BI-LATERAL TRADE AGREEMENTS AND ECONOMIC SOVEREIGNTY: A CASE FOR NIGERIA*

Abstract

The quest for development and sustainability through improved trade has caused States to consider, negotiate, enter into and implement trade agreements with other States in order to liberalise their markets. The main motivation is the reduction/elimination of custom duties, barriers and the promotion of goods and services in markets. Agreements are thus made to supervise these relationships. These agreements can be multi-lateral or Bi-lateral in scope. Bi-lateral trade agreements are now a primary means through which improved social services, guaranteed rights of investor access to investment opportunities, privatisation of public service goods and less restricted access to markets are being realised. Despite the numerous benefits of Bi-lateral Trade Agreements, it is undoubtedly accompanied with a plethora of demerits with the diminution of the ability of a State to manage its economic and monetary affairs without external influence and control—its economic sovereignty. The impact of these agreements on such States are equally numerous ranging from trade imbalance and deficit, free movement of goods and services to capital flight, brain drain as well as steady diminishment of the nation's economic sovereignty and the inability to take decisions on certain international matters. Nigeria enjoys numerous Bi-lateral Trade Agreements and Relationships with other States in its resolve to foster its economic development. These agreements have in no small measure fostered the overall growth of the Nation's economy. However, have these agreements, as noble as they seem, chipped away at the Nation's economic sovereignty? This will be addressed in this paper.

Keywords: Trade Agreements, Bi-Lateral, Economic Sovereignty, Nigeria

1. Introduction/Historical Background

The doctrine of mercantilism dominated the trade policies of the major European powers for most of the sixteenth century through to the end of the eighteenth century. The key objective of trade, according to the mercantilists, was to obtain a 'favourable' balance of trade, by which the value of one's exports should exceed the value of one's imports. The mercantilist trade policy discouraged trade agreements between nations as governments tended to assist local industry through the use of tariffs and quotas on imports as well as the prohibition of exporting tools, capital equipment, skilled labour, or anything that might help foreign nations compete with the domestic production of manufactured goods. One of the best examples of a mercantilist trade policy during this time was the *British Navigation Act of 1651*. Foreign ships were prohibited from taking part in coastal trade in England and all imports from continental Europe were required to be carried by either British ships or from a ship that was registered in the country where the goods were produced. The whole doctrine of mercantilism would come under attack through the writings of foremost political economist Adam Smith who stressed the desirability of imports and stated that exports were just the necessary cost of acquiring them. His theories gained increasing influence and helped to ignite a trend towards more liberalized trade.

Ever since political economists like Adam Smith[1] extolled the virtues of the division of labour and explained the comparative advantage of trading with other nations, the modern world has become increasingly more economically integrated. International trade has expanded, and trade agreements have increased in complexity. Thus, international trade flows began to grow and gain momentum. Unfortunately, the First World War would prove to be fatal for the trade liberalization that had begun in the early nineteenth century. The rise of nationalist ideologies and dismal economic conditions following the war served to disrupt world trade and dismantle the trading networks that had characterized the previous century. The new wave of protectionist trade barriers moved the newly formed League of Nations to organize the First World Economic Conference in 1927 in order to outline a multilateral trade agreement. Yet, the agreement would have little effect as the onset of the Great Depression initiated a new wave of protectionism. The economic insecurity and extreme nationalism of the period created the conditions for the outbreak of World War II. With the U.S. and Britain emerging from the Second World War as the two great economic superpowers, the two countries felt the need to engineer a plan for a more cooperative and open international system. Thus, the General Agreement on Tariffs and Trade (GATT) was created and designed to encourage the reduction of tariffs amongst member nations and thereby provide a foundation for the expansion of multilateral trade, the period that followed saw increasing waves of more regional trade agreements. Serving to spark numerous other regional trade agreements in Africa, the Caribbean, Central and South America, the GATT agenda was pushed forward as other countries looked for further tariff

* **By Chiugo ONWUATUEGWU, LLM, BL,** Lecturer, Department of Commercial and Property Law, Faculty of Law, Nnamdi Azikiwe University, Awka.

[1] Adam Smith (16 June 1723 – 17 July 1790) was a Scottish economist, philosopher, and author. He was a moral philosopher, a pioneer of political economy, and was a key figure during the Scottish Enlightenment era. Smith studied social philosophy at the University of Glasgow and at Balliol College, Oxford and is regarded as the father of modern economics. He is best known for two classic works: *The Theory of Moral Sentiments* (1759), and *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776).

reductions to compete with the preferential trade that European partnership engendered. The push for regionalism was likely due to a growing need for countries to go beyond the GATT provisions, and at a much quicker pace.

The World Trade Organization (WTO) is an institution of international character which guides international trade. The WTO was established on January 1, 1995 under the Marrakesh Agreement[2] and signed by 123 States on April 15, 1994. This subsequently replaced the General Agreement on Tariffs and Trade (GATT) which was established in 1948. The General Agreement on Tariffs and Trade (GATT) was a multilateral agreement which served the purpose of regulating international trade. According to its preamble, its purpose was the gross and substantial reduction of tariffs and other trade barriers among States in trade relations and the elimination of preferences on a reciprocal and mutually advantageous basis. This agreement was negotiated by States during the United Nations Conference on Trade and Employment and was adopted following the failure of negotiating States to establish the International Trade Organization (ITO). GATT was accepted and signed by 23 States in Geneva on October 30, 1947 and came into effect on January 1, 1948. It remained effective until the signature by the 123 States in Marrakesh on April 14, 1994 during the Uruguay Round Agreements, establishing the World Trade Organization (WTO) on January 1, 1995. However, despite the creation of the WTO, the original GATT text (GATT 1947) is still in force under the WTO framework subject to the amendments of GATT 1994.[3] The GATT agreement was the only major framework adopted by States as governing international trade until the creation and the establishment of the WTO. The GATT framework of trade relations evolved to become an accepted global trade organisation that eventually had an estimated number of 130 States carrying out trade relations under its framework. Through a number of negotiating rounds, the GATT was extended or modified by numerous supplementary agreements, codes, waivers and exemptions, final reports of dispute-resolution panels, and decisions of its governing body. During one of its negotiations which ended in 1994, the original GATT and all amendments made to it and presented before the Uruguay Round were cumulatively renamed GATT 1947. These set of agreements and negotiations were differentiated from GATT 1994, which consists of the amendments, modifications and clarifications made during the Uruguay Round also known and called Understandings as well as a number of other multilateral agreements on merchandise. GATT 1994 became a fundamental part of the rounds of agreements that established the WTO. States, in turn, carry out these objectives envisaged in GATT and other Agreements through the instrumentality of Trade Agreements. Trade Agreements can be Bi-lateral, multi-lateral, Plu-lateral.

A bilateral trade agreement is a treaty entered into by two States which promotes the exchange of goods between the two States thereby facilitating trade and investment by reducing or eliminating tariffs, import quotas, export restraints and other trade barriers as well as promoting economic development abroad and more.[4] Put in another way, it is an exchange agreement between two nation or trading groups that gives each party favoured trade status pertaining to certain goods obtained from the signatories. The agreement sets purchase guarantees, removes tariffs and other trade barriers.[5] This form of agreement is a reciprocal treaty where the benefits are reaped by exporters and importers from the parties to the agreement. The purpose of these agreements is to lower trade barriers between cooperating nations although not necessarily applied to only the countries negotiating the agreement and ultimately promote greater economic integration between the participants. The goal of bilateral trade agreements is expanding access between two countries' markets and increasing the countries' economic growth. However, these agreements must be seen in a global context as stepping stones towards full integration into a global free market economy. They are another way to ensure that governments implement the liberalisation, privatization and deregulation measures which form the crux of the objectives of the World Trade Organisation (WTO).[6]

2. Bi-Lateral Trade Agreements and Economic Sovereignty

Bi-Lateral Trade Agreements

Despite the right to economic sovereignty which States enjoy over their territories, natural and non-natural resources under the New International Economic Order (NIEO) as guaranteed in the The Charter of Economic Rights and Duties of States of 1974. Trade policies remain a key component of a State's foreign policy. The

[2] The Marrakesh Agreement, manifested by the Marrakesh Declaration, was an agreement signed in Marrakesh, Morocco, by 124 nations on 15 April 1994, marking the culmination of the 12-year-long Uruguay Round and establishing the World Trade Organization, which officially came into being on January 1, 1995. The agreement developed out of the General Agreement on Tariffs and Trade (GATT), supplemented by a number of other agreements on issues including trade in services, sanitary and other related measures, trade-related aspects of intellectual property and technical barriers to trade. It also established a new, more efficient and legally binding means of dispute resolution. The various agreements which make up the Marrakesh Agreement combine as an indivisible whole; no entity can be party to any one agreement without being party to them all.

[3] 'World Trade Organization', accessed on April 1,2023,https://en.wikipedia.org/wiki/ World Trade _ Organisation.

[4] 'Bilateral Trade Definition' ,accessed on September 2, 2022, http://www.investopedia.com/terms/b/bilateral-trade.asp#ixzz4d9YrEhuP

[5] *Bilateral Trade Agreement*,' accessed on September 2, 2022, http:// www. businessdictionary.com/ definition /Bilateral-Trade-Agreement.html

[6] 'FTAs', accessed on September 2, 2022, http://www.bilaterals.org/?-ftas-

establishment of beneficial trade relationships can facilitate domestic growth and industry expansion, development of an efficient global marketplace while simultaneously strengthening a State's political capacity in the international world. Global markets offer vast commercial opportunities that far outweigh opportunities that exist within a domestic economy**.** These opportunities are effectively utilized through the instrumentality of trade agreements. An online research site- Wikipedia- defines a trade agreement as 'A wide ranging tax, tariff and trade treaty that often includes investment guarantees.'[7] Trade agreements are usually negotiated and concluded in order to establish more free and flexible markets for the purposes of trade relationships envisioned between the signatories. Trade Agreements are of various forms one of which are Bilateral Trade Agreements (BTAs). Bilateral trade is also defined here as the exchange of resources and goods between two States with the purpose of fostering trade and investment by reducing or eliminating tariffs, import quotas, and such other trade barriers.[8]

Bilateral Trade Agreements are defined as 'Agreements entered into between two States whereupon both States agree to reduce or remove trade restrictions and barriers with the purpose of expanding trade opportunities.'[9] Bilateral Trade Agreements, in addition to being agreements between States also encompasses agreements between States and private investors of other States. This typically involves the reduction or removal of tariffs and establishing preferential trade status with each other. The central goal of Bilateral Trade Agreements is to give two States free and unrestricted access to each other's markets. As such, they are better referred to as 'preferential' agreements because they are discriminatory in favour of the participants to which they relate and to the exclusion of other countries. The central goal of BTAs is to give the two States free and unrestricted access to each other's markets.[10] Bilateral Trade Agreements are classified into two: Market-restoring BTAs and Market-creating BTAs. Market-restoring BTAs are BTAs which States engage in for the purposes of restoring trade links with other States that existed prior to Multilateral Trade Agreements which has hitherto weakened. This form of Agreement was developed as a result of disenchantment with the pace of progress with liberalisation at the multilateral level and in response to the global trading environment. As the world trading system began carving into economic blocs, States that did not belong to Multilateral Trade Agreements felt compelled to enter into BTAs with allied States in order to secure regional markets. Market-creating BTAs are BTAs which involve States seeking to strengthen trade and investment relations when there has been little or weak economic relations in the past due to trade barriers or other regulatory or commercial restrictions. This agreement is usually between developed economies, which have little left to liberalise on the tariff front but are looking for better access to new markets and developing economies, which are in need of industrialised goods and foreign investment.[11]

Economic Sovereignty

States are masters of and over their own territory. They have jurisdiction over their nationals, individuals and corporations alike. Thus, States enjoy broad and wide powers to pursue and enforce regulatory interests for economic purposes. Each State enjoys freedom from any external constraints and undue influence imposed on them by other States. The accumulation of these powers and independence is commonly called Sovereignty.

However, the increase of economic activities amongst States as a result of Globalization and inter-dependence has necessitated the recognition of some form of Economic Sovereignty with the aim of safeguarding the concept of 'Sovereignty and Equality of States' consistent with the fundamental norms and tenets of International Law. There is no gainsaying the fact that economic functions are central to government policies in the promotion of economic welfare. It is noteworthy that the crux of International Economic Law lies in the shaping of a State's economic sovereignty. Hence, political sovereignty without economic sovereignty translates into a mockery of independence. Sovereignty in the international economic sphere relates mainly to the management of a State's permanent resources, its economic system and its rules of engagement in international economic relations. The Charter of Economic Rights and Duties of States of 1974[12] reflects the concept of Economic Sovereignty of States in Article 2(1): 'Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities'. Article 32 forbids the employment of any such economic measures which aim at the subjection of one State to another in exercising sovereign rights.[13]

---

[7] 'Trade agreement*',* accessed on September 2, 2022,https://en.wikipedia.org/wiki/Trade_agreement

[8] 'Bilateral Trade', http://www.investopedia.com/terms/b/bilateral-trade.asp#ixzz4cR73K3rl Accessed September 2, 2022

[9] Kimberly Amadeo, 'Free Trade Agreement, types and examples', https://www.thebalance.com/free-trade- agreement-types-and-examples-3305897

[10] Olagbegi-Oloba and Odetola, Oluwadamilola 'Revisiting bilateral trade agreements between African and non-African states*'* last accessed September 2, 2022,http:// www.ibanet.org /Article/ Detail.aspx ?Article Uid=e94 bbe53-20a7-461f-9121-aba6736be022

[11] Jayant Manon, 'Dealing with the Proliferation of Bilateral Free Trade Agreements', (2009): 1393-1394, accessed on September 2, 2022, https://www.researchgate.net/publication/46538322

[12] Charter of Economic Rights and Duties of States, GA Res. 3281 (XXIX),(12 December 1974)

[13] M. Herdegen, *Principles of International Economic Law,* (UK: Oxford University Press, 2013) 65-66

The Concept of Economic Sovereignty is built on the notion that independent states ought to be free to control their various economies having attained political independence which is premised upon the fact that each state is equal and sovereign as guaranteed under International Law. Nwikpasi[14] in his definition of an Economic Sovereignty posits that:

> Economic sovereignty refers to the right of a State to freely and willingly choose and develop at home the type of economic system it wants and to maintain vis-à-vis the outside world the type of economic relations its wishes without foreign influence. This means that a Country has the right to choose an economic policy for instance, Capitalism, Socialism or Communism or a mixed economy without any influence from a foreign state. The government of a country has the right to mastermind her- own economic policies and make efforts to ensure that it works. …There is no gain saying the fact that economic sovereignty is the real sovereignty so to speak, because mere political independence which is not backed up by economic power makes a nation to be tossed around by the Super Powers in international politics.[15]

Economic Sovereignty is beyond control over resources within the borders of a Sovereign State, it also entails the freedom a State has to choose its economic system and implement same. Its ability to choose its economic system determines its external economic policies and that is the crux of Economic Sovereignty.

Subedi[16] in his work further posits that:

> When states began to function as politically independent and sovereign entities, they realised that one of the most important attributes of state sovereignty was economic sovereignty. Without this, political sovereignty was not complete. Asserting economic sovereignty meant having control over the economic activities of both juridical and natural persons conducting business within the country, whether nationals of that country or foreigners…..[17]

Despite the popular notion of Economic Sovereignty, It is worthy to note that Economic Sovereignty is more about technical capacity, expertise and strength of the economy of a State than it is about public administration. The relativity and interdependence of States in International Law equally applies to the economies.

3. BTAs and the Economic Sovereignty in Nigeria

The Benefits of Bi-lateral Trade Agreements

Bilateral Trade Agreements open the doors of a State's economy to Foreign Direct Investment (FDI). A number of benefits accrue from FDI which include: (a) Augmentation of domestic capital (b) Transfer of technology, knowledge and skills (c) Promotion of competition and innovation (d) Employment and enhanced output (e) Export and revenue performance. However, these must be weighed against their costs such as (a) Anti-competitive and restrictive business practices (b) Tax avoidance and abusive transfer pricing (c) Volatile flows of investment (d) Transfer of polluting activities and technologies (e) Excessive influence on economic affairs with possible negative effects on industrial development and national security. A country desirous of hosting FDI must of necessity institute policies aimed at maximizing the direct and indirect benefits as well as in minimizing the possible negative impacts.[18] Bringing the Nigerian State into focus, a major Bilateral Trade Agreement partner with the Nigerian State is China. As a result of the BTAs between China and the Nigerian State, China and the Nigerian State remain strongly complementary to each other economically and Chinese export commodities to the Nigerian State are relatively cheap and of high quality compared to their western counterparts, suitable for the consumption of the African market and greatly welcomed by the Nigerian consumers. China imports resources from African countries like oil, mineral products and timber etc. which are indispensable for Chinese economic construction and sustainable development. China-Nigeria trade maintained increased promotion of economic development and improvement of the citizenry's standard of living in both China and Nigeria. [19]

---

[14] Nwikpasi N.T. is a Lecturer-in-Law at the Rivers State Polythenic, Bori-Ogoni, Delta State, Nigeria.

[15] Nwikpasi N.T. *Appraisal of the Concept of Economic Sovereignty in International Law,* accessed on **September 2, 2022**, http://reikojournals.org/index.php/the-journal-of-social-and-economic?id=272

[16]Professor Surya P. Subedi, is a Professor of International Law at the University of Leeds, specialising in the fields of Public International Law, International Investment Law, WTO Law and International Human Rights Law.

[17] Subedi S.P., *International Economic Law* (2006) p. 22-23, accessed on September 2, 2022, http://www. London international .ac.uk/sites/default/files/international_economic_law.pdf

[18] Gboyega Alabi Oyeranti, Musibau Adetunji Babatunde, E. Olawale Ogunkola, 'An analysis of China-Nigeria investment relations.' *Journal of Chinese Economic and Foreign Trade Studies*, 4, no. 3,(2011):193

[19]Ministry of Commerce People's Republic of China'Great Achievements in Trade and Economic Cooperation*',*accessed on April 3, 2023, http: //engl ish.mofcom .gov.cn/ article/ speech/ 200601 /200601 01413962.shtml-----China had always insisted on developing bilateral trade relations with African countries with the principle of 'equality and mutual benefit, various forms, focus on practical effect and common development'. China-Africa trade was 10 times of that 10 years before, 30 times of that 20 years before and even over 100 times of that30 years before. The bilateral trade had an extensive prospect of development. During the period from 2001 to 2004, the bilateral trade kept an annual growth rate of about 40%. The fast growth in China-

The downside of Bi-lateral Trade Agreements

Conversely, the BTAs were secured by the developing States at great a cost to their independent sovereignties as guaranteed by international law. For example, In December 2022, China exported $1.93B and imported $129M from Nigeria, resulting in a trade deficit of $1.8B. Between December 2021 and December 2022 the exports of China have decreased by $-96.1M (-4.74%) from $2.03B to $1.93B, while imports decreased by $-241M (-65.1%) from $370M to $129M.[20] A number of these downsides are: BTAs resulted in free movement of goods and services under the 'No-tariff and import barrier' rule—a policy that succeeded in rendering developing States into 'Economic colonies'. This policy has equally ensured that African States remain neck-deep in debt as the revenue generated from import duties which is needed to drive infrastructural development is not available. BTAs championed the 'Free and equal treatment' rule that has successfully rendered the manufacturing sectors of developing States comatose as it is economically strangulating for the local producers to favourably compete with their more developed counterparts. Secondly, in spite of this, profits realised by the investors are repatriated to the home State, a practice which is basically a spin off on the economy of the host State. BTAs resulted in gross trade deficit in trade volumes between the developed State on the one hand and the developing State on the other hand. This has resulted in diminished revenue for the developing States who end up turning to the 'Economic Imperialists' for aid to drive infrastructure. In terms of dispute resolution, International Commercial Arbitration is the majorly accepted way of settling trade disputes under BTAs. This development strips the developing, in this case, African States from the right to sanction economic violations which occurs in its territory.

4. Conclusion

Bi-lateral Trade Agreements despite its acclaimed promises in developing the economies of States is equally plagued with a number of shortfalls. To get the best of BTAs, participating States must ensure that its interest is not truncated on the altar of trade agreements. Despite the economic gloom facing the State, Nigeria remains capable of charting its own economic course while engaging in Bilateral Trade Agreements with other States. This can be achieved through the following means:

- Domestic industries must be subsidized to cushion them from economic shocks. Import duties should not be the exclusively for Nigerians, instead, it is the other way round. Cottage industries should be incubated and encouraged.
- Nigeria is an all-round resource rich State, natural and non-natural, as well a massive market for goods in Africa. This places the State at a unique advantage in its Bilateral Trade Relations with other States. It is recommended that Nigeria leverages on this enormous asset to attract concessions vital to National interest such as Technological transfers, Infrastructural development, capacity building amongst others.
- There is urgent need for Nigeria to adopt The Import Substitution Industrialisation (ISI) policy as an indispensible pole in its foreign economic policy which is greatly needed by developing States to drive industrialization. The Import substitution industrialization (ISI) is a trade and economic policy which advocates replacing foreign imports with domestic production. Import substitution refers to the use of domestic products to replace imported goods by limiting the import of foreign industrial manufactured goods to promote domestic industrialization. Import Substitution Policy refers to a State's drive to adopt various measures to restrict the import of certain foreign industrial products, promote domestic industrial production to replace imported goods as well as create favourable conditions for the domestic industrial development. ISI is based on the premise that a country should attempt to reduce its foreign dependency through the local production of industrialized products.
- The prevailing state of trade deficit (trade imbalance) must be reduced considerably by encouraging domestic production. The manufacturing sector as well as the Small and Medium scale Enterprises (SMEs) should be given maximum government cooperation, low or no interest loans should be available to them through the Bank of Industry, taxes payable by them should be reduced to the barest minimum and local content policies should be created and strictly complied with. This is the only way Nigeria can compete favourably in trade of goods in the international market.

Africa trade was kept on in 2005 and total imports and exports reached US$39.74 billion, up by 34.9% on a year-on-year basis. According to primary statistics, by the end of Oct. 2005, Chinese enterprises invested US$1.075 billion in African counties, covering areas of trade, processing, resources exploitation, transportation, agriculture and comprehensive development of agricultural products. Meanwhile, investment policies and environment of Chinese enterprises in African countries were improved day by day. Now, China signed with 41 African countries the Bilateral Trade Agreement, with 28 African countries, Bilateral Investment Agreement of Encouragement and Guarantee, and with 8 African countries Avoidance of Double Taxation Agreement.

[20] https://oec.world/en/profile/bilateral-country/chn/partner/nga, accessed on September 2, 2022.