



Interrogating the Justification of Nigeria Land Borders Closure within Ecowas Trade Liberalisation Scheme (Etls) Framework

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Abstract

The dream of the leaders of the West African States (WAS) of integrating the region economically led to the establishment of the Economic Community of West African States (ECOWAS). The dream also led to the adoption of the ECOWAS trade liberalization scheme (ETLS) as the mechanism for banning tariff barriers (TB) and non-tariff barriers (NTB). Despite the economic integration agenda of the ECOWAS, Nigeria; one of the member states closed all her land borders which served as the trade ban on the movement of products across the land borders with the exclusion of the sea and air borders. Premised on this, the paper focused on interrogating the justification of Nigeria land borders closure with the ETLS. The study adopted qualitative method of data collection and analysis and relied heavily on documents, descriptions and observations. The documents are extant literature from journal articles, official documents, workshop and seminar papers, newspapers, magazines and internet sources.

KEYWORDS: *Borders Closure, Economic Integration, Originating Products, Regional Integration, Tariff Barriers, Non-Tariff Barriers, Trade Liberalization,*

Introduction

The interdependence of human society connected to every sphere of life influenced trade among states. The degree of influence was to the extent that states perceive the precept of international relations beyond political relations to include economic relations.¹ The importance of trade relations also influenced Leal-Arcas² to rely on Pascal Lammy postulation that trade creates economic ties and generates more wealth and therefore contributes to peace and security among states. The Leal-Arcas postulation was predicated on the belief that states that trade with each other will not engage each other with war. While Acquah³ in drawing the attention of other Governors of the Economic Community of West African States (ECOWAS) Central Bank postulated that trade provides impetus to growth. The trade includes transboundary and cross-boundary trade not limited to trade through land

borders but also include maritime and air borders.

The degree of importance attached to economic relations within the international plane also motivates states to enter into trade agreements with or without the establishment of an International Community. The essence of which is to strengthened international economic cooperation.⁴ Such Agreements may be at the international level such as the Marrakesh Agreement⁵ that establishment the World Trade Organization (WTO). Such agreements at the regional level include the treaty of Rome⁶ that established European Union (EU), the North American Free Trade Agreement (NAFTA), the African Continental Free Trade Agreement and the ECOWAS Revised Treaty that established ECOWAS. Nigeria is not left out among her counterpart of the world as the state continuing engaging in both transboundary and cross-

¹ Dominic A. Akpan and Bassey Inyang, 'Economic diplomacy, global waste trade: The African perspective since the 20th century ' [2017] 2(1) African Journal of History and Archaeology 1.

² Rafael Leal-Arcas, 'The fragmentation of international trade law: Is now the time for variable geometry' [2011] 12(2) Journal World Investment and Trade 145.

³ Paul A. Acquah, 'ECOWAS trade liberalization scheme' (Welcome remarks at the meeting of the

Committee of Governors of ECOWAS Central Banks, Accra, 30 August 2005).

⁴ Milenko Milic, 'Access of land-locked states to and from the sea' [1981] 13(3) Case Western Reserve Journal of International Law 501.

⁵ *Marrakesh Agreement* establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154, 33 I.L.M. 1144 (1994).

⁶ Treaty establishing the European Community (Consolidated version) Rome Treaty March 25, 1957 189 UNTS.

boundary trade not only with her neighbours but also with other states of the world.

The trade between Nigeria and other states are through its connectivity enhanced by sea, land and air borders which may be formal trade or informal trade. While trade between Nigeria and her non neighbouring states are dominated by formal trade, that of her neighbours are dominated by informal trade. This is because reasonable proportions of the trade are unrecorded, unofficial and illegal or illicit and thereby leads to loss of revenue on the part of Nigeria.⁷ This is because the accurate volumes of the informal import and export are unascertainable⁸ based on smuggled products. That was the situation of thing until 19 August 2019 when Nigeria announced the closure of all her land borders.⁹ The borders closure was a ban on the movement of all goods and people across the land borders through Benin, Niger, Chad and Cameroon until 16 December 2020 when it was partially open. The closures led to public discussion both in support and against land borders closure based on harshness it brought not only to the Nigerians due to skyrocketing in the price of some products that were been imported through land borders but also Nigeria neighbours.

The closures continue degenerates negative effects on the neighbouring states to the extent that some believe the closure was to oppress the neighbouring states¹⁰ and even influence ECOWAS's reaction on 9 February 2020 to inaugurate investigative committee without setting any deadline for the Committee's report.¹¹ The reactions were precipitated by Nigeria being signatories to international treaties at the world and regional level focusing on

⁷ Muhammad Othman Lawan, Alhaji Bukar Mustapha and Babajidda Malah, ' Factors influencing informal cross border cattle trade between Chad and Nigeria' [2016] 21(2) IOSR-JHSS 7; Central Bank of Nigeria, *Measuring informal cross-border trade in Nigeria* (CBN, 2016) 1.

⁸ Adetunji Musiliu Adeyinka, 'Trans-Border movement and trading activities across Nigeria-Benin Republic border' [2014] 5(1) Mediterranean Journal of Social Science 415.

⁹ This Day, 'Nigeria: Indefinite Closure of Land Borders' (All Africa, 22 November 2019)

<<https://allafrica.com/stories/201911220848.html> > accessed 27 June 2020.

¹⁰ Levinus Nwabughio, 'Border closure: Tell your govts to respect anti-smuggling protocols, Deputy Speaker urges ECOWAS lawmakers' (Vanguard, 27 November 2019) <<https://www.vanguardngr.com/2019/11/border-closure-tell-your-govts-to-respect-anti-smuggling-protocols-deputy-speaker-urges-ecowas-lawmakers/>> accessed on 5 February 2020.

¹¹ Damilola Ekpo, 'ECOWAS set to investigate Nigeria's land border closure' (Ventures Africa, 11 February 2020) <<http://venturesafrica.com/ecowas-set-to-investigate-nigerias-land-border-closure/>> accessed on 4 November 2019.

trade liberalization. One of such instruments is the ECOWAS Revised Treaty¹² and ECOWAS trade liberalization scheme (ETLS) focusing among others on abolition of non-tariff barriers (NTB) and tariff barriers (TB).¹³ This work was carried out with a qualitative method of data collection and analysis and relied heavily on documents, descriptions and observations. The documents are extant literature from journal articles, official documents, workshop and seminar papers, newspapers, magazines and internet sources. The general objective of this research is to examine the implication of Nigeria land borders closure on the ETLS.

While the specific objectives are to juxtapose the ETLS trade relationship with Nigeria and her land borders; the effect of Nigeria neighbours weak enforcement of international agreement and paradigm of the necessity of land borders closure in Nigeria. Also, the core enquiry of this work is to examine the implication of Nigeria closure of land borders closure on ETLS? While the specific enquiry is to juxtapose the ETLS trade relationship with Nigeria and her land borders. Another specific enquiry is to examine the effect of Nigeria neighbours weak enforcement of international agreement with the necessity behind Nigeria land borders closure. While further enquiry is to examine the paradigm of the necessity of land borders closure in Nigeria. As a result of which this work is divided into 5 parts with the first part focusing on the introduction, the second part focusing on land borders closure in Nigeria while the third part focus on the ECOWAS trade liberalization. Also, the fourth part focus on the implications of Nigeria land borders closure on ECOWAS trade liberalization with the fifth part focuses on the conclusion.

LAND BORDERS CLOSURE IN NIGERIA

Land borders closure is not a new phenomenon in the history of the world due to the multidimensional approach credited to the different bases for land borders closure's adoption. It may be protective measures; import curtailment inclusive, engagement in a war to protect its territorial integrity¹⁴ and presence of diplomatic disputes. Other reasons are the existence of security concerns, health

¹² ECOWAS Revised Treaty 1993.

¹³ Ibid, art. 3(d)(i) and (ii).

¹⁴ Akinkuolie Rasheed, 'Nigeria's border closure: Pros, cons and consequences' (Punch, 2 January 2020) <<https://punchng.com/nigerias-border-closure-pros-cons-and-consequences/>> accessed on 22 October 2020.

precautions and economic considerations among others. But security concern has been credited to most military regimes' borders closure in Africa; Nigeria inclusive. This is because borders closure is adopted as part of the military regime security policies of coup plotting to prevent external induced military intervention that may threaten their legitimacy.¹⁵ Aside from borders closure relating to Africa military regime; land borders inclusive, land borders has been repeatedly closed by several states of the world in the past 30 years to refugee influxes.

The closure is usually for the preservation of security and relieves pressure on national capacity.¹⁶ Some of the closure of the borders includes the Turkey - Iraq border closure around 1991, the Zaire - Rwanda border closure around 1994 and 1996, the Tanzania - Burundi border closure around 1995 and the Rwanda - Burundi border closure around 1996. Also, the Macedonia - Kosovo border closure around 1999, Chad - Sudan border closure around 2006.¹⁷ Likewise, Jordan - Iraq border was closed around 2006, the Syria and Iran borders with Iraq; the Malawi - Tanzania border; the Kenya - Somalia border as well as Egypt's borders with the Gaza Strip's side of the Israeli nation were closed around 2007. DR Congo - Zambia border was closed around 2008 and the Saudi Arabia - Yemen border was closed around 2009.¹⁸ Not only that; earlier in the year 2019, Sudan closed its border with Libya and the Central Africa Republic while Kenya suspended transboundary trade with Somalia.¹⁹ Aside from land borders closure against refugee influx; several states of the world had at a point in time implemented specific restrictions on trade with certain jurisdictions. The trade restrictions ranged from sanctions imposed by the United Nations Security Council or WTO in particular and specific state-imposed trade restrictions on another state despite their WTO membership. States that imposed sanction on another state(s) based on sanctions imposed by the United Nations or WTO are Argentina, Australia, Brazil, Germany, Mexico,

¹⁵ Johnson Olaosebikan Aremu, Afro-centricism in Nigeria's foreign policy agenda, 1960-1999: some documentary evidence [2015] 5(4) *Azerbaijani Journal of Economics and Social Studies* 48.

¹⁶ United Nations High Commissioner for Refugees (UNHCR), 'No entry! A review of UNHCR's response to border closures in situations of mass refugee influx' (2010) United Nations High Commissioner for Refugees Policy Development and Evaluation Service (PDES) PDES/2010/07, 1, par 5 <<https://www.refworld.org/pdfid/4c21ad0b2.pdf>> accessed on 18 February 2020.

¹⁷ *ibid* para 24.

¹⁸ *ibid*.

¹⁹ Jideofor Adibe, 'The politics of border closure' (The Cable, 5 December 2019) <<https://www.thecable.ng/the-politics-of-border-closure>> accessed 18 February 2020.

Panama, South Africa, Taiwan and Turkey. So also Cyprus, Belgium, Finland, France, Hong Kong, Italy, Japan, Jordan and Malaysia. Another state trade restriction based on self-desire was Argentina imposed restrictions on trade activities in Malvinas part of the Falkland Islands. Also, Australia implements an autonomous sanctions regime based on its foreign policy²⁰ while China place restriction on certain goods from the Democratic People's Republic of Korea. Costa Rica placed a ban on imports of Mexican avocados which is based on sanitary concerns of the Ministry of Agriculture.²¹ Also, Pakistan prohibited goods of Israeli origin or imports from Israel and certain goods from India. Russian Federation restricted trade with the United States (US); EU; Australia; Canada; Norway; Iceland; Liechtenstein; Albania; Montenegro.²² While Ukraine, South Korea restricted trade in specific goods with certain jurisdictions, industries, organizations and individuals to maintain international peace and security.²³ United Arab Emirates prohibited the importation of goods manufactured in Israel while the US imposed restrictions on trade with Cuba; Iran; North Korea; Syria and Crimea by prohibiting imports and exports of goods; services; and technology without licences from those territories.²⁴ The US also prohibits dealing with specific individuals from Belarus; Burundi; the Central African Republic; the Democratic Republic of Congo; Iraq; Lebanon; Libya; Russia; Somalia; South Sudan; Ukraine; Venezuela; Yemen. The US also listed Zimbabwe on the specially designated nationals and blocked person list.²⁵

The recent outbreak of coronal virus disease 2019 forced a larger part of the states of the world to close not only their land borders and air borders but also

²⁰ Thomson Reuters, 'International Trade Restrictions' (Practical Law, 1 May 2020) <[https://uk.practicallaw.thomsonreuters.com/4-617-5483?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/4-617-5483?transitionType=Default&contextData=(sc.Default)&firstPage=true)> accessed on 12 September 2020.

²¹ *ibid.*

²² *ibid.*

²³ *ibid.*

²⁴ *ibid.*

²⁵ *ibid.*

restrict access to their maritime boundaries.²⁶ Likewise in Nigeria, the closure of the borders that is the subject matter of this study is not the first land borders closure in the history of Nigeria. The first land borders closure was traceable to the era of General Muhammadu Buhari; today's President of Nigeria as the military head of state when Nigeria closed the land borders on 24 April 1984. The justification for the closure is to stop smuggling and illegal immigrants whose thousand were equally expelled to make their jobs available for Nigerians.²⁷ Equally, Ibrahim Gambari; the then Minister in charge of external affairs now Chief of Staff to the President justified the then land borders closure as an instrument to prevent the escape of the then ousted politicians through Nigeria porous and unpoliced land borders. The prevention is for the purpose of recovering embezzled public funds as well as enabling the government look inward to re-order internal priority. It also includes checking indiscipline, consolidating the value of naira as well as checking smuggling with the mindset to put trade relationships with Nigeria's neighbours on a very positive path.²⁸ The closure had a serious effect on the economy of Nigeria neighbours with the Niger Republic losing one-fourth of its revenue that year.²⁹ The consequential effect of the closure facilitates leaders of Benin and Togo to pay a visit to General Muhammad Buhari to plead for the opening of the borders. It also instigates other leaders of ECOWAS to publicly plead for re-opening of the borders including the offering of chairmanship of ECOWAS to General Muhammad Buhari during 1984 submits. Despite the offer, General Muhammad Buhari failed to ascend to their demand based on his

²⁶ Phillip Connor, 'More than nine-in-ten people worldwide live in countries with travel restrictions amid COVID-19' (Pew Research, 1 April 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 on 3 July 2020; Aljazeera, 'Coronavirus: Travel restrictions, border shutdowns by country' (Aljazeera, 3 June 2020) <<https://www.aljazeera.com/news/2020/03/coronavirus-travel-restrictions-border-shutdowns-country-200318091505922.html>> 3 July 2020.

²⁷ Times Wire Services, 'Coup in Nigeria ousts military ruler; corruption and ailing economy cited' (Latimes, 28 August 1985) <<https://www.latimes.com/archives/la-xpm-1985-08-28-mn-24972-story.html>> accessed on 23 October 2020.

²⁸ Gambari Ibrahim. *Theory and reality in foreign policy making: Nigeria after the Second Republic*. New (Jersey: Humanities Press International Inc., 1989).

²⁹ Jackson A. Aluede, *Border relations in Africa and the impact of nation-building: a study of Nigeria and her limitrophe neighbours since the 1960s*, African Journal of Governance and Development, Vol. 6 No. 1, June 2017, 18.

uncompromised commitment to the cause of Nigeria.³⁰ That was the situation of things until 27 August 1985 when a coup led to the exit of General Muhammad Buhari's regime and entry of General Ibrahim Babangida's regime. The announcer of the coup did not only affirmed the continuation of closed land borders but also closed airports and seaports with the further directive that airports will be open at midnight while land borders and seaports remain closed.³¹ The situation continues until 1 March 1986 when General Ibrahim Babangida regime having realized the danger in the continuation of the closure of the land borders open the land borders to external economic forces. While the right of migrants to work and live in Nigeria were limited to professionals such as engineers, doctors and health personnel, teachers, architects, surveyors and the bilingual secretary³² and therefore reduce tension between Nigeria and her neighbours. Also, General Sanni Abacha military regime that succeeded Chief Earnest Shonekan; General Ibrahim Babangida regime's successor closed the land border with Benin at Seme. The closure according to Alhaji Alhassan Kpaki; Nigeria Minister of state for foreign affairs³³ in his diplomatic note to Benin Foreign Minister; Edgar Monnou on 28 February 1996 was based on the received security threat.

The received security threat is that a certain group of individuals from Nigeria and Benin intends to destabilize the then Benin forthcoming election. The report stupefied Benin due to the failure of Nigeria to respond to Benin request for details. But according to Chief Tom Ikimi; the Minister in charge of Nigeria foreign affairs during the meeting with the African Diplomat in Abuja, the Seme

³⁰ UKESSAYS, 'Nigeria and the achievements of ECOWAS Politics Essay' (UKESSAYS, 28 August 1985) <<https://www.ukessays.com/essays/politics/nigeria-and-the-achievements-of-ecowas-politics-essay.php>> accessed on 23 October 2020; Akinrinade, O., From Hostility to Accommodation: Nigeria's Policy in West Africa, 1984 – 1990, Nigerian Journal of International Affairs. Vol. 18, No. 1. 1992.

³¹ Times Wire Services 'Coup in Nigeria ousts military ruler; corruption and ailing economy cited' (n 27); Reuters, 'New rulers in Nigeria announce shake-up of military command' (The New York Times, 29 August 1985) <<https://www.nytimes.com/1985/08/29/world/new-rulers-in-nigeria-announce-shake-up-of-military-command.html>> accessed on 23 October 2020.

³² UKESSAYS, 'Nigeria and the achievements of ECOWAS Politics Essay' (n 30); Ajayi, Kunle, "Domestic unpredictability and foreign policy stability" in Kolawole, D. (ed.). Nigeria's foreign policy since independence (Lagos: Julius and Julius Associates, 2004) 138; Festus Iyayi, 'The trouble with Babangida' (Sage Publication) <<https://journals.sagepub.com/doi/pdf/10.1080/03064228908534589>> accessed on 23 October 2020 and Anthony Asiwaju, 'Letters: Back again at draconic border closure policy' (Punch, 29 August 2019) <<https://punchng.com/back-again-at-draconic-border-closure-policy/>> accessed on 23 October 2020.

³³ Dulue Mbachu, 'Nigeria-Benin: The politics of the border' (Inter Press Service News, 2 May 1996) <<http://www.ipsnews.net/1996/05/nigeria-benin-the-politics-of-the-border/>> 23 October 2020.

border was closed because the border served as an escape route to dissidents. Another reason for the closure is that coup plotters and agents of destabilization were taken advantage of the route which was denied by Ayite Kpako; Benin Ambassador to Nigeria. Another reason credited to the then Seme border closure was the Benin President's criticism of General Sanni Abacha military regime for killing 9 Ogoni activists.³⁴ Despite the assiduous reasons for the Seme border closure, the border was opened on 19 April 1996. The re-opened received public applaud as well as a motivated visitation of Benin President; Mathieu Kerekou to his Nigeria counterpart the next day and continue till the beginning of democratically elected government in Nigeria.

That was the situation of things in Nigeria until the emergence of Chief Olusegun Obasanjo regime which continues leaving Nigeria land borders open until 9 August 2003 when the Seme border was closed. The closure was based on a series of trans-borders crimes ranging from armed robbery, fuel smuggling, and human trafficking but was opened on 16 August 2003 after the meeting of the leaders of Nigeria and Benin. It is the meeting that facilitated handing over of Ahmed Tijani; a notorious armed robber living in Benin but specializing in transborders crime en-route Nigeria to Benin.³⁵ While President Goodluck Jonathan also shut Nigeria borders with Cameroon, Chad and Niger in the northeastern part of the states as part of a declared state of emergency on 31 December 2011 to fight Boko haram insurgency. The effect of the closure was enormous on Nigeria neighbours including stranded of over 500 trucks transporting essential commodities to the Republic of Chad, Togo and Ghana between the borders of Nigeria and Chad.³⁶

The situation remains the same until 2017 when Nigeria under President Muhammad Buhari led administration perceived the need to take drastic action

³⁴ Jackson A. Aluede, *Border relations in Africa and the impact of nation-building: a study of Nigeria and her limitrophe neighbours since the 1960s* (n 29).

³⁵ [Tove Olori](http://www.ipsnews.net/2003/08/politics-nigeria-benin-border-reopens/), 'Politics-Nigeria: Benin Border Reopens' (International Press Service News, 16 August 2003) <<http://www.ipsnews.net/2003/08/politics-nigeria-benin-border-reopens/>> accessed on 6 November 2020; BBC, 'Nigeria re-opens Benin border' (BBC News, 15 August 2003) <<http://news.bbc.co.uk/2/hi/africa/3147989.stm>> accessed on 6 November 2020; The New Humanitarian, 'Obasanjo, Kerekou to meet over closed borders' (The New Humanitarian, 13 August 2003) <<https://www.thenewhumanitarian.org/report/45478/benin-nigeria-obasanjo-kerekou-meet-over-closed-borders>> accessed on 6 November 2020.

³⁶ [Felix Onuah](https://www.reuters.com/article/us-nigeria-emergency-idUSL6E7NV07T20111231), 'Nigeria's Jonathan declares state of emergency' (Reuters, 31 December 2011) <<https://www.reuters.com/article/us-nigeria-emergency-idUSL6E7NV07T20111231>> accessed on 6 November 2011; South Africa's Freight News, 'Nigeria-Chad border closure sees hundreds of trucks stranded' (Freight News, 11 March 2012) <<https://www.freightnews.co.za/article/nigeria-chad-border-closure-sees-hundreds-trucks-stranded>> 6 November 2020.

against smuggling activities going on through the Seme border.³⁷ President Muhammad Buhari led regime eventually announced the partial closure of all land borders on 19 August 2019 till 31 January 2020 and later extend the closed land borders infinite but re-opened on 16 December 2020. The recent land borders closure is to curb smuggling in and out of Nigeria that is serving as cankerworms to Nigeria economy, trans-borders insurgency as well as the mechanism of import substitutions to revive Nigeria agricultural sector. This is because Asian rice and other agricultural products such as red oil, groundnut oil, vegetable oil, tomatoes among other poultry produced are being smuggled to Nigeria through land borders. Also, second-hand vehicles, as well as import prohibited and contraband goods such as textiles, firearms and drugs among others are also being smuggled to Nigeria through land borders.

While the same land borders were used as an avenue for illegitimate exporting business such as exporting of Nigeria-subsidized petroleum products. Another factor that distinguished today's land borders closure and that of 1984 under the same leadership is that President Muhammadu Buhari has reservations against the leadership of some of the Nigeria neighbours bothering on non-compliance. The non-compliance relates to ECOWAS treaties, protocols and conventions regulating international trade based on weak enforcement of policies and laws therefore aid smuggling.³⁸ Benin is not excused from this allegation most especially as regard the smuggling of processed and semi-processed agricultural products such as rice, red oil, groundnut oil, vegetable oil and tomatoes to mention but a few. This is coupled with a series of complaint from Nigerian business leaders that Benin is not conferring national treatment to their products including overtaxing and prohibition of selling of Dangote cement in her territory.³⁹

The implication of this is that President Muhammad Buhari agenda behind land borders closure is beyond curbing all sorts of smuggling but also ensuring import substitution and self-sufficiency of Nigeria.⁴⁰ Despite enormous reasons

³⁷ Anna Okon, 'Customs seek closure of Cotonou border' (Punch, 21 September 2017) <<https://punchng.com/customs-seek-closure-of-cotonou-border/>> accessed on 6 November 2020.

³⁸ Damilola Ekpo, 'ECOWAS set to investigate Nigeria's land border closure' (n 11).

³⁹ Vincent Duhem, 'Nigeria - Benin border closure: bully boy tactics to crush a weaker rival' (The Africa Report, 26 September 2019) <<https://www.theafricareport.com/17737/nigeria-benin-border-closure-bully-boy-tactics-to-crush-a-weaker-rival/>> accessed on 4 November 2019.

⁴⁰ Elliot Smith, 'Nigeria's border closures place a further strain on a burdened economy, expert warn' (CNBC TV, 30 October 2019) <<https://flipboard.com/@CNBC/nigeria-s-border-closures-place-further-strain-on-a-burdened-economy-experts-wa/a->

attached to land borders closure in Nigeria, the closure pointed to clusters bothering on the past, present and the future undertaken of Nigeria to protect her neighbours. The desire of Nigeria to protect her neighbours was expressed on 8 October 1960 on admissions of Nigeria to the United Nation when the then Nigeria Head of Government; Alhaji Tafawa Balewa informed other leaders of the World that:

*So far I have concentrated on the problems of Africa. Please do not think that we are not interested in the problems of the rest of the world: we are intensely interested in them and hope to be allowed to assist in finding solutions to them through this organization, we are naturally concerned first with what affects our immediate neighbourhood.*⁴¹

Nigeria had successively adopted the ideology of protecting her neighbours including successive inclusion of Africa as the centrepiece of the Nigeria foreign policy in Nigeria Constitution⁴² and even motivating regional economic integration that gave birth to ECOWAS; ETLs inclusive. Regardless of which Nigeria recently closed all her land borders based on which this paper intends to examine the justification of land borders closure within ETLs.

THE ECOWAS TRADE LIBERALISATION

Africa states have a long-standing history of interactions and engagement socially, culturally and economically traceable to the pre-colonial days of each of the enclaves that constitute Africa. The intermingling motivates Adeola and Fayomi⁴³ to trace the interactions of people of West Africa States (WAS) during the pre-colonial days and the colonial period to the kith and kin relationship that existed among them. The duo observed that the French-speaking languages of

6rTrMoDpTGy76Hog3DKKAA%3Aa%3A2133612304-1d7f1ce542%2Fcnbc.com> accessed on 4 November 2019; John Coumantaros, 'Flour Mills of Nigeria backs closure of border with Benin' (The Africa Report, 10 January 2020) <<https://www.theafricareport.com/21974/flour-mills-of-nigeria-backs-closure-of-border-with-benin/>> accessed on 4 November 2020.

⁴¹ Johnson Olaosebikan Aremu, Afro-centricism in Nigeria's foreign policy agenda, 1960-1999: some documentary evidence (n 15).

⁴² Constitution of the Federal Republic of Nigeria (As amended) 1999, sect 19.

⁴³ Gabriel Lanre Adeola and Fayomi, Oluyemi, 'The political and security implications of cross border migration between Nigeria and her francophone neighbours' [2012]1(3) IJSST 1.

bounded states of today's enclave called Nigeria do not constitute barriers to their relationship.

Even in the post-colonial era, African states continued with the existing relationship as there has been an economic, political and socio-cultural interconnected and supportive relationship which enhanced influx within each other borders. The relationship includes sharing of facilities provided by the government of the respective states.⁴⁴ Even though the relationship was soured by changes in the economic fortune of various African states hence influence the need to mend the fence which gave birth to the new relationships including the birth of ECOWAS within the African sub-region.

The birth of ECOWAS

The influence of collaboration to create more opportunities with expanded harmonious relations among the populace of the WAS influences the regional integration of member states. This is because most states have realized that they cannot exist in isolation hence the adoption of regional integration to enhance survival.⁴⁵ One of the efforts is the French-speaking African states adoption of the CFA Franc as a single currency around 1945 and the suggestion of economic union of the WAS by the then Liberian President; Williams Tubman around 1964. As well as the 1972 sensitization regional tour towards the idea of regional integration respectively commenced by the then Nigeria Head of State; General Yakubu Gowon and the then Togo Head of State; General Gnassingbe Eyadema. The consequential efforts of WAS Leaders enhanced the signing of the ECOWAS Treaty on 28 May 1975 in Lagos, Nigeria by 15 WAS⁴⁶ which was later succeeded by the ECOWAS Revised Treaty of 1993.

⁴⁴ Shuaibu Shittu Isyaku, 'A legacy of peaceful coexistence: Historico-political and economic perspectives of Nigeria-Benin relations' [2017] 6(1) International Journal of Arts and Humanities 208; Mark Bolak Funtah, 'The paradox of Cameroon-Nigeria interactions: Connecting between the edges of opportunity/benefit and quandary' [2015] 6(3) International Journal of Peace and Development Studies 30.

⁴⁵ Abimbola Opanike, Ayodeji Anthony Aduloju and Lawrence O. Adenipekun, 'ECOWAS protocol on free movement and trans-border security in West Africa' [2015] 3(1) Covenant University Journal of Politics and International Affairs 41.

⁴⁶ The 15 West Africa States that signed ECOWAS Treaty are Benin, Burkina Faso, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo. Cape Verde joined ECOWAS around 1977 and therefore makes ECOWAS to consist of 16 member states. But Mauritania withdrew her membership on 26 December 2002 and makes ECOWAS as at today to remain 15 member states even though Guinea and Niger has been suspended due to 2008 and 2009 respectively plotted coup in respective states.

The treaty was revised to bridge the gaps observed in implementing ECOWAS integration as well as creating enabling environment towards addressing ECOWAS security challenges.⁴⁷ The ECOWAS agenda on security must have been influenced Akanji postulation that peace, security and stability are essential ingredients for effective regional integration and socio-economic development.⁴⁸ ECOWAS treaty provides a robust framework governing member states' regional integration. The revised treaty covered almost all fields of economic activities⁴⁹ namely industrial, transport, telecommunications, energy, agriculture, natural resources, commerce, monetary, financial questions as well as social and cultural matters.⁵⁰ The objectives of ECOWAS are to promote cooperation and integration in order to raise the living standards of the people of member states. It also includes maintaining and enhancing economic stability with fostering relations among member states which contribute to the progress and development of the African Continent.⁵¹

It is premised on the set goal the focus was to eliminate all tariff barriers (TB) and non-tariff barriers (NTB) among member states to foster prosperity, social-economic growth and development. The relationship created by ECOWAS is similar to the pre-independence relationship among modern WAS wherein the respective political enclaves were intermingling socially, culturally and economically. Since the establishment of ECOWAS, different agendas have been invented towards the actualization of dreamed regional integration. Examples are West African Clearing House now West African Monetary Agency, Inter-State Road Transport and ECOWAS Monetary Cooperation Programme. Others are the West African Monetary Zone, West African Monetary Institute and West African Institute for Financial and Economic

⁴⁷ Karamoko Diakite, 'ECOWAS security policy in the fight against transborder crimes', in *Get to know the ECOWAS: Peace and Security in an ECOWAS of People 05-13 October 2010, Abuja* (Friedrich-Ebert-Stiftung 2011).

⁴⁸ Olajide O. Akanji, 'Sub-regional Security Challenge: ECOWAS and the War on Terrorism in West Africa' [2019] 11(1) *Insight on Africa* 94, 101.

⁴⁹ Aderanti Adepoju, 'Operationalising the ECOWAS protocol on free movement of persons: Prospects for sub-regional trade and development' in Marion Panizzon, Gottfried Zürcher and Elisa Fornalé (eds), *The Palgrave Handbook of International Labour Migration* (Palgrave Macmillan 2015).

⁵⁰ Akperan Adam James and Kayode Sanni Ganiyu, 'The role of Economic Community of West African States (ECOWAS) in promoting borderless trade in West Africa' [2010] 34 (4) *Bullion* 1.

⁵¹ ECOWAS Treaty of 1975, art 3; Ugochukwu Samuel Osisioma, 'Regional trade and economic growth in West Africa' [2020] IV (VII) *International Journal of Research and Innovation in Social Science* 16.

Management. This is without exclusion of the ECOWAS Bank for Investment and Development as well as ETLS.

ECOWAS trade liberalization scheme (ETLS)

Trade liberalization (TL) was perceived as reduction or removal of TB such as customs duties and NTB such as quota, license and exchange control for free trade.⁵² It was also perceived as the non-existence of restrictions to trade, economic and business activities as well as the dismantling of existing regulatory structures in financial markets, traded goods markets and labour markets.⁵³ As part of efforts towards achieving the ECOWAS set economic integration, ECOWAS launched ETLS in 1979 while its effective date was postponed till 1989 but eventually entered into force on 1 January 1990.⁵⁴ It appears that the decision of ECOWAS to liberalise trade was part of consequential effect of Bretton Woods institutions imposed structural adjustment programs (SAP) on developing states.⁵⁵ The imposed SAP with the aim of attaining high growth rates imposed obligations on developing states to abolish imports control including the foreign exchange rationing inherent in the short-term balance-of-payment deficit and long term protection measures (TB and NTB).

The ETLS is a facilitating tool towards working of the free trade area (FTA) as it was established to progressively establish custom union (CU) among the member states over a period of 15 years commencing from 1990. The essence of the FTA was to ensure free circulation of products of ECOWAS community origin within member states as the FTA eliminates tariffs even though tariffs was re-introduced following the adoption of CET through establishment of

⁵² Essotanam Mamba and Afi Balaki, 'Effects of trade policies on external trade performances of ECOWAS countries' (Final Report) <<https://aercafrica.org/wp-content/uploads/2020/06/D5-Mamba-Balaki-FR-English.pdf>> accessed on 4 November 2020.

⁵³ Akperan Adam James and Kayode Sanni Ganiyu, 'The role of Economic Community of West African States (ECOWAS) in promoting borderless trade in West Africa' (n 50) 32.

⁵⁴ Abiodun S. Bankole, Noah Olasehinde and Abiodun Raheem, 'ECOWAS Trade Liberalization Scheme (ETLS) 1 and its Impact on Intra-Regional Trade' [2012] 1(1) Journal of West African Integration 86, 88.

⁵⁵ Musibau Adetunji Babatunde, 'Trade policy reform, regional integration and export performance in the ECOWAS sub-region' (2006) United States Document <<https://documents.pub/reader/full/trade-policy-reform-regional-integration-and-export-policy-reform-regional>> accessed on 15 March 2020.

CU.⁵⁶ It also serves as a measure towards facilitating trade by reducing red tape and paperwork at the borders. As at the time ETLS was introduced in 1979, its application is restricted to unprocessed or agricultural products but extends to include traditional handicrafts in 1981 and later to industrial products originating from member states in 1983.⁵⁷ The products classified as unprocessed or agricultural products are livestock, fish, snail, crab, fresh milk, eggs, natural honey, plant, yam, cocoyam, plantain, vegetables, edible fruits, coffee, pepper, cereals, salt, sugarcane and mineral products that have not undergone any industrial transformation.

The products classified as traditional handicrafts are articles made by hand with or without the help of tools, instruments or devices that are activated directly by the craftsman. It includes wooden cooking utensils, basket works, fancy goods, small cabinet works, mats, carpets, handbags as well as hides and skin. Others are wallets, purses, toilet cases, lace embroidery, bed linen, footwear, headgear, prepared feathers, blankets, coverlets, rugs, pot covers, game pouches made of skin; cotton materials containing at least 85 per cent weight of cotton worked by hand. It includes footwear, gaiters parts of such articles such as sandals, light sandals with leather soles, leather babouches, turkish slippers etc. Industrial products are both processed and semi-processed products of community origin. The ETLS implementation was scheduled into 3 stages with a mandate to ensure total elimination of TB by the end of 1999. The first stage is immediate and full liberalization of trade involving unprocessed goods and traditional handicrafts. The second stage is the phased liberalization of trade in industrial products, with the phasing reflecting the differences in the levels of development of 3 categories of ECOWAS member states. And the last stage is the gradual establishment of a common external tariff (CET). The failure of the implementation schedule aimed at eliminating all TB and NTB as of 1999 influencing the Authority of Head of States and Government of ECOWAS to review the plan and adopt a fast-track approach that led to the proclamation of member states as a FTA in 2000. The 1 January 2001 was set for its

⁵⁶ Mariame Bakouan and Dorothee Boccanfuso, 'General Equilibrium Effects of Trade Liberalization in ECOWAS Countries: Structural Gravity Approach' (2021) 12 *Modern Economy* 274, 275.

⁵⁷ Akims, K.A., 'ECOWAS and trade liberalisation: Challenges and the way forward' [2014] 6(1) *Journal of Social Sciences and Public Policy* 172, 173.

transformation as a CU⁵⁸ that was re-scheduled to 2005 which led to the adoption of CET in January 2015.⁵⁹ The aim of the CET is to abolish all forms of barriers in trade and differences in the chargeable tariffs against the rest of the world;⁶⁰ importing from non-members states (NMS) inclusive. While member states undertake to apply the ECOWAS common customs nomenclature and customs statistical nomenclature.⁶¹

Apart from CET regulating trade between ECOWAS member states and NMS, ETLS also focused on regulating re-exportation of originating products within member states. The implication, therefore, is that CTT covered only products originating within the member states but excluded products imported from the NMS as such products are subject to tariffs and other duties chargeable under CET. Beyond the concentration of ETLS on CET and CTT, ETLS foresaw the likelihood of injury to a particular product of member states arising out of the effect of increment of importation of similar product as a result of reduction or elimination of duties and charges on the product. The injury may also be a by-product of raw materials used for manufacturing the product and, therefore, empowers the Council of Ministers to study the arisen likelihood consequential effect with an amicable solution.⁶² Like its counterpart within the WTO, ETLS enjoined national treatment on community products within member states and therefore prohibit preferential treatment of national products over similar community products.

This is achievable through the prohibition of imposition of fiscal charges on imported products in excess of domestic products.⁶³ So also the imposition of different privileges, rights, favour or immunities as it relates to trading with member states⁶⁴ and granting of concession more favourable to the third party

⁵⁸ Ken Ukaoha and Aniekan Ukpe, 'The ECOWAS trade liberalisation scheme: Genesis, conditions and appraisal' [2013] 2(3) ECOWAS Vanguard 1, 2.

⁵⁹ Mariame Bakouan and Dorothee Boccanfuso, 'General Equilibrium Effects of Trade Liberalization in ECOWAS Countries: Structural Gravity Approach' (2021) 12 Modern Economy 274, 275.

⁶⁰ Akinbobola T. O. And Oladunjoye O.N., 'The ECOWAS Common External Tariff (CET) and Macroeconomic Performance in Nigeria' (2015) 6(23) Journal of Economics and Sustainable Development 43.

⁶¹ ECOWAS (n. 12) art. 37.

⁶² *ibid* art. 39.

⁶³ *Ibid* art. 40

⁶⁴ *ibid* art. 40 and 43.

than member states.⁶⁵ ETLS equally impose obligations on member states to remove all the then existing quota, quantitative or like restrictions or prohibitions which apply to the import of products originating in the NMS and thereafter refrain from imposing any further restrictions or prohibitions.⁶⁶ ETLS forbids preferential treatment and imposed a duty on member states to refrain from enactment of laws or promulgation of regulations that will confer national treatment on local community products over other similar community products.⁶⁷ But ETLS permits member states to impose quantitative restrictions on products relating to the protection of the security of member states and protection of its valuables.

The security aspect relates to the application of security laws and regulations; the control of arms, ammunition and other war equipment as well as military items. It also involves the control of narcotics, hazardous and toxic wastes, nuclear materials, radioactive products or any other material used in the development or exploitation of nuclear energy.⁶⁸ The protection of the valuables of the member states aspect relates to the protection of human, animal or plant health or life, or the protection of public morality; the transfer of gold, silver, precious and semi-precious stones as well as the protection of national artistic and cultural property.⁶⁹ ETLS also prohibit dumping with duty on the importing member states to appeal to the Council of Minister in-cases of dumping. The Council is expected to consider the issue and take appropriate measures to determine the causes of the dumping without more.⁷⁰ The ETLS regulate the re-exportation of products and transit within member states by enjoining members to grant freedom of transit of products from or to NMS through its territory.

The conferred right is subject to conditions contained in the convention A/P.4/5/82 of the ECOWAS Authority of Heads of State and Government on inter-state road transit of goods (ISRTG).⁷¹ The actors within the ETLS are not limited to an enterprise that are community nationals trading within the

⁶⁵ *ibid* art. 43.

⁶⁶ *ibid* art. 41 (1) – (3).

⁶⁷ *ibid* art. 44.

⁶⁸ *ibid* art. 41(4)(a),(b) and (f).

⁶⁹ *ibid* (c) - (e).

⁷⁰ *ibid* art. 42.

⁷¹ *ibid* art. 45; Supplementary convention A/SP.1/5/90 establishing a community guarantees mechanism for inter-state road transit of goods; art. 2.

community but includes all enterprises located, operating and desire to export within the community. Provided the products traded by the enterprise are products originating within the community. Products are considered to originate within the community if the products have been wholly produced by one or two member states or have been produced in one or two member states. So also if the raw materials used in the production of the products are wholly obtained from the member states or not wholly obtained from member states but have undergone operations and process conferred community origin on the products and/or sufficiently transformed in one or several member states.⁷²

ECOWAS protocol specifies products wholly produced within the member states⁷³ as live animals born and raised within the member states and the products obtained from such animals. Others are aquaculture products; mariculture products inclusive provided the animals are raised from egg, larva and fingerlings or products obtained from hunting and fishing conducted within the territory of member states. It also includes sea fishing and other products obtained from the sea by the ship of member states outside their territorial water. Provided the ship belonging to the member states and registered with a member state as well as sail under the flag of a member state with 50% of the nationals of a member state as its crew including the commanding staff. Without exclusion of the products manufactured on board ship factory from sea fishing and other products obtained from the sea by ship of member states outside such member state's territorial water.

Such factory ship must belong to the member state, registered with a member state, sail under the flag of a member state with not less than 50% of the nationals of member states as its crew including the command staff. It also includes vegetable products harvested within the member states with the mineral products extracted from the community soils, seabed or seafloor. So also the mineral products extracted from seabed located outside territorial waters of the member states provided the exclusive rights on the seabed for the purpose of exploitation vested on the member state. The originating products within the community also include used articles gathered within the member

⁷² Supplementary act A/SA.7/12/18 fixing community rules of origin and procedures applicable to goods originating in the Economic Community of West African States (ECOWAS), art. 3.

⁷³ *ibid* art. 3, 4 and 5.

states solely to be used as raw materials or to be used as waste. It includes the waste resulting from manufacturing operations within the member states with products produced from the above-listed products or materials lacking any imported element from NMS or of unknown origin and electric energy produced in the member states.

Preservation and protection of goods with mechanical devices or chemical substances or any forms of cleaning does not make such products fall within the ambit of wholly produced within the member states provided by ETLS. So also, rebranding, repackaging, re-organising, labeling, assembling and repairing or combinations of 2 or more excludes the goods within the ambit of wholly produced within the member states provided by the ETLS.⁷⁴ However, the origin of products obtained from the originating state within the ETLS shall be proof with a certificate of community origin issued by an appropriate authority of exporting member states with an invoice of declaration of community origin.⁷⁵ While the community origin of industrial products needs to be proof, agricultural and handicraft products have been excluded with the exception of sea fishing products. Also, the community origin of other products obtained from the sea by the ships of member states outside their territorial waters and products manufactured solely from such products onboard factory ships need to be proof.

Other excepted products are products sent in small shipments from a private individual to another private individual who may be contained in the travelers personal luggage provided the products are not imported for commercial interest and conform to the ECOWAS protocol regulating rules of community origin. Also exempted are occasional import products solely for the usage of the receiver or the travelers or their families' members. So far the nature and the quantity of the products lack commercial interest. The commercial interest of the products can be evaluated by accessing the ratio of the total value of the products to the amount imposed by the national regulation of each member state.⁷⁶ The implication, therefore, is that the dream of the founding fathers of ECOWAS reflected in ETLS is to create a sort of borderless relationship as

⁷⁴ *ibid* art. 6(1).

⁷⁵ *ibid* art. 16.

⁷⁶ *ibid* art. 19.

regard trading in respect of agricultural, handcraft and industrial products originating within member states. Despite the borderless dream relations, Nigeria closed all her land borders which have implications within the legal framework of ETLS.

THE IMPLICATION OF NIGERIA LAND BORDERS CLOSURE ON ECOWAS TRADE LIBERALISATION SCHEME

Nigeria closed all her land borders despite the economic integration agenda of ECOWAS leaders manifested in creating a dreamt borderless relationship regarding trade in agricultural, handcraft, and industrial products originating within the member states through ETLS. The essence of the land borders closure was to curb smuggling, trans-border insurgency as well as import substitutions in favour of the agricultural sector. The borders closure was a ban on the movement of all products; including agricultural, handcraft and industrial products originating within the member states as well as people across the land borders. But the closure does not affect the movement of people and products through the sea and air borders even though trade among Nigeria and her land neighbours are dominated through land borders.

As a result of which the closure is not a total ban of agricultural, handcraft and industrial products originating within the ECOWAS member states. Despite which it is to be noted that land borders closure form part of the NTB sought to be liberalized by the ECOWAS. Hence the need to evaluate the land borders closure and ETLS. The evaluation centred on the implications of Nigeria land borders closure within the ETLS and the implications of Nigeria's neighbour weak enforcement of the international agreements. As well as the paradigm of necessity to land borders closure in Nigeria.

Juxtapose of Nigeria land borders closure on trade within ETLS

Nigeria and her land neighbours territory are part of the ECOWAS community FTA and CU wherein goods of community origin within FTA are regulated by CTT. Also trading involving products of ECOWAS NMS within the community; Nigeria inclusive are part of ECOWAS CU and regulated by CET while products of community origin outside the purview of ETLS imported by another member state into Nigeria are regulated by CTT. The regulated trade is

not only through the maritime and air borders but also Nigeria land borders which was the basis ETLs prohibited the imposition of TB and NTB. Despite the prohibitions, Nigeria closed her land borders which are part of the prohibited NTB. The closure was a ban on the movement of all products across land borders; ECOWAS community products inclusive without affecting maritime and air borders. It is not all the products of ECOWAS member states that can be imported to the territory of Nigeria as community goods rather agricultural, handicraft and industrial goods wholly produced within the member states.

Whereas one of the justifications for Nigeria land borders closure is smuggling without denial of legitimate trade of community origin. Asian rice, red oil, groundnut oil, vegetable oil, tomatoes, poultry produced among other agricultural products, second-hand vehicles, textiles, firearms and drugs among others are being smuggled to Nigeria through land borders. Also, Nigeria-subsidized petroleum products are being smuggled into the territory of Nigeria's land neighbours through the same land borders. The listed item comprises processed and semi-processed agricultural products and other industrial products with exception of firearms which has been excluded by ECOWAS for the purpose of trade integration.⁷⁷ The listed products failed the test of wholly produced products under the ETLs as there are imported into the respective member states territory and therefore entitled to payment of customs duties and taxes among other conditions which is being evaded through smuggling.

Even if any of the products fall within the member states product, the products community of origin need to be proved with the production of a certificate of origin and a declaratory invoice which were not available hence resulting in its smuggling into the territory of Nigeria. The evasion of customs duties and taxes coupled with non-availability of certificate of origin and declaratory invoice where it applicable shows that the importer and the exporters are not importing and exporting the products in and out of Nigeria respectively within the purview of ETLs. Also, the Nigeria borders closure has been attributed to import substitution and self-sufficiency of Nigeria. Import substitution has been a trade policy to support the economic well being of states. The emergence of import substitution as a policy was to promote speedy industrialization by conferring

⁷⁷ ECOWAS (n. 12) art. 45; ECOWAS convention on small arms and light weapons, their ammunition and other related materials, art. 3(3).

preferential treatment on domestic products. Nigeria as part of policies towards reviving the agricultural sector adopts an import substitution policy.

The products affected are not limited to raw agricultural products but also industrial processed agricultural products. The policy was adopted as part of a plan to improve domestic farming and local production of food and other raw materials.⁷⁸ Import substitution is one of the ETLS foreseeable NTB so also Nigeria land borders closure as it bans movement of products of community origin which are agricultural, handicraft and industrial products wholly produced within the member states. The agricultural and industrial products affected by land borders closure comprises smuggled and traded products within ETLS. It is not only the traded products within the ETLS that are necessary within Nigeria's economy; so also the smuggled products as they are necessary for the survival of her nationals. This is because local productions of the smuggled products will hype Nigeria available products not only with the ETLS but also for its national consumption.

Despite the adoption of import substitution to revive Nigeria agricultural sector, agricultural products and processed agricultural industrial products with certificate of community origin issued by an appropriate authority of exporting member states with invoice of declaration of community origin will still be imported into the territory of Nigeria. The implication, therefore, is that importation of agricultural products and processed agricultural industrial products are not constraint by import substitution as it does not affect maritime and air borders. And therefore make import substitution a necessary trade policy towards rebuilding Nigeria's economy without affecting Nigeria's commitment to ETLS. Therefore, the implication is that smuggling and consequential import substitutions make land borders closure necessary within the Nigerian territory.

The implications of Nigeria neighbours' weak enforcement of the international agreement

Another reason associated with land borders closure in Nigeria is the non-compliance relating to ECOWAS treaties, protocols and conventions regulating

⁷⁸ Leidong, T. A., (2019). Nigeria's border closure has implications for Africa's economic integration. The conversation, <<http://theconversation.com/nigerias-border-closure-hasimplications-for-africas-economic-integration-125592>> (Accessed on 2/10/2021); Shuaib, Kabir Musa, 'The Changing Pattern of International Trade: Import Substitution Policy and Digital Economy in Nigeria. A Review' [2020] 6(4) IIARD International Journal of Economics and Business Management 13, 17 - 18.

international trade. Most especially the non-compliance has been identified to be aiding smuggling in and out of Nigeria. At the international plane; regional and sub-regional inclusive, there are pectorals of policies; trade policies inclusive which must be complied with so also as regards trade between Nigeria and her neighbours. Aside from ECOWAS revised treaty, there are other international agreements within the sub-region that regulate trade between ECOWAS member states and NMS to the extent of prescribed import and export conditions including its conveyance to its destination. An example of such agreement is the ETLS which regulate trades of goods of community origin among member states and non-community origin among both member states and NMS.

The regulation also includes prescription of proof of origin through the issuance of a certificate of community origin and declaratory invoice by the authority of originating member state. Also, the convention regulating ISRTG placed an enormous duty on customs administrations of departing state within ECOWAS to communicate such departure to the destination states.⁷⁹ The essence is to guarantee the payment of duties, taxes and other impositions incurred in the territory of the member state transmitting such products within the framework of the ISRTG. Whereas, it is a noncompliance that aids smuggling of goods to Nigeria and consequential closure of land borders. That was the basis the Nigeria Customs Service (NCS) identified porous borders and improper implementation of the ECOWAS protocol on transit by neighbouring states as major hindrances to fight against smuggling.⁸⁰ While Nigeria opted for land borders closure, the convention placed a duty on Nigeria to adopt amicably settlement and where amicable settlement fails, to lodge grievances before the ECOWAS tribunal whose decision shall be final.⁸¹

Whereas Nigeria opted for land borders closure to protect her territory instead of placing her grievances before the ECOWAS tribunal. Apart from trade policies, the ECOWAS treaty equally places duties on member states to safeguard and consolidate relations conducive to the maintenance of peace,

⁷⁹ Convention A/P.4/5/82 relating to inter-states road transit of goods, art. 1, 6, 9, 10, 14, 20, 28 and 31.

⁸⁰ Sulaimon Salau, 'Porous borders, ECOWAS protocol hindering fight against smuggling' (Guardian 19/12/2018)

⁸¹ Convention A/P.4/5/82 relating to inter-states road transit of goods (n. 75) art. 35.

stability and security within the region.⁸² To strengthen the obligation, ECOWAS member states signed different protocols ranging from the protocol relating to the mechanism for conflict prevention, management resolution, peacekeeping and security (ECOWAS-mechanism). Also ECOWAS protocol on the fight against corruption as well as ECOWAS convention on small arms and light weapons, their ammunition and other related materials (ESALW). Others are ECOWAS counter-terrorism strategy and implementation plan 2013 (ECSIP) and ECOWAS Political Declaration and Common Position against Terrorism of 2013 (EPDCPT).⁸³

ECOWAS-mechanism focused on conflict prevention; management and resolution as well as strengthened cooperation in the area of conflict prevention, early warning, and peacekeeping operations. The focused area of cooperation strengthened to include the control of cross border crime, terrorism, the proliferation of small arms, maintaining and consolidating peace, security and stability within member states.⁸⁴ Whereas, ESALW ban international transfer of small arms except transfer for legitimate self-defence, security needs or peace supporting operations of member states subject to approval. The convention equally bans transfers of small arms and light weapons to NMS with provisions regulating local manufacturing of small arms.⁸⁵ Also; member states have a duty to strengthen their internal affairs in combating the illicit circulation of small arms and light weapons.⁸⁶ Likewise, EPDCPT adopted ECSIP which rest on 3 main pillars namely prevent, pursue and repair.⁸⁷

The prevention pillar placed a duty on member states to prevent terrorism⁸⁸ while pursuing pillar place duty on member states where terrorism is already in existence within the territory to take all necessary measures to minimize its impacts. The main objectives are to disrupt terrorists' planning, networks and activities; investigate and bring terrorist leaders and their followers, supporters

⁸² ECOWAS (n. 12) art. 58.

⁸³ Adopted in Yamoussoukro, Côte d'Ivoire, on 28 February 2013.

⁸⁴ Joshua O. Bolarinwa, 'An overview of the ECOWAS peace and security architecture' in *Get to know the ECOWAS: Peace and Security in an ECOWAS of People 05-13 October 2010, Abuja* (Friedrich-Ebert-Stiftung 2011).

⁸⁵ Dinshak, L. D., 'Perspectives on the implementation of the ECOWAS convention on small arms and light weapons in Nigeria' [2020] 1(1) *Open Journals of Social Science and Humanities* 27, 28.

⁸⁶ ECOWAS convention on small arms (n. 73) art. 22(a).

⁸⁷ ECOWAS Counter-Terrorism Strategy, par. 20.

⁸⁸ *ibid* par. 21 and 22.

and sympathizers to justice to the full extent provided by the law. It also aimed at cutting off terrorists' funding and access to equipment, finances, training and meeting grounds; and creating a hostile environment for terrorists in the region with a view to eliminating future threats.⁸⁹ Also, the strategy foresaw the likelihood of destruction as the aftermath of terrorism and therefore placed a duty on affected member states to rebuild society and heal consequential social wounds.⁹⁰ The focus of EPDCPT is to eliminate and stamp out the scourge of terrorism in the region and to create an enabling environment for effective regional integration, economic development, peace, security and stability in West Africa.

Regardless of which Nigeria has been experiencing ranges of trans-borders crime including trans-borders aided bandits and Boko haram insurgency among other terrorists' activities. The activities were aided by trans-borders smuggling of small arms and light weapons as well as the porosity of Nigeria and neighbours borders due to improper or non-implementations of the provisions and therefore influence Nigeria land borders closure to protect her territory.

Paradigms of necessity to land borders closure in Nigeria

Compliance with international obligations; regional and sub-regional obligations inclusive are based on the principle of *pacta sunt servanda* which means that rules and commitment contained in international agreement make compliance obligatory. Even though it is subject to certain exceptions or defence, there may be events that were not foreseen by the said agreement hence the paradigm of necessity. The term necessity paradigm connotes a model bothering on the usage of administrative actions designed to restore order by the administrative authority. Necessity as a model was first expounded by the 13th-century English medieval jurist called Henry de Bracton. Henry de Bracton in his proposition was of the view that what is otherwise not lawful is made lawful by necessity.⁹¹ The necessity model was later advanced by other scholars among whom is William Blackstone and legal authorities.

⁸⁹ *ibid* par. 23.

⁹⁰ *Ibid* par. 24.

⁹¹ Jayampathy Wickramaratne, 'Doctrine of necessity: Stumbling against the same Stone in Pakistan - A mistake not to be emulated in Sri Lanka' (2020) (SSRN) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3598986> accessed on 15 March 2021.

Glanville Williams in his contribution perceived the paradigm of necessity as a defence involving a choice of the lesser evil. According to Glanville Williams, it requires a judgment of value upon adjudication between adverse products and a sacrifice to one other as its disguises the selection of values that is involved.⁹² Also in the English case of *Manby V. Scott*,⁹³ the Court held that 'the law for necessity dispenses with things which otherwise are not lawful to be lawful. But modern evolvement has been traced to 1954 when the Pakistan Chief Judge; Muhammad Munir adopted the model to validate the use of emergency power by Governor-General; Ghulam Muhammad.⁹⁴ The model thereafter spread its tentacles beyond Pakistan to the other Commonwealth States such as Grenada in 1985, Nigeria and Nepal in 2010.⁹⁵ But its evolvement within international trade is traceable to the development of international law over the past sixty years.

The development was from a narrow system of inter-state cooperation to a broader and organised inter-state co-existence. Necessity evolvement within international trade is due to the degree of increment in the multilateral treaties existing to promote the interdependence of states as against physical perceived legal frameworks. Beyond the relevancy of the paradigm of necessity to the multilateral agreement, necessity paradigm will continue relevant in all international agreement due to lacunae that will continue existing in the treaties. Smuggling is one of such lacunae traced to ETLS which aids Nigeria land borders closure and its consequential import substitutions. The necessity paradigm thereafter served as the justification between the smuggling, import substitutions and weak enforcement of international law been the basis of land borders closure in Nigeria despite ETLS prohibitions of land borders closure as NTB.

CONCLUSION AND RECOMMENDATIONS

The economic integration dream of ECOWAS leaders consequently gave birth to ETLS which is TL of agricultural, handicraft and industrial products wholly

⁹² Glanville Williams, 'Defence of necessity' (1953) *Current Legal Problems* 216, 224.

⁹³ (1672) 1 *Lev.* 4.

⁹⁴ *Federation of Pakistan V. Maulvi Tamizuddin Khan* PLD (1955) FC 81, 240.

⁹⁵ Vijay Pd. Jayshwal, 'An application of the doctrine of necessity: Previous constituent assembly of Nepal and its time extension to avoid constitutional uncertainty' [2015] 27(1) *Mimbar Hukum* 117, 122 – 123.

produced within ECOWAS member states and thereby creating borderless relationships among member states. Despite Nigeria signatory to ETLS, Nigeria closed all her land borders due to smuggling, trans-borders insurgency and the need to revive Nigeria agricultural sector as well as compel Nigeria neighbours to comply with their international commitment. And thereby serve as a trade ban across land borders including on community products under the ETLS framework. The implications, therefore, is that the closure serves as a trade ban on community products and smuggled products coupled with the need to revive Nigeria agricultural sector as well as ensure the security of Nigeria thereby makings the land borders closure necessary.

It is without prejudice to the impact of the necessity paradigm; we found it worthy to recommends as follow as the machinery to be put in motion to avoid future conflict of Nigeria performance of international obligations and closure of land borders as an instrument to manage smuggling, import substitutions and weak enforcement of international law. They are:

- i. Nigeria should put machinery in motion towards identification of all the land borders and properly man despite being porous. This will drastically if not totally eradicate smuggling and compel Nigeria neighbours to comply with their international obligations.
- ii. Nigeria should put machinery in motion towards the production of some of the smuggled goods in better quantity and quality because it is been smuggled based on the needs of Nigerians themselves which will also place Nigeria in a better position towards trading within ETLS.
- iii. As part of the import substitutions agenda relating to agricultural products and discouragement of smuggling of agricultural products,, Nigeria should put machinery in motion towards preserving, protecting, processing, rebranding and repackaging and/or combinations of 2 or more of some of the agricultural products including rice production.
- iv. As part of the import substitution agenda of rice production and discourage polish rice smuggling, Nigeria should create rice processing centres equipped with modern rice processing machines for the processing of various local rice to polish rice that appears as Nigerians preferred choice.

- v. As part of the import substitution agenda and discouragement of smuggling in respect of agricultural products, Nigeria should strategise towards providing farming equipment at subsidized rates to aid mechanized farming.
- vi. As part of an effort towards curbing smuggling and Nigeria's neighbours' non-compliance with international obligations, Nigeria should make provisions for payment of duties and other charges at various land borders on non-contraband goods.