries in World Trade organisation.<sup>12</sup> It is important to emphasise that developed countries have invested their resources in Africa for development purposes. Brewer further argues that they have also through their technocratic advisers attached little importance to the historical background of the countries they work for which accounts for the major failures of development aid in the region. The fact that aid was not working, brought a shift to trade rather than aid in the 1990s. The fact that Africa participated well in international trade at the WTO did not solve the problem of per capita income growth through trade in the continent.<sup>13</sup> This is because; there is no section of the continent which economic growth matches those of the advanced countries in per capita income, living standard and life expectancy. The foregoing argument underscores the necessity for a legal framework for African market through a single organisation, such as obtained in WTO. Already, there is New Economic Partnership for African Development (NEPAD), the Intra-African trade initiatives and other sub-regional organisations like Economic Community for West African States (ECOWAS), Southern African Development Community (SADC) Eastern African Community (EAC) and Association like the Common Market for Eastern and Southern Africa (COMESA) and recently, trade laws of some countries in Africa are being harmonised such as OHADA to make commercial transaction very easy within the sub-regions especially for member states. The sixteen ECOWAS countries have also agreed to begin uniform tariffs for all imports from overseas.<sup>14</sup> All these measures are to ensure that business in Africa is made easy and less cumbersome.

The marginalisation of Africa from economic participatory process and the social exclusion of the vast majority of her people constitute a serious threat to her economic stability at the world trade organisation.<sup>15</sup> The four basic rules of WTO have never benefit African trade. These include the rules of quantitative restriction, Most Favoured Principle, Multifibre rules and Transparency Rules of General Agreement on Trade and Tariffs. Only a few African economists and political leaders raised genuine concerns on how to transform Africa from its economic stagnation to result-oriented trade growth strategies. This explains why there is a need to have a single legal platform for a trade

<sup>8</sup> Mohammad Yunu, 'Creating a World Without Poverty: Social Business and the Future of Capitalism' (2009) <<http://www.goodreads.com/work/quotes/1554281-creating-a-world-without-poverty-social-business-and-the-future-of-capi>> accessed on 9 May, 2017).

<sup>9</sup> *Ibid.*

<sup>10</sup> Dambisa Moyo, 'Dead Aid: Why Aid is Not Working and How there is a Better way', 1<sup>st</sup> edn. Penguin Publications, New York 2009)

<sup>11</sup> Joe Brewer, 'A World Without Poverty' (2014) <https://evolution-institute.org/blog/a-world-without-poverty-a-guest-blog-by-joe-brewer>. (accessed on June 22, 2016). Joe Brewer is a researcher at Culture2 Inc. He asked what it would look like to live without poverty and is it even possible. He argues that foundations' staff and nonprofit organizations, and government agencies dive into poverty topic, they typically do so with the assumption that poverty is just a natural part of the universe, but contends that if they simply looked to the anthropological literature, they would think very differently as he claimed Poverty appeared about some 10,000 years ago when during the Neolithic Age of agriculture with its permanent human settlements, stratification of wealth and inequality.

<sup>12</sup> *Ibid.*

<sup>13</sup> Pau Collier, 'Why The WTO Is Deadlocked: And What Can Be Done About It' (2005) Department of Economics, Oxford University. He argues that the GATT through the notion of Special and Differential Treatment (SDT) has not aided much in the development of trade in Africa. He further posts that the utter failure of SDT simply demonstrates that the GATT was not a transfer agency. In order words, GATT needed to get on with its core business which did not initially include market access for developing countries where negotiations were greatly facilitated by the exclusion of developing countries. The real rationale for SDT in GATT (as amended) was to legitimize this exclusion. Issues of market access for developing countries have become a front burner that obviously cannot be ignored in the WTO.

<sup>14</sup> D Ogah, '16 ECOWAS Countries Begin Uniform Tariff Regime for Imports', (2015) *The Guardian Publications*. Available on <https://guardian.ng/business-services/business/16-ecowas-countries-begin-uniform-tariff-regime-for-imports/> (accessed on August 20, 2017).

<sup>15</sup> *Ibid.*

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organization being canvassed in this study.<sup>16</sup>Africa's trade initiatives need a cold bathe with a strong legal framework for the establishment of her own trade institution, a made –in- Africa- for -African trade organisation.

### **3. Factors Affecting Development in Africa**

Apart from the challenges which defining any particular concept from a single point of view entails, Schwarzenberger<sup>17</sup> says several early legal development theorists had written comprehensively about the nature of society and its legal implication towards economic development, he said most of the theories have often failed to yield result. Garcia and Ciko<sup>18</sup> states that theories of international economic law and international development are sometimes interlinked as they are interdependent. They took the view that interaction economics require that one search into the preliminary theories of law and development in order to build a theoretical framework upon which the research into international development aid is to be premised. Shah<sup>19</sup> argues that scholars have described economic development in terms of growth in developing countries or LDCs as unattainable due to inconsistency of laws regulating Overseas Development Assistance (ODA) which is a combination of law and politics. She believes inquiry into the nature and theories of international development is very fundamental, yet its exposition is not straight forward. A number of authors have given various definitions of economic development and how Africa should develop.<sup>20</sup>Moyo condemns foreign aid to Africa. She said the aid African countries are receiving is not making the continent to grow economically as it is equally preventing development in terms of industrialisation. She argues that aid has made economic growth in Africa slower and left the continent an incredible debt. Moyo suggests cutting off the flow of aid to African nations in her work. Other factors affecting development of trade in Africa is the multiple regional laws which essentially serves as protectionist for each region, other factors include war, security and ethnic politics. Birdsall perceives aid as causes of several problems to Africa<sup>21</sup>. She argues that in the 1990s, some developing countries took off in growth terms, apparently benefiting from and effectively exploiting the increasing integration of the global market. Easterly sees 'poverty' in Africa as the failure of adequate planning of economic system and institutions. In his book, titled '*the Big Push*',<sup>22</sup> the suggestion that Africa needs more aid as take-off for development failed because they are clearly in favour and supports of free market. Trubek and Santos<sup>23</sup> are other writers that added their voices on how legal scholars view development by stating the role law might play in development planning. Alesina opines<sup>24</sup> that development aid regulatory and Collier posits that the causes of failure

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<sup>16</sup>Part of the aims and objective of NEPAD includes strengthening mechanisms poverty eradication, management and resolution at the sub-regional and continental levels, and to ensure that these mechanisms are used to restore and maintain peace, promoting and protecting democracy and human rights in their respective countries and regions, by developing clear standards of accountability, transparency and participatory governance at the national and sub-national levels, restoring and maintaining macroeconomic stability, especially by developing appropriate standards and targets for fiscal and monetary policies, and introducing appropriate institutional frameworks to achieve these standards, instituting transparent legal and regulatory frameworks for financial markets and the auditing of private companies and the public sector, revitalising and extending the provision of education, technical training and health services, with high priority given to addressing the problem of HIV/AIDS, malaria and other communicable diseases, promoting the role of women in social and economic development by reinforcing their capacity in the domains of education and training; by developing revenue-generating activities through facilitating access to credit; and by assuring their participation in the political and economic life of African countries, building the capacity of the states in Africa to set and enforce the legal framework, and to maintain law and order.

<sup>17</sup> George Schwarzenegger, 'The Province and Standards of International Economic Law' (1948) (2,) (.3) pp.402 – 420 *The International Law Quarterly*, Cambridge University Press on behalf of the British Institute of International and Comparative Law. E. J. Wells.

<sup>18</sup> Frank Garcia, and Linda Ciko, 'Theories of Justice and International Economic Law' (2011) *Boston College Law School*.

<sup>19</sup>AnupShah. 'Foreign Aid for Development Assistance' (2004) p.2 <<http://www.globalissues.org/article/35/foreign-aid-development-assistance.Countries>, *Economic Journal*, 97(387), 616–641. (accessed on February 20, 2016). Dambisa's argument on 'Why Foreign Aid Is Hurting Africa' (2009).>accessed on the October 7 , 2016) <<https://www.bartleby.com/essay/Why-Foreign-Aid-Is-Hurting-Africa-PKJLWS2KTC>>.

<sup>20</sup>R Ishaya, 'Why Africa must develop infrastructure – World Bank Report' (2017) <<http://www.nan.ng/business/why-africa-must-develop-infrastructure-world-bank>>. <accessed on July 28 2017>.

<sup>21</sup>NsnvyBirdsall, 'Seven Deadly Sins: Reflections on Donor Failings' (2005) ( 5) p.7 *Working Paper Centre for Global Development*.

<sup>22</sup> Williams Easterly, *Reliving the 50s: the Big Push, Poverty Traps, and Takeoffs in Economic Development* ( 1<sup>st</sup>edn. 2005) *New York University*.

<sup>23</sup>D Trubek & MA Santos, 'The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice' (2006) in *The New Law and Economic Development: A Critical Appraisal*, Cambridge University Press.

<sup>24</sup>A Alesina & David Dollar, 'Who Gives Foreign Aid to Whom and Why?' (2000) ( 5) pp. 33-63 *Journal of Economic Growth*, Springer.

of development in developing countries may be linked to a sub-set of traps<sup>25</sup> such as civil wars and bad governance. He suggests the G8 will have to adopt preferential trade policies and ‘enact new laws against corruption.

The preferential trade treatment was implemented by WTO and clogged by its rules of quantitative restriction stagnates Africa’s trade growth. Lundsgaarde, Breunig and Prakash<sup>26</sup> view economic development as ‘representing bitterness, unfriendliness of the poor countries over the rich nations who have been adamant as a driving force towards the poor region of developing countries’. Dollar and Alesina believes ‘foreign aid can be instrumental to growth which developed countries can employ to alleviate resources of the developing countries, reduce inequalities, and support policy reforms.<sup>27</sup> In all of the above literatures, an input which runs through most of the definitions of law and economic development are that they indicates the inevitability of continuing desire for human development and poverty alleviation especially in sub-Saharan Africa.

#### 4. AfCFTA and Intra-African Trade from Regional Trade Agreements

According to Faizel Ismail,<sup>28</sup> the Continental free trade zone within Africa is the most ambitious expression of another dream and vision of Pan-African leaders Kwame Nkrumah, Genorge Padmore, Leopold Senghor and W.E. B. Du Bois. The idea started in 2015 which was focused on the sole trade and regional integration of the African Continent. It is a fifty (50) year program and it is to form the main Agenda of 2063 vision for the transformation of the African states. There are various trade Agreements and Associations that have come together for the common good of trade and free movement within their region. Thus, there are Economic Communities of West African States (ECOWAS) South African Development Communities (SADC), East and Central African Communities (ECAC) and other block trade organisations such as Commodities of Eastern and Southern Africa (COMESA) and many others. This paper advocates trade development in terms of Africa having her own trade organisation but noting that the existence of political differences and border policies, AfCFTA<sup>29</sup> may not have been the answer to the problem of development in Africa. The following areas need be considered further:-

- i. That Africa must ensure that the architecture of regional integration is asymmetrical in favour of the Small Vulnerable Economies (SVEs) and the Least Developed Countries (LDCs) but these was not clearly provide for in the Act.
- ii. That Africa must prioritise the fullest participation of all Africa’s members in regional productive value chains that enhance Africa’s industrialization. This position is not also sorted out and the lacuna created in the article give free hands to countries to freely close their borders on economic and security reasons.
- iii. Adding my own voice is that Africa must also strive to facilitate the cooperation of member states towards the building of cross border infrastructure towards human and trade development even though this might take long process but in the end, it would be an enduring solution for parties to the agreement.

Agenda for the AfCFTA for 2063 will provide Africa with a powerful tool and negotiating mandate to drive the process of engagement between Africa and its main trading partners, multilaterally in the World Trade Organisation

<sup>25</sup>Paul Collier, ‘The Bottom Billion: Why The Poorest Countries are Failing and What Can Be Done About It’ (2007) pp 3-10 *Oxford University Press, Inc.*

<sup>26</sup>Erik Lundsgaarde Christian Breunig Aseem Prakash, ‘Trade versus Aid: Donor Generosity in an Era of Globalization’(2007) (40,) (2) pp. 157-179, *Policy Sciences, Springer*

<sup>27</sup> Paul Collier, David Dollar, ‘Development Effectiveness: What Have We Learnt?’ (2004 ) pp3-5 *The Economic Journal, Policy* .

<sup>28</sup>F Ismail, ‘Trade and Industrial Policy: Working Paper Advancing the Continental Free Trade Area (CFTA) and Agenda 2063 into context of the changing Architecture of Global Trade’ (2016). P.12 *Trade & Policy Strategies*. <info@tips.org.za>accessed on April 10, 2018

<sup>29</sup> Article 4 of the Agreement establishing the Freed Trade Areas is to the effect that for purposes of fulfilling and realising the objectives set out in Article 3, provided that State Parties shall:

- (a) progressively eliminate tariffs and non-tariff barriers to trade in goods;
- (b) progressively liberalise trade in services;
- (c) cooperate on investment, intellectual property rights and competition policy;
- (d) cooperate on all trade-related areas;
- (e) cooperate on customs matters and the implementation of trade facilitation measures;
- (f) establish a mechanism for the settlement of disputes concerning their rights and obligations; and
- (g) establish and maintain an institutional framework for the implementation and administration of the AfCFTA.

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and bilaterally with the European Union,<sup>30</sup> the United States, China and other countries.<sup>31</sup> The misgiving in the whole arrangement of the continental trade agenda is whether the leopard has changed its spots in terms of Africa's leadership style. Other writers like Bach<sup>32</sup> and Baldwin<sup>33</sup> had earlier stated that trade integration which forms treaty between different economies (and in case of Africa divergent) economies poses controversy in terms of politics and economic rivalries. On issue of tariff which is the main factor behind intra-trade agreement, in 2016, Karingi<sup>34</sup> and Davies point out that the average applied tariff within each of the above regional formations has been substantially reduced from zero per cent for the EAC but failed to point out the economic growth achievement of any of the member countries since year 2000. The United Nations Economic Commission for Africa report produced by Friedrich Ebert Stiftung is to the effect that 'given that governments have obligations to mobilise resources for human rights purposes, it is necessary to take into consideration of the full breadth of implications of tariff reductions and consider with utmost care its implications.'<sup>35</sup> This suggestion cuts across the vulnerable groups and some weak economic states in Africa. Frankel and Rose posit that on the average, regional trade arrangements can have positive effect on intra-regional trade, noting that regional integration is seen as a pathway to ensuring a bigger access to larger market, resulting in high economic gains<sup>36</sup> however, issues of security and states industrial stratification by the AfCFTA was not considered in their paper. Africa already faces an integral level of a complicated grid of multiple and overlapping members of several regional integration and organisation which aims to increase regional trade.

### **Need for Establishment of a Single Umbrella Trade Institution as Panaceas to Trade Development in Africa**

According to United Nation, African Continental Free Trade Agreement ((AfCFTA)<sup>37</sup> is expected to boost and drive up Intra-African trade by 52 percent Gross Domestic Product (GDP).<sup>38</sup> However, the misgiving behind the effect of this agreement is whether this AfCFTA will respect the protection of infant industries in the states who are parties to this agreement.<sup>39</sup> One of the grey areas of this agreement is how exactly it is intended to boost African trade

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<sup>30</sup>Deloitte & Touche, 'The Deloitte Consumer Review: Africa: A 21<sup>st</sup> Century View' (2014) , Available on <http://www2.deloitte.com/content/dam/Deloitte/au/Documents/international>  
Deloitte & Touche (2014) ,The Deloitte Consumer Review. Africa: A 21<sup>st</sup> Century View  
<<http://www2.deloitte.com/content/dam/Deloitte/au/Documents/internationalSpecialist/deloitte-au-aas-rise-african-middle-class-12.pdf>>accessed on July 25, 2017

<sup>31</sup>*Ibid.*

<sup>32</sup> Daniel C Bach, 'Regionalism in Africa: Genealogies, Institutions and Trans-State Networks' (2<sup>nd</sup>edn. Routledge, Oxford 2016) pp.2-5, 17 -25

<sup>33</sup>R Baldwin, 'Multilateralising 21st Century Regionalism' (2013) p.7 OECD<<http://voxeu.org/article/multilateralising>>accessed on Mary 21, 2017).

<sup>34</sup> S Karingi, W Davis, 'Towards a Transformative African Integration Process: Rethinking the Conventional Approaches' (2016) *United Nations Economic Commission for Africa*.

<sup>35</sup>Friedrich Ebert Stiftung, 'The Continental Free Trade Area (CFTA) in Africa – A Human Rights Perspective (2017) p.5 *Report - United Nations Economic Commission for Africa*.

<sup>36</sup>J. A **Frankel** and Andrew K. **Rose** , 'An Estimate of the Effects of Currency Unions on Trade and Growth' (2000)p.4 *Kennedy School of Government, Harvard University, Cambridge, MA and Haas School of Business, University of California, Berkley, CA*.

<sup>37</sup> Article 3 is on the general objectives of the AfCFTA which are mainly to:-

- (a) create a single market for goods, services, facilitated by movement of persons in order to deepen the economic integration of the African continent and in accordance with the Pan African Vision of 'An integrated, prosperous and peaceful Africa' enshrined in Agenda 2063;
- (b) create a liberalised market for goods and services through successive rounds of negotiations;
- (c) contribute to the movement of capital and natural persons and facilitate investments building on the initiatives and developments in the State Parties and RECs;
- (d) lay the foundation for the establishment of a Continental Customs Union at a later stage;
- (e) promote and attain sustainable and inclusive socio-economic development, gender equality and structural transformation of the State Parties;
- (f) enhance the competitiveness of the economies of State Parties within the continent and the global market;
- (g) promote industrial development through diversification and regional value chain development, agricultural development and food security; and
- (h) resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes.

<sup>38</sup> See UN Commentaries on African Trade Agreement. <https://www.uneca.org/publications/african-continental-free-trade-area-questions-answers> accessed on 22, October, 2019.

<sup>39</sup>C Mwai, 'How CfCTA Will Boost Intra-African Trade' (2018) pp.1-3  
<<http://www.newtimes.co.rw/section/read/230886/>>accessed on 9 April 2019

development as development is not automatic. It is on record that most of African governments signed a AfCFTA recently, all committed to cut tariffs on 90 per cent of goods to bolster intra-African trade and push up growth, Nigeria, being the largest economy and most populous nation within Africa has in the wake of such agreement taken bold step to protect her home grown products against foreign domination and this is allowed by law. The initiatives of AfCFTA is already suffering a set back because, like the Kyoto Protocol, the excuse America gave for not signing that Agreement was that it would ‘*hamstrings her economy*’. Nigeria, as the giant of Africa may be perceived from that direction. The major pitfalls on the intra-trade agreement is that as stated by Nigerian President, such agreement must as a matter of policy, irrespective of how good is the object of the continental aspirations, must and should complement the national objective of each state.

The place of intra-African Trade is not the same thing as establishing an Africa’s own single umbrella trade organisation within Africa for Africa. The examination of the challenges for regional trade agreements within African which posed difficulties for regional trade by non implantation of regional trade agreement and insights on how to enhance implementation of existing agreements was not exhausted before the idea of AfCFTA came into being. The following are some of the pertinent questions raised at the 16<sup>th</sup> Session of the United Nations on African trade and Development in 2013:

- (i) What are the opportunities for cross border trade in African and why most of the opportunities are not been fully exploited?
- (ii) How can African countries enhance implementation of existing regional agreement to boost intra African trade?
- (iii) What factors limits the capacity of African enterprises to produce goods and services that are competitive in export markets?
- (iv) How can African Countries ensure that intra-African trade is driven primarily by national and regional entrepreneurs to maximise benefits for Africans?
- (v) How can the benefits of regional trade be widespread and distributed across countries?
- (vi) What are factors reasonably foreseeable as inhibiting intra-African trade and how can Africa come out such problems?

The 2013 UN report on African trade had it that intra- African trade presents opportunities for sustained growth and development in Africa. However, the report of 2009 was on strengthening regional economic integration for the development of Africa while the report of 2011 is on fostering industrial development in Africa in the new global environment. In all of these, the report of 2013 differs in the following areas.

- i. Unlike previous studies, the 2013 studies stresses on how to incorporate the private sector into continuing efforts to boost intra-African trade. It focuses on how to strengthen the private sector to promote intra-African trade.
- ii. On the other hand, it argues that the lack of productive capacity is a major obstacle to expanding intra - African trade and should be given as much attention by African policymakers using the elimination of trade barriers as a test case.
- iii. It also provides new and specific ideas on how to enhance implementation of existing regional trade agreements with a view to boosting intra-African trade.
- iv. The fourth difference is that it stresses the need for an alternative approach to regional integration in Africa.
- v. The new approach calls for a move away from a linear model of integration, which lays undue emphasis on processes, into a more pragmatic and results -oriented approach to integrative dynamism.

African Union summit sees intra-African trade and AfCFTA as watersheds for African economic and trade growth without focussing its minds on the fact that it may be another ‘*new wine in an old wine skin*.’ The intra-African trade was viewed as an urgent initiation which immediate implementation would provide quick gains, impact on socio-economic development and enhance confidence on the achievement of its goals. The best way out to boosting African economic development is to have a legal framework for the establishment of a single trade organisation for all of Africa just as is obtained in World Trade Organisation.

## 5. Conclusion and Recommendation

The question to ask is what was wrong with the previous regional arrangement as highlighted above? As the ailment with the regional integrations which has proved not to be of help in terms of growth been sorted out or cured; if not, AfCFTA or Intra-African Trade Agreement is not the answer to the region’s Trade Development. This is because

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the AfCFTA may yet witness some hiccups in the areas of distribution of cost and benefits, security problems and variation of the numbers of sensitive products. This is similar to the problem with the definition of 'likeness product' in WTO rules where the Appellate body ran into difficulties of the technicality of arriving at which product is in "likeness of the other." Furthermore, the continental free trade zones may experience slow pace and sluggishness as transition process can be very difficult if most products and factor markets are not sufficiently flexible.<sup>40</sup> This paper recommends that the weakness attached to AfCFTA which will frustrate the effort of the policy makers should be removed<sup>41</sup> The paradigm shift in Africa's trade development should rather be targeted towards the establishment of a single umbrella trade organisation as against the AfCFTA or the existing intra African trade agreements as the primary reason for the slow achievement of the regional trade development are still present The Article setting up the Agreement should be amended to address the lacuna. Besides, there are conflicting trade rules, cross-border restriction as recently displayed by Nigeria which closed her borders with neighbouring African countries. This paper recommends that poor transport networks and host of other technical problems should be avoided . Furthermore, this paper recommends that Africa should establish of a single umbrella trade Organisation where there will be a polling of like products in measures by African States for an International Trade competition.

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<sup>40</sup>*Ibid.*

<sup>41</sup>M Tafirenyika, 'Intra-Africa Trade: Going Beyond Political Commitments Progress will come when the Agreement are Implemented' (2014), <http://www.un.org/africarenewal/magazine/august-2014/intra-africa-trade-going-beyond-political-commitments>.(accessed on May 26, 2017).