

**ASSESSING THE ECOWAS TRADE  
LIBERALIZATION SCHEME (ETLS) AS A  
VEHICLE FOR THE PROMOTION OF A WEST  
AFRICAN FREE TRADE AREA**



**THIS DISSERTATION IS SUBMITTED TO THE UNIVERSITY  
OF GHANA, LEGON IN PARTIAL FULFILLMENT OF THE  
REQUIREMENT FOR THE AWARD OF THE MASTER OF  
ARTS (M.A) INTERNATIONAL AFFAIRS DEGREE**

**DECLARATION**

I, hereby, declare that this dissertation is the result of an original research conducted by me under the supervision of Dr. Emmanuel Ashiedu Codjoe. All sources referred to in the study have been acknowledged and that no part has been submitted anywhere else for any other purpose.

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**DEDICATION**

*This work is dedicated to my family, especially my mother and my siblings, for their support and prayers throughout this journey.*

## **ACKNOWLEDGEMENTS**

My profound gratitude goes to God for giving me this opportunity, and then to my parents – my mother, Dora Saka and my father, Asante Boahene – for their financial and moral support and sacrifices. My siblings also deserve acknowledgement for their support throughout the duration of my program.

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## LIST OF ABBREVIATIONS

AU	–	African Union
CAB	–	Conformity Assessment Bodies
CACM	–	Central American Common Market
CET	–	Common External Tariff
COMESA	–	Common Market for Eastern and Southern Africa
EAC	–	East African Community
ECCAS	–	Economic Community of Central African States
ECOSHAM	–	ECOWAS Standards Harmonization Model
ECOQUAL	–	ECOWAS Quality Policy
ECOWAS	–	Economic Community of West African States
EPA	–	Economic Partnership Agreement
ETLS	–	ECOWAS Trade Liberalization Scheme
EU	–	European Union
FTA	–	Free Trade Area
GATT	–	General Agreement on Tariffs and Trade
GATS	–	General Agreement on Trade in Services
ISO	–	International Standards Organization
MFARI	–	Ministry of Foreign Affairs and regional Integration
MFN	–	Most Favored Nations
MOTI	–	Ministry of Trade and Industry
NAFTA	–	North American Free Trade Area
NT	–	National Treatment

OAU	–	Organization of African Unity
RAS	–	Regional Accreditation System
SADC	–	Southern African Development Community
SADCC	–	Southern African Development Coordination Conference
SPS	–	Agreement on Sanitary and Phytosanitary Measures
TBT	–	Agreement on the Technical Barriers to Trade
TRIPS	–	Agreement on the Trade in Intellectual Property
UEMOA	–	West African Monetary and Economic Union
WTO	–	World Trade Organization

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## **ABSTRACT**

The ECOWAS Trade Liberalization Scheme (ETLS) has been the tool for ECOWAS to establish a free trade area in West Africa. The scheme that was drawn up in 1979 but began implementation in 1990 has seen some achievements, but it has also seen some challenges. Using the WTO-plus framework as a tool, an assessment is made of the ETLS and its implementation, and explores whether the scheme has succeeded in the creation of a free trade area in the West African sub-region. Some obstacles to the establishment of a free trade area as well as recommendations towards improving the ECOWAS methods of achieving a free trade area in the region are explored by the researcher. Gathering data through interviews and secondary sources like books, journal articles and official documents and reports from ECOWAS, UNIDO, and the EU, the study has been able to assess the ETLS and its implementation and offered a conclusion on whether the performance of the scheme has been good so far. In the end, the conclusion is that, even though the scheme has achieved some heights in its implementation of, amongst others, the MFN Treatment and regional accreditation systems, it has generally failed in the creation of a free trade area. This is because of shortfalls in the implementation of such provisions like the national treatment provisions, transparency mechanisms, competition policies, harmonization models, amongst others.

## CHAPTER ONE

### INTRODUCTION

#### 1.1 Background of the Study

As the world becomes more globalized, new challenges also arise. Some of these challenges can best be addressed globally, not internally. Global hunger, poverty, global warming and so on are issues that have become the focus of many international organizations. Through bilateral and multilateral agreements and policies, states attempt to solve these problems.

Integration has been a widely recognized and accepted way for states to address some of its problems. “From its lowest to its highest forms, integration has been said to progress through the freeing of the barriers to trade, the liberalization of factor movements, the harmonization of national economic policies and the complete unification of these policies.”<sup>1</sup> Integration comes in many forms including free trade areas, customs unions, common markets, complete economic union and a political union.<sup>2</sup> For the purposes of this study, the focus will be on free trade area.

There is said to be a free trade area (FTA) when states eliminate all trade restrictions between them, while maintaining their individual freedoms to formulate other trade policies with third countries.<sup>3</sup> An example of a free trade agreement is the North American Free Trade Area (NAFTA), made up of the United States of America, Mexico and Canada. A free trade agreement is important because it encourages healthy competition and improves efficiency within the area through member states’ increased specialization in specific production sectors, and also saves resources by ensuring a better allocation of them into the most productive areas.<sup>4</sup> There is a free trade scheme within West Africa through its regional economic body, the

Economic Community of West African States (ECOWAS), known as the ECOWAS Trade Liberalization Scheme (ETLS).

ECOWAS was established with the objective of “liberalizing trade among member states through the elimination of tariff and non-tariff barriers and the ultimate achievement of an economic and monetary union, after successfully going through the process of a free trade area, customs union and a common market”.<sup>5</sup> Specifically, the aim is to remove tariff and non-tariff barriers to trade within the region; establish a common external tariff (CET) for trade relations with third countries; remove all obstacles to the movement of the factors of production, including people and capital; and harmonize trade policies across its member states to improve trade in the region.<sup>6</sup> The creation of the ECOWAS Trade Liberalization Scheme is the policy move to begin the achievement of the objectives of ECOWAS.

West Africa’s trade liberalization policy, “the ECOWAS Trade Liberalization Scheme (ETLS) is the main ECOWAS operational tool for promoting the West African region as a free trade area.”<sup>7</sup> It officially started operating in 1990, even though it was formulated in 1979. Fifteen (15) West African states under ECOWAS are signatories to the scheme. The ETLS is meant to create opportunities by creating new markets for goods and services outside the signatory countries; to increase investment opportunities for third countries and corporations; to cheapen trade by removing all customs duties; and to facilitate the movement of goods through customs to make trade faster, while harmonizing technical and sanitary standards.<sup>8</sup>

The implementation of the scheme is supposed to be conducted in stages. The first stage is the complete liberalization of trade in goods that are not processed, as well as handicraft products.<sup>9</sup> The second stage is the gradual liberalization of trade in industrial products and the

third stage is the gradual institution of a Common External Tariff (CET), which would lead to a customs union.<sup>10</sup>

The scheme has undergone a series of transformations to define exactly what categories of goods should be covered under since 1979.<sup>11</sup> According to the Scheme, goods that are covered include “wholly produced goods, i.e., goods that have raw materials which completely originate from the community; goods which do not have raw materials that completely originate from the region but their production requires the use of different materials which are classified under a different tariff sub-heading from that of the product; and finally, goods that are made of raw materials which do not completely originate from the community but their production requires the use of materials which have received a value added of at least 30% of the ex-factory price of the finished goods”.<sup>12</sup> Specific products that are covered under the scheme vary from country to country. For instance, in Ghana, Alugan Company’s Glass Louvre Blades are covered under the scheme, Densu Industries’ Dental Antiseptic and so on, are covered under the scheme.

## 1.2 Statement of the Research Problem

ECOWAS has, in recent years, dedicated its efforts towards a monetary union with the establishment of the ECO, the currency which is intended to be the new common currency for the member states of ECOWAS. There have been summits upon summits to discuss the way forward. The current deadline to meet this goal is the year 2020.<sup>13</sup> With just under two years to go, preparations towards the achievement of the goal are being spearheaded by Ghana, Niger and Ivory Coast.<sup>14</sup>

The main goal of ECOWAS is to create a strong regional economic community to facilitate the trade in goods. The plan to achieve this follows laid-down procedure as established

by ECOWAS. The elimination of tariff and non-tariff barriers is the beginning. This is followed by the creation of a free trade area, a common external tariff (CET) in dealings with states and other bodies outside the regional community and then an economic and monetary union.<sup>15</sup>

The research problem, then, is whether ECOWAS, through the ETLS, has accomplished its agenda of removing the technical and physical barriers to trade, establishing a free trade area, along with the other objectives, which is supposed to pave way, according to the ECOWAS stated goals, for the establishment of a monetary union.

The research, thus, focuses on assessing how successful the ECOWAS agenda for establishing a free trade area has been by examining the performance of the trade liberalization scheme. The ETLS is the mechanism for implementing a free trade area in the West African sub-region hence, an assessment of the scheme will inform the researcher on how prepared the community is towards establishing a monetary union by the year 2020.

### 1.3 Research Questions

1. What progress has the ETLS made in establishing West Africa as a free trade area?
2. What are the obstacles to achieving the ETLS goal of establishing a free trade area?
3. How can ECOWAS improve upon its methods of achieving a free trade area?

### 1.4 Objectives of the Research

1. To assess the performance of the ETLS in establishing West Africa as a free trade area
2. To investigate the factors militating against the achievement of a free trade area
3. To recommend ways in which ECOWAS can achieve its goal of a free trade area in the sub-region

### 1.5 Scope of the Research

The research focuses on the implementation of the ECOWAS Trade Liberalization Scheme by ECOWAS regionally and by member states within their individual countries, with a focus on Ghana.

### 1.6 Rationale of the Study

The study, besides adding to existing knowledge on the ECOWAS Trade Liberalization Scheme and free trade in West Africa, also assesses the current status of the trade liberalization scheme in West Africa. It will help inform policy makers when decisions are being made regarding trade issues in individual states within West Africa, as well as economic decisions within the West African sub-region.

The study also highlights some gaps within the ECOWAS body, as well as within the implementation of the ECOWAS Trade Liberalization Scheme and directs ECOWAS towards filling these gaps in the interest of the proper functioning of the scheme and ECOWAS as a whole. In the same vein, any strength identified within the regional economic body and its scheme towards trade liberalization can be applied in other parts of Africa for the greater integration of the African continent.

### 1.7 Limitations of the Study

The conduct of the study faced certain limitations, significant of which was the reliance on secondary sources of data due to the fact that the ECOWAS Commission's Trade Department failed to respond to enquiries related to the study.

Again, the limited funds and required pages for the study led to a truncation of the interviews to be conducted for the study. However, the information gained from the interviews conducted was enough to conclude on the findings.

### 1.8 Conceptual Framework

The conceptual framework for the conduct of the study is WTO-Plus. This framework takes the provisions of the World Trade Organization (WTO) as a mechanism in assessing regional trade agreements (RTAs).<sup>16</sup>

A very important feature of the WTO is the stark differences between rule obligations and market access obligations of the WTO. The WTO rule obligations include the general obligations that the WTO member states are to obey the WTO rules of conduct, while the obligations of individual member states to lower the barriers to trade in specific goods and services make up the market access obligations.<sup>17</sup> Rule obligations are embodied in the Marrakesh Agreement and its annexes, including GATT 1994, GATS, TRIPS and the DSU, amongst others. Market access obligations are also found in the WTO member state's goods and services schedules, annexes of GATT 1994 and GATS, respectively.

The WTO rule obligations and market access obligations differ in terms of design. Rule obligations are uniform, in that, all WTO members follow the same set of rules of conduct.<sup>18</sup> Market access obligations are country specific, in that, the obligation to liberalize trade in specific goods and services differ amongst the different countries.<sup>19</sup> The individual market access obligations of the member countries, however, apply equally to all WTO member states under the Most-Favored-Nations (MFN) treatment. It is also more difficult to change or remove rule obligations than it is to modify, change, remove or renegotiate market access obligations.<sup>20</sup>

Market access obligations are removed, changed, withdrawn, and even renegotiated periodically under certain circumstances on the grounds of reciprocity.

“Under the structure of the WTO agreement, the rule obligations of the acceding states should, in principle, be the same as the existing members, but specific provisions of the WTO agreement on accession creates a possible departure from that principle.”<sup>21</sup> Article XII.1 of the GATT 1994 lays emphasis on the last part of the agreement which says that any state or customs territory that wants to accede to the agreement will only accede “on terms to be agreed between it and the WTO” even if they meet the criteria in the multilateral trade agreement.<sup>22</sup> This means that some states can accede on obligations higher or tougher, or generally, different from other WTO members, for instance, China. Article XII places no limits on the terms of entry, mentioned in Article XXXIII of the GATT 1994, to be agreed upon between the acceding state and the WTO member countries.<sup>23</sup> The existing members can legally negotiate any terms they want, including country-specific rule obligations, changing the existing rules of conduct for particular acceding members.<sup>24</sup> This becomes the origin and the legal basis for WTO-plus principles and obligations.

The WTO as a body regulates trade in the international system by using the obligations established in the preceding paragraphs – rule obligations and market access obligations. These rules and regulations create a trade regime, of which ECOWAS is a notified member of, with all ECOWAS members being parties to the WTO agreement itself. This makes the WTO-plus framework a good analytical tool to assess whether the provisions of the WTO for regional trade agreements have been adhered to by ECOWAS in terms of its implementation of the ETLs in West Africa.

The WTO-plus is an analytical framework ideal for qualitatively assessing regional trade agreements. It focuses on four broad and interdependent aspects of most trade agreements, including the coverage of the agreement, procedural provisions available and implemented under the agreement, substantive provisions available and implemented under the agreement, and the implementation and enforcement provisions that the agreement provides.<sup>25</sup>

Under this framework, coverage concerns the reach of the arrangement, particularly if it extends beyond the obligations undertaken by the WTO on non-discrimination.<sup>26</sup> If the trade agreement surpasses the levels which the WTO provides, for example, a wider coverage in trade in goods, then such an agreement can be said to be effective in terms of coverage.<sup>27</sup> This, essentially, links to the National Treatment (NT), which means that companies and products in the region are treated, on the surface, as domestic companies and products; as well as the Most Favored Nations (MFN) treatment, which accords the same treatment by ECOWAS member states to all other member states.<sup>28</sup> Third countries, or countries outside the region, do not benefit from this treatment.

In terms of procedural provisions, the framework focuses on transparency, open decision-making and institutional infrastructure. Measuring transparency involves assessing the implementation of the notification of regulatory acts or norms or standards through legal requirements under the scheme to the WTO and other relevant bodies.<sup>29</sup> Improved notification of these norms along with relevant information on how to apply them enables beneficiaries of the agreement to comply sooner with new regulations and legislations with ease to better facilitate trade within the region.

Open decision-making involves assessing the availability and effectiveness of the provisions which require local authorities to give prior notifications of decisions to implement regulations within the region.<sup>30</sup> It also looks out for the existence and effectiveness of provisions for the representation of interested parties. Open-decision making promotes the use of best regulatory practices, which increases the predictability of future regulations and helps reduce regulatory capture.<sup>31</sup>

On the promotion of institutional infrastructures, regional trade agreements should provide for technical assistance and financial assistance, as well as cooperation or twinning between regulatory authorities.<sup>32</sup> These facilitate better and more rapid decisions towards the efficiency and effective of the agreement.<sup>33</sup>

Substantive provisions are spread across measuring for harmonization of standards; mutual recognition or equivalence; and regulatory discretion.<sup>34</sup> Regional agreements have to promote harmonization of national regulations, standards or conformance assessment provisions. If there are varying regulations, standards and conformance assessment procedures in the various ECOWAS countries, it will increase costs for foreign suppliers, and reduce their willingness to conduct business within the region. Thus, harmonization reduces these costs and enhances market access by third parties and countries within the arrangement. Also, a number of national regulatory policies could be replaced by one regional standard – approximation. All regional trade agreements possess a certain degree of harmonization. “Regional harmonization can oblige other countries to fall in line with the dominant regional standards”. For instance, the European Union’s (EU) *acqids* is a requirement for entry to the EU market. In assessing the impact of regional trade agreements, it will be vital to determine whether the agreements go farther than the WTO provisions in promoting policy harmonization within a region.

“Mutual recognition means that the performance standards or legitimate policy objectives in the exporting country are considered equivalent to those of the importing country, so that no further testing or certification is required.”<sup>35</sup> The recognition of test results by the importing country means that laboratories in the exporting countries test the products for conformity with the standards of the importing country. This leads to no further testing in the importing country is necessary. Mutual recognition facilitates open markets and reduces the costs of trade.<sup>36</sup> Therefore, it is necessary to assess the level of mutual recognition or equivalence in determining the impact of regional trade agreements.

Another important aspect is whether or not the agreement reduces regulatory discretion. A good agreement does not only concern what rules are made, but also how the rules made are interpreted. In the interpretation of the rules, there can be certain abuses, which can serve as a barrier to market access. The abuse can be checked by transparency in decision-making procedures. However, tools within the agreement such as the exceptions to non-discrimination that agreements like these offer on the grounds of human and animal health and safety; as well as the general exceptions within the GATT (1994) under Article XX, provide justification and a legal basis for states to pursue some discretion that border on abuse of regulatory powers.<sup>37</sup> “Regional trade agreements could be said to be WTO-Plus if they interpret these general exceptions more restrictively than the multilateral rules.”<sup>38</sup> One way of doing this is to interpret such criteria or exceptions within a judicial or quasi-judicial procedure, for instance, within the European Court of Justice in the European Union (EU).

On the implementation and enforcement of the regulations, the framework measures effective reviews and remedies. It also looks out for the existence of anti-competitive practices and how it is being implemented. Efforts to reduce the barriers to trade will only be effective if

there are effective and efficient ways to implement the regulations under the regional agreement and make provisions for periodic reviews of the impact of the arrangement.<sup>39</sup> There should be a decentralized means of dealing with disputes that can arise from the implementation of the policies. For many regional agreements, it occurs through some recourse to action by the grieving parties, usually private companies and member countries. In assessing effective implementation and reviews against the WTO standard, it is vital to “assess whether the regional trade agreement offers more effective or more immediate dispute resolution mechanisms than the WTO”.<sup>40</sup> Regional trade agreements can be WTO-plus if they provide reviews and remedies for signatory states and third countries with regards to the application of regulations, legislations and decisions.<sup>41</sup>

Regional trade arrangements also need to ensure that practices that are anti-competitive do not negatively affect trade and that competition is promoted within the region. As a measure, the framework looks out for the existence of competition policies that will stir the natural competition of any marketplace. The existence of competition policies creates a control on the misuse of market power by large corporations that may otherwise prevent effective market access.

Applying the framework to address the research problem of the performance of the ETLS in creating a free trade area in West Africa is ideal. This is because the framework breaks down the various components of a regional trade agreement like the ETLS into its basic parts, which can be assessed for effectiveness. Based on the assessment, conclusions can be drawn on its effectiveness, and possible recommendations can be made to make it better in its execution.

## 1.9 Literature Review

Literature reviewed for this study encompasses the areas of regional economic integration, free trade areas and the ECOWAS Trade Liberalization Scheme.

In Ademola Oyejide's "Regional Integration and Trade Liberalization in Sub-Saharan Africa", he concludes that while trade liberalization efforts in Africa often show positive results, regional integration schemes have not met expectations because of their design and implementation problems.<sup>42</sup> He asserts that regional integration can be very positive for Africa if not for the ineffectiveness of regional integration schemes. He argues that membership in regional integration schemes are the least significant stimulus for the liberalization of trade in the various regions in Africa, hence, less concentration should be given to the creation of regional integration schemes, and more focus should be placed on the effectiveness of these, and not just their existence. He also pointed out that some integration instruments constrain trade just as much as how multiple membership in different integration schemes, the lack of political will to integrate, or the impotency of some regional authorities in ensuring compliance of of protocols and decisions, amongst others, do. Though dated, this work is vital to understanding the stark differences between having a regional integration scheme and implementing trade liberalization policies in the sub-region. These findings inform the study's conclusions on the hindrances to free trade in West Africa, as well as aids in making recommendations to the sub-regional community towards improving free trade arrangements.

Sesay and Omotosho's "The Politics of Regional Integration in West Africa" concluded that regional integration processes are driven by the preeminence of the forces of globalization in the post-Cold War international system.<sup>43</sup> They assert that successful integration will enable

weaker regions and states to equip themselves to face some of the fierce competition among states and regions in the international system. He further discusses some recommendations that will consolidate the gains from ECOWAS that can move ECOWAS's regional integration agenda forward. Some of the recommendations given include deepening democracy and strengthening institutions through accountability and transparency; proper coordination of national production structures to complement each other; developing the agricultural sector in the sub-region; developing ECOWAS's human resources; strengthening the capacity of conflict management institutions; solving funding problems; and redefining the region's relationship with Europe and the United States.<sup>44</sup> The work considered the ECOWAS Trade Liberalization Scheme as a critical project to drive the economic integration of the region. It, however, acknowledged that the basic purpose of the Scheme to establish a West African free trade area has not been successful.<sup>45</sup> The requirements for the scheme are criticized as being too difficult to carry out. National governments have also been reluctant to fully implement the scheme in their states. Other criticisms include bureaucratic red tape that frustrates the system during the process of acquiring mandatory documents; and some ECOWAS countries are weary that less developed states in the region will dump their below-standard goods into their markets. These criticisms and more have slowed down intra-regional trade in West Africa and some states are experiencing what they call "integration fatigue" resulting from the relatively negligible returns from the ETLS. This particular literature informs the study's scope. Instead of limiting the study to strictly the implementation of the ETLS, it is also good to consider how the politics of the individual states are affecting the implementation of the scheme and whether it is good or bad for the scheme. The findings will show how the innate fears of some of the countries in ECOWAS

inform their decisions to not respect the MFN treatment and National Treatment clauses of the scheme.

The study by Mohammed Shuaibu into trade liberalization and intra-regional trade sets out to “assess the impact of trade liberalization on intra-ECOWAS trade using an augmented gravity model that accounts for import duties as a measure of trade liberalization”.<sup>46</sup> Essentially, it sought to determine whether or not trade liberalization leads to increased intra-regional trade using ECOWAS as a case study. Data from twelve ECOWAS countries showed that reducing import duties on manufactured and primary goods increase intra-ECOWAS trade volume in all areas except the agricultural sector, which showed a decrease in the volume of trade. According to Shuaibu, improved infrastructure and better institutions impact intra-ECOWAS trade positively. This underlines the value of the elimination of tariff and non-tariff barriers to trade in the sub-region, which is one of the main motivations of the work – understanding the shortfalls of the ETLs in order to improve the scheme to benefit ECOWAS member states. According to Shuaibu, the harmonization of policies and standards should be pursued in addition to trade liberalization by regional economic communities so as to gain the most from trade for the benefit of all countries. This work justifies our study in the need to explore the performance of the ETLs in liberalizing trade in the sub-region, and why steps should be taken to address the obstacles to free trade in the sub-region.

In Adedokun’s “A Legal Appraisal of a West African Free Trade Area”, he observes that “a lot of homework has to be done in lowering rules of origin requirements for goods manufactured in member countries, providing public infrastructure and enabling access to credit by entrepreneurs in West Africa’s free trade agreements” because West Africa’s percentage share of world trade, excluding its oil members, is very low.<sup>47</sup> The regional economic body needs

committed and visionary leadership to judiciously apply state resources to improve transportation, amongst other things, that hinder intra-regional trade.<sup>48</sup> To increase trade within states in the region, the purpose for which free trade agreements are created, will solve the problems created by the division of the African continent into a number of non-viable economies. Lowering rules of origin is not explored by this study into the performance of the ETLS, but it does agree with the conclusions of Adekokun in addressing all issues that hinder trade between West African states, hence, the need to review the performance of the ETLS and address its shortfalls. Adekokun's literature addresses similar issues as the researcher does in this study, only from a legal perspective.

A critical evaluation of the free movement of goods and trade liberalization in ECOWAS by Okom, Otu and Lloyd conclude that ECOWAS still has ways to go to accomplish this goal.<sup>49</sup> This article is very necessary as it presents the problems in the region as is, without sugar-coating. Most of the problems in this article are given much deeper focus and context in this study. According to the article, cross-border trade in the sub-region is still plagued by customs barriers, which results in earnings loss to individual member states in the region and the ECOWAS body as a whole. Some problems identified in the region include the inadequate diversification of production which causes states to repackage goods from outside the region to export to other members of the regional community, the inadequacies of laid-down policies coupled with the constant circumvention of such policies, the absence of harmonization of policies and standards and so on. These problems, according to the article, contribute to the failure of the community to implement the free movement of goods protocols and achieve true trade liberalization in the sub-region. The authors recommended equal commitment to policies under the community. They also recommended that Nigeria take up the leadership mantle in

moving the integration agenda of the community forward. The harmonization of policies and standards in the region is another recommendation from the authors to the economic community towards improving the region in its bid to liberalize.

Ukuoha and Ukpe, in their work titled, “The ECOWAS Trade Liberalization Scheme: Genesis, Conditions and Appraisal”, highlights the elements of the Liberalization Scheme to include some of the aims of the scheme, the coverage of the scheme and the defined conditions for the importer.<sup>50</sup> The scheme is meant to create opportunities by creating new markets for goods and services within the West African sub-region, increase investment opportunities and make trade cheaper and faster. They also addressed some of the concessions granted under the scheme, and most importantly, they reviewed the implementation of the ETLS. Some issues of political commitment on regional integration programs were revealed, which undermines the main purpose of the ETLS. Some obstacles to achieving the goals of the ETLS identified included the absence of a legal backing for the scheme; a lack of awareness and sensitization; and issues of sovereignty. They recommended partnerships for sensitization on the scheme, advocacy campaigns, whistle blowing and complaints, facilitating access to ETLS certification for companies, enlightenment campaigns, and establishing border markets. They further recommended private sector interactions, trade fairs and exhibitions, parliamentary action on the domestication of the scheme, integrating the informal sector into the scheme and so on. This article is a must-read because a critical look at it provides the information necessary to gain deeper understanding of the ETLS, which is the focus of this study.

#### 1.10 Sources of Data and Methodology

The study is an exploratory research, and thus, involves extensive literature review, interviews and qualitative research methods to probe the research questions and arrive at its conclusions.

The sources of data for the study are of both primary and secondary nature. The primary source of data is interviews conducted in semi-structured format. An interview is conducted with Hon. Ing. Frederick Alipui, who is a former Director of the Department of Trade and Industry of the African Union and the Managing Director of Afrinvest Consult Limited. He is an expert on the ECOWAS Trade Liberalization Scheme (ETLS) and other free trade schemes in Africa. Other interviewees include the Director-in-Charge of ECOWAS in Ghana's Foreign Affairs and Regional Integration Ministry's (MFARI) Africa Bureau, Mr. Samuel Ofori-Asante and the Director of Multilateral and Bilateral Affairs Bureau in the Ministry of Trade and Industry (MOTI), Mr. Nyame Baafi. These government agencies are especially given focus because they are responsible for the implementation of the ETLS in Ghana. Information is also gathered from respondents from the Ghana Exports Promotion Authority (GEPA) and the Ghana Standards Authority (GSA), who prefer to be anonymous.

These experts are sampled using the snowball sampling techniques due to the limited number of people that the researcher knows in the various areas of study. The snowball sampling method allowed the researcher to gain access to sources of information he wasn't already privy to. Some purposive sampling is also used to gain access to data from specialized sources like experts such as Hon. Frederick Alipui.

Secondary sources of data employed in this research include a review of books and journals written about the area of study, obtained from the University of Ghana Balme Library, the LECIAD library and online repositories like JSTOR, science direct and others. ECOWAS protocols, decisions and regulations, and other materials relevant to the study were obtained from the ECOWAS website and the ECOWAS information center at LECIAD, which were essential to the conclusions of the study.

The analysis of the data collected is conducted with the aid of the WTO-plus framework. The framework allows the study to focus on specific areas relevant to regional trade agreements such as the MFN and national treatment of products and companies, review mechanisms, and the transparency of the scheme and so on, and conclude on whether or not it has achieved its goals. The conclusion will be reached through the discussion of data gathered in the field, analyzing previous research materials from other researchers, and identifying its relevance to this study, while highlighting the study's original contribution to knowledge. A thorough discussion of the findings through the lens of the WTO-plus framework will serve as adequate analysis for a viable conclusion on the research questions and objectives.

#### 1.11 Organization of the Study

The study comprises four chapters. Chapter one is the introduction of the study. It highlights the statement of the research problem, outlines the research questions and objectives and introduces the conceptual foundations of the research. It also reviews some literature on the study areas and touches on the sources of data and methodology of the research.

Chapter two also gives an overview of regional economic integration in Africa with a special focus on the free trade agreement in West Africa, the ECOWAS Trade Liberalization Scheme.

Chapter three assesses the ETLS as a vehicle for promoting a free trade area in West Africa. It also explores some obstacles to achieving the ECOWAS goal of establishing a free trade area in West Africa, as well as some recommendations for improving the implementation of the scheme.

Finally, chapter four summarizes the findings of the study, states the conclusion it offers and some recommendations from the researcher.

## Endnotes

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## CHAPTER TWO

### OVERVIEW OF REGIONAL ECONOMIC INTEGRATION, FREE TRADE AREAS AND THE ECOWAS TRADE LIBERALIZATION SCHEME

#### 2.0 Introduction

This chapter looks at an overview of regional economic integration, free trade area and the ECOWAS Trade Liberalization Scheme (ETLS). It first looks at an overview of regional economic integration, what it is and a historical overview of economic integration in Africa. It, then, looks at the concept of a free trade area and the various free trade arrangements in Africa, and, subsequently, an overview of the ECOWAS trade liberalization scheme.

#### 2.1 Economic Integration in Africa

“Economic integration can be defined as a series of actions whereby two or more countries in the same geographical region voluntarily come together to follow common policies and objectives in matters of general economic growth or in a specific economic field of common interest to the mutual advantage of all participating countries.”<sup>1</sup> Economic integration , as defined by Antwi-Danso, “is a commercial policy of discriminately reducing or eliminating trade barriers only among the nations joining together – the market approach to integration”.<sup>2</sup>

Most of the working regional organizations in Africa were founded or renewed in two waves. The first wave took place between the middle of the 1970s to the beginning 1980s, while the second wave occurred between 1990 and 1995.<sup>3</sup> The formation of these organizations in Africa at the time was induced by the positions and certain actions taken by African countries as well as various occurrences in different parts of the world.<sup>4</sup> In effect, “inspiration for the first

wave was related to the deliberate post-independence pursuit of integration by African countries”, for instance, the establishment of ECOWAS in 1975.<sup>5</sup> However, it could also be considered to be a response to the success of Europe’s economic community and its growth in the 1970s with the addition of Denmark, the UK and Ireland.<sup>6</sup> The second wave was mostly about the revitalization and expansion of the mission of the existing regional institutions rather than the creation of new organizations.<sup>7</sup> For instance, the 1991 Abuja Treaty created the African Economic Community (AEC) which expanded the mandate of the African Union. With regards to issues happening in the international scene, the creation of NAFTA by North American countries, as well as the signing of the Maastricht Treaty in the 1990s could have been a contributing factor to the second wave.<sup>8</sup> For instance, the UEMOA, which became the new form of the CEAO in the 1990s is said to have been influenced by the signing of the Maastricht Treaty.<sup>9</sup>

“Some African countries have embraced regional integration as an important component of their development strategies primarily driven by the economic rationale of overcoming the constraints of small economies working in isolation.”<sup>10</sup> Historically, this can be seen in the trajectory of events and occurrences that has landed Africa in its current economic state. A summary of these milestones are highlighted in the subsequent paragraphs, illuminating its effects in African economic integration.

A number of the colonial cross-border institutions continue to exist after the independence of the previously colonized countries to promote their regional integration agenda.<sup>11</sup> Significant of these arrangements is the African Financial Community (CFA franc) Zone, which refers to the two currencies used in Western and Central African countries like Togo, Benin, Cote d’Ivoire, and Burkina Faso and so on. The currencies – the West African CFA

franc and the Central African CFA franc – are backed by the French treasury. It was created on the 26<sup>th</sup> of December, 1945 to spare the French of a strong devaluation after the signing of the Bretton-Woods agreement, which required the French franc to be devalued in order to set a fixed exchange rate with the US Dollar. The establishment of these monetary zones in the western and central parts of Africa served as one of the earliest forms of economic integration in post-independence Africa.

In 1958, the establishment of the United Nations Economic Commission of Africa (ECA) by the, then, Economic and Social Council of the United Nations, as a regional commission of the United Nations, together with partners and member states, consequently worked towards sustainable development in Africa.<sup>12</sup> The ECA was established to champion economic cooperation among African states following a recommendation of the United Nations General Assembly. Amongst other things, the ECA recommended the creation of sub-regional groupings in Africa to promote sustainable development in the 1960s.<sup>13</sup> It was following this recommendation that such regional communities as the ECOWAS, SADCC, and so on were formed.

Another important milestone and a contributing factor towards the economic integration of Africa was the formation of the Organization of African Unity (OAU) in May, 1963. Amongst others, its main objectives were “to promote unity and solidarity of its members; to organize and strengthen cooperation for the development of the continent; to protect the sovereignty and territorial integrity of its member states; and to encourage international cooperation as outlined by the United Nations Charter”.<sup>14</sup> The OAU brought the continent together to fight against colonial rule and helped achieve independence for some African countries, thereby, opening the door for further cooperation of African states in areas such as trade and economic development.

There was also the establishment of the African Development Bank (AfDB) Group, around the same time as the creation of the OAU in 1963. It is a multilateral development finance group, which comprises three bodies; the African Development Bank established in 1963, the African Development Fund established in 1972 and the Nigeria Trust Fund, established in 1974.<sup>15</sup> The Bank was established to help the fight against poverty and improve the living conditions of the people on the continent through the promotion of investment of public and private capital in projects and programs that are likely to improve the economic and social status of the continent.<sup>16</sup> The main objectives have been the mobilization and allocation of resources for investments in member states, giving policy advice to local governments and providing technical assistance where necessary to support the development efforts of the various member states.<sup>17</sup>

All these organizations and institutions operated under established conventions and frameworks. This contributes to the reasons why African integration arrangements became binding under international law. “They were either created under the framework of the Lagos Plan of Action or arrangements which pre-existed that.”<sup>18</sup>

The Lagos Plan of Action, officially known as the Lagos Plan of Action for the Economic Development of Africa 1980-2000, was an OAU and ECA backed plan to increase Africa’s self-sufficiency. It was adopted in 1980 in Lagos, Nigeria, at the OAU Extraordinary Summit, which included several African leaders. The plan apportions the blame of Africa’s economic crisis on the various Structural Adjustment Programs of the World Bank and the International Monetary Fund (IMF) and the vulnerability of African economies to international economic shocks.<sup>19</sup> Among the decisions of the summit were the future establishment of an African Economic Community; the build-up of existing regional economic communities like ECOWAS and

COMESA; and the establishment of new regional economic communities to cover the continent as a whole.<sup>20</sup> The regional economic communities were all expected to operate under the framework of the Lagos Plan of Action.

Another important framework that underpins African economic integration is the Abuja Treaty of 1991. “It is arguably the most important agreement as regards economic, social and political collaboration, coordination and convergence in Africa as it lays out the future of the continent with the establishment of an African Economic Community (AEC), following the decision of the Lagos Plan of Action.”<sup>21</sup> The goals of the AEC include the establishment of free trade areas, customs union, a single market, a central bank, and a common currency, thus, establishing an economic and monetary union in Africa. The regional economic communities (RECs), consisting of, amongst others, ECOWAS, COMESA and ECCAS, are the pillars of the AEC, with some of the RECs containing sub-regional groupings. Some of the sub-regional groupings include the Economic and Monetary Community of Central Africa (CEMAC) under the Economic Community of Central African States (ECCAS) and the West African Monetary Zone (WAMZ) under ECOWAS. In six stages, the goals of the AEC, according to the Abuja Treaty, were to be achieved by “creating regional blocs in regions where such did not exist by 1999, strengthening intra-REC integration and inter-REC harmonization by 2007, establishing a free trade area and customs union in each regional bloc by 2017, establishing a continent-wide free trade area and a customs union by 2019, establishing a continent-wide African Common Market by 2023, and establishing a continent-wide economic and monetary union and parliament by the year 2028”.<sup>22</sup> The integration process covers a total of 34 years.

With these institutions, including the treaties and organizations, the African integration process in terms of the economy was established, and reinforced with the Sirte Declaration of

1999, which, among other things, transitioned the OAU into the African Union (AU) in 2003. The adoption of the New Partnership for Africa's Development (NEPAD) in 2002 in Durban to deal with Africa's development problems in a new way aimed to "reduce poverty; put Africa on a sustainable development path; halt the marginalization of Africa; and empower the women on the continent".<sup>23</sup> The partnership provides an extensive plan which tackles key social, economic and political aspects of the continent. A distinguishing feature of NEPAD was the African Peer Review Mechanism (ARPM) which became operational in 2003, and aimed at promoting good governance practices in African countries.

In recent years, the African continent has had plans of establishing a Continental Free Trade Area (CFTA). The CFTA is meant to boost intra-Africa trade. In March 2018, African heads of states gathered in Kigali, Rwanda to sign the proposed agreement. Forty-four (44) of the fifty-five (55) African states had signed the agreement by the end of March 2018, and it will come into force when 22 of the 44 signatory states ratify it. The ECA estimates that the agreement will boost intra-Africa trade by 52% by the year 2022, when ratified.<sup>24</sup>

## 2.2 Regional Economic Integration – West Africa

The most comprehensive regional institution in West Africa is the Economic Community of West African States (ECOWAS), created in June, 1975.<sup>25</sup> It has fifteen member states and was established under the Treaty of Lagos. Article three of the Revised ECOWAS Treaty outlines one of the main objectives of ECOWAS as the promotion of economic integration in the region.<sup>26</sup> According to the treaty, this can be achieved by, amongst others, "ensuring the harmonization and coordination of national policies and the promotion of integration programs, projects and activities; the establishment of a common market through the liberalization of trade

by the abolition of customs duties and tariff barriers among member states in order to establish a free trade area in the sub-region; the adoption of a common external tariff and trade policies in dealings with third party countries; the removal of any obstacles to the free movement of persons, goods, services and capital; and the eventual establishment of an economic union”.<sup>27</sup> In simple terms, its mission is to stimulate economic integration across the region, and to achieve self-sufficiency for its member countries by creating a single trade alliance and building a full economic and trade union. It is also sometimes involved in peacekeeping missions in the West-African sub-region, for instance, the ECOWAS Monitoring Group’s (ECOMOG) operations in Liberia and Sierra Leone.

ECOWAS has two sub-regional blocs. The first is the West African Economic and Monetary Union (UEMOA), made up of eight mainly French-speaking countries in the sub-region. After their independence, most French colonies in Africa retained their monetary union with France. It started out as the Communauté Economique de l’Afrique de l’Ouest (CEAO) established in 1973 by the West African CFA franc Zone countries including Mauritania, but without Togo.<sup>28</sup> In 1994, CEAO was replaced by the UEMOA when the economic and integration functions were combined, with Togo and without Mauritania. According to Dinka and Kennes, the UEMOA’s treaty was inspired by the European Union’s Maastricht Treaty in the 1990s.<sup>29</sup> The creation of the UEMOA sped up the implementation of some strategies including the establishment of a common trade policy, a customs union and a UEMOA Commission which has the right to enter into negotiations on behalf of member countries.

The second sub-regional body is the West African Monetary Zone (WAMZ), made up of six mainly English-speaking countries in West Africa. The sub-regional body was established in

2000 with plans to adopt its own common currency, the eco, like the UEMOA currency of the CFA franc.

Regional economic integration is expanding beyond tariff and non-tariff agreements concerning trade in goods to include services, intellectual property, investment, and competition.<sup>30</sup> However, with ECOWAS in perspective, the focus is placed on the removal of tariff and non-tariff barriers and the subsequent establishment of a Free Trade Area in West Africa.

### 2.3 Free Trade Areas

“Regional trade agreements (RTAs) are constructed within the context of regional integration as a means of expanding trade between members of the economic bloc.”<sup>31</sup> RTAs were made a part of the GATT because of the incessant insistence of the developing countries for a more inclusive international trade regime in the 1960s. RTAs liberalize trade between the countries that form a part of the agreement, but not with the rest of the world, to “achieve economies of scale and foster political and security cooperation within the region”.<sup>32</sup> RTAs signify trade relationships established under the principles of reciprocity and preferential treatment. Reciprocity implies that the trade partners interact with each other on the basis that there is, or should be, no trade barriers in any form, physical or regulatory.<sup>33</sup> RTAs based on the principle of a preferential treatment, usually under Preferential Trade Agreements (PTAs) are mostly between an advanced country and a less developed country, with the advanced country typically dictating the terms of the agreement.<sup>34</sup>

There are essentially two types of Regional Trade Agreements, namely: Free Trade Areas (FTAs) and Customs Union (CU).<sup>35</sup> FTA members maintain autonomy in its external trade

policies. However, customs union members have a Common External Tariff (CET).<sup>36</sup> This is the main difference between FTAs and CUs. Free trade areas are more common than customs Unions. However, the largest regional trade agreement in the world, the European Union (EU), is a Customs Union.

RTAs have been increasing steadily since the 1990s. According to the WTO, as of 7<sup>th</sup> April, 2015, there were 406 regional trade arrangements notified to GATT/WTO.<sup>37</sup> According to Okhawa et. al., the majority of the recently established Regional Trade Agreements are bilateral agreements, and most of them are FTAs, mostly between dissimilar countries.<sup>38</sup> RTAs are expanding to include a wide range of issues such as competition, the environment, intellectual property, services and so on, in addition to its primary focus on market access across borders.<sup>39</sup>

In Africa, all the regional economic communities (RECs) have regional trade agreements that establish a form of free trade within their respective regions. The following paragraphs will focus on the Tripartite Free Trade Agreements between the Common Market for Eastern and Southern Africa (COMESA), Southern African Development Community (SADC) and the East African Community (EAC); the free trade agreement of the Economic Community of Central African States (ECCAS); the Africa Continental Free Trade Area (AfCFTA) between African Union member states; and the ECOWAS Trade Liberalization Scheme in the ECOWAS sub-region.

### 2.3.1 The Tripartite Free Trade Agreement (TFTA)

In June, 2011, the heads of states and governments of COMESA, EAC and the SADC member countries met and signed a declaration which launched negotiations for the establishment of a free trade area involving three economic communities, COMESA-EAC-

SADC – the Tripartite Free Trade Area (TFTA).<sup>40</sup> It is made up of 26 countries with a population of about 600 million people and a total GDP of approximately 1 trillion dollars. The main objective is to promote economic integration in eastern and southern Africa. It means to achieve these objectives through the harmonization of policies and programmes across the three regional economic communities in the areas of trade, customs and institutions.

These regional economic communities that came together to form the TFTA already have free trade agreements in their separate sub-regions. The SADC is an intergovernmental organization headquartered in Gaborone, Botswana. Its main goal is to promote cooperation and integration in the socioeconomic wellbeing of its citizens. It also aims to promote political and security cooperation among the member states. Member states include South Africa, Angola, Botswana, Democratic Republic of Congo (DRC), Seychelles, and Zimbabwe and so on. The SADC Protocol on Trade envisages “the establishment of a free trade area in the SADC region by 2008”.<sup>41</sup> The objectives of the FTA was “to further liberalize intra-regional trade in goods and services; to ensure efficient production; to contribute towards the improvement of the climate for domestic, cross border and foreign investment; and to enhance economic development, diversification and industrialization of the region”.<sup>42</sup> Of the 15 member states of SADC, only Angola and the DRC are not yet participating in the agreement.

COMESA is free trade area with twenty member states and stretches from Libya to Swaziland. It was formed in December 1994 to replace a preferential trade agreement that had been in place since 1981. Member states include Kenya, Rwanda, Burundi, Uganda, Seychelles, and Angola and so on. It adopts a market approach to integration, which typically starts with the removal of tariff and non-tariff barriers to trade and, subsequently, the establishment of a free trade area, a customs union and so on.<sup>43</sup> It had in place an established free trade area by the year

2000, which was formed by nine of the twenty current member states, while others joined in later.<sup>44</sup> COMESA's free trade area was the first free trade arrangement in Africa and the third in the world after the establishment of the European Union and NAFTA.<sup>45</sup> Currently, it is in the process of becoming a common market with its implementation of the Common External Tariff (CET) in 2004.

The EAC is also an intergovernmental community made up of six countries in the African Great Lakes Region, namely: Burundi, Kenya, Uganda, Tanzania, South Sudan and Rwanda. In July 2010, Kenya launched the East Africa Common Market Protocol to expand the bloc's existing customs union in a common market. The main elements of the customs union included a common external tariff, free trade among member countries and harmonized customs procedures. Under the customs union, different rates are applied for different kinds of products, with the rates of raw materials at 0%, the rates of intermediate products at 10% and the rate of finished goods at a maximum of 25% across member states. However, due to a long exclusions list to the common external tariff and the free movement of goods and services, the customs union has never been fully implemented. Work also needs to be done on the harmonization and modernization of customs procedures in the EAC's major points of entry. The Common market protocol will, however, lead to the free movement of labor, capital, goods and services within the EAC. Ratification is needed for full implementation, but official recognition, by member states, of the protocol occurred on the 1<sup>st</sup> of July, 2010, when Kenya launched it. The protocol is seen as a step towards the implementation of a common currency by 2012 and full political federation by 2015.

By considering the TFTA as an extension of its own free trade agreements, these regional economic communities, upon ratification, will establish a free trade area that covers these three

regions. “The three main pillars of the tripartite strategy are market integration, infrastructure development and industrial development.”<sup>46</sup> The agreement aims to improve the social and economic wellbeing of the citizens in the three RECs through the promotion of regional economic growth by creating an environment ripe for regional trade.<sup>47</sup> The strategy to achieve these aims is “a reduction of tariff and non-tariff barriers to trade; the implementation of programmes to design and roll out the TFTA; the harmonization and implementation of trade and transport facilitation measures; and the design and implementation of infrastructure to support trade”.<sup>48</sup>

### 2.3.2 The ECCAS Free Trade Area

ECCAS is an economic community of the AU to promote regional economic integration in central Africa. It aims to “achieve collective autonomy, raise the living standards of the people living in the region and maintain economic stability through harmonious cooperation”.<sup>49</sup> It currently has ten member states including Angola, Burundi, Chad, Gabon, and Cameroon and so on.

Article 6 of the ECCAS treaty provides for the establishment of a free trade area and a customs union in two decades.<sup>50</sup> In July, 2004, ECCAS launched its free trade area with the aim of “establishing a common external tariff by the year 2008”, but the agreement had to be postponed because of the unpreparedness of the member states for a free trade area.<sup>51</sup> The region, however, implements trade facilitation programs including the construction of one-stop border posts that are becoming more frequent in the region.<sup>52</sup> Central Africa remains the region with the least amount of intra-Africa trade amongst all the five regions of Africa.

### 2.3.3 The African Continental Free Trade Area

In January 2012, at the 18<sup>th</sup> Ordinary Session of the Assembly of heads of States and Government of the AU held in Addis Ababa, AU member states adopted a decision to establish a continental free trade area by 2017.<sup>53</sup> The Africa Continental Free Trade Area is the result of the African continental free trade agreement among all AU member countries. The agreement was signed in Kigali, Rwanda on the 21<sup>st</sup> of March, 2018 by forty-four AU member states, pending ratification by twenty-two of the states to establish a continental free trade area (CFTA). This free trade area is set to be the largest after the establishment of the WTO. The CFTA will bring together all African countries of over a billion people and a combined GDP of close to 3.5 trillion dollars.<sup>54</sup>

The main objectives of the CFTA is “to create a single continental market for goods and services, with free movement of business persons and investments; expand intra-Africa trade through better harmonization and coordination of trade liberalization and facilitation regimes and instruments across the regional economic communities and across Africa in general; resolve the challenges of multiple and overlapping memberships in the regional economic communities and expedite regional and continental integration processes; and enhance competitiveness at the industry and enterprise level through exploiting opportunities for scale production, continental market access and better reallocation of resources”.<sup>55</sup> The CFTA will open the door for the eventual creation of a continental customs union in Africa.

### 2.4 The ECOWAS Trade Liberalization Scheme (ETLS)

The ECOWAS Trade Liberalization Scheme (ETLS) is a mechanism meant to promote the functioning of the free trade area, per the aims of ECOWAS as shown in Article 3 of the

Revised ECOWAS Treaty.<sup>56</sup> The scheme “ensures that goods can be circulated freely without the payment of customs duties and taxes with similar effects of imports, and also has measures to facilitate trade by reducing red-tape and paperwork at borders.”<sup>57</sup>

With the establishment of ECOWAS in 1975, a treaty provision found in Article 12 of the original treaty, says that, “There shall be progressively established in the course of a transitional period of fifteen (15) years from the definitive entry into force of this Treaty, and as prescribed in this Chapter, a Customs Union among the Member States. Within this Union, customs duties or other charges with equivalent effect on imports shall be eliminated. Quota, qualitative or like restrictions or prohibitions and administrative obstacles to trade among the Member States, shall also be removed. Furthermore, a common customs tariff in respect of all goods imported into the Member States from third countries shall be established and maintained.”<sup>58</sup>

This treaty provision served as the background for the establishment of the ETLIS in 1979.<sup>59</sup> The scheme was established with the council decisions C/DEC. 8/11/79, which aims to remove tariffs on agricultural and traditional goods, and C/DEC. 4/5/82, which aimed to define and remove non-tariff barriers to trade in the sub-region. It covers all the countries that make up the ECOWAS within the West African sub-region. The take-off of the scheme was postponed until 1989 and even though there was agreement on over eight protocols and conventions, the implementation of the scheme was shifted to January, 1990.<sup>60</sup>

The scheme’s eventual goal is to eliminate trade barriers including taxes and levies within the West African sub-region. Towards achieving this, the set objectives of the scheme include “improving trade links in the sub-region; facilitating free movements of unprocessed goods and traditional handicraft products which are exempted from customs duties and taxes; the

progressive elimination of customs duties and taxes of equivalent effect on industrial products originating from the member states of the community; a phased liberalization of trade in industrial products, with the phasing reflecting the difference in the levels of development of three categories of ECOWAS member states; and the gradual establishment of a common external tariff against non-members”.<sup>61</sup>

There are two main phases of the scheme in terms of its implementation. The first phase involves the reduction of customs duties and non-tariff barriers, while the second phase involves the total liberalization of trade of three types of products amongst three country groups.<sup>62</sup>

The total liberalization of the product types in the different groups of countries is very essential in the implementation of the scheme. The three product types initially included unprocessed goods, typically made up of animal, mineral and plant products.<sup>63</sup> These products may include milk, eggs, plantain, yam, vegetables and so on. These products are not qualified for the loss of revenue incurred during the importation of goods from member states. The second group includes traditional handicraft products, defined as “articles made by hand, with or without the help of tools; investments or devices that are directly made by craftsmen”.<sup>64</sup> These may include shoes, belts, rugs, and so on.

Drawing on the provisions of article 5 of the Revised ECOWAS Treaty, a third product type was established as industrialized products by the 1983 decision of the Authority of ECOWAS. It stipulated the liberalization scheme for trade in industrial products originating from member states and the schedule for the elimination of tariffs on the said products by the different country groups.<sup>65</sup> Three groups of states were created with two sets of industrial products; priority and non-priority goods.<sup>66</sup> Group one included Cape Verde, The Gambia, Guinea Bissau,

Upper Volta, Mali, Mauritania and Niger. These states were expected to liberalize trade within a period of 8 years. The second group, made up of Benin, Guinea, Liberia, Sierra Leone and Togo were given 6 years to liberalize trade. Finally, the third group made up of countries like Ghana, Nigeria, Cote d'Ivoire and Senegal were given between 3-4 years to liberalize trade. Each of these countries had two additional years to liberalize trade in non-priority products.

Again, a decision was made in the early 1990s, which aimed to “eliminate the difficulty encountered in effectively implementing the trade liberalization scheme, particularly in respect to fulfilling the rules of origin, the minimum national participation in the equity capital of production enterprises, and the structure of the scheme involving the categorization of industrial products as priority and non-priority goods”.<sup>67</sup> Decision A/DEC.6/7/92 provided a new liberalization scheme for trade in industrial products originating from member countries and schedule for the removal of tariffs on these industrial products by the different country groups.<sup>68</sup> Group one has ten years to eliminate tariffs and to reduce customs duties and taxes at a rate of 10% per annum. Group two has eight years to eliminate tariffs and to reduce customs duties and taxes at a rate of 12.5% per annum. Finally, group three has six years to eliminate tariffs and to reduce customs duties and taxes at a rate of 16.6% per annum.

The ETLIS is available to all enterprises based and operating in any of the 15 countries that are members of ECOWAS that intends to export their products within the region.<sup>69</sup> Enterprises that choose to trade under the scheme are bound by certain rules spelt out in the protocols and regulations governing the scheme, most significant of which are those spelt out in Protocol A/P1/1/03 of 31<sup>st</sup> January, 2003; Regulations C/REG.3/4/02; Regulations C/REG.4/4/02; and Regulations C/REG. 5/4/02 of 23<sup>rd</sup> April, 2002.

Protocol A/P1/1/03 relates to the definition of the concept of products originating from member states of the ECOWAS. This protocol establishes rules and regulations covering several areas related to the origin of goods, such that implementing the ETLS is simpler and clearer. The protocol provides that goods are considered as originating from member states if they are “wholly produced in member states”, where examples of goods produced in member states are live animals, electric energy produced in member states, or goods produced with certain raw materials used alone or mixed with other raw materials to produce a finished good, amongst others.<sup>70</sup> Goods are also considered originating from member states if “they have been produced in member states but contain raw materials which were not wholly obtained from member states, provided that such materials have undergone operations and processes that confer community origin”.<sup>71</sup> Operations and processes confer community origin in instances where “goods are not wholly produced in member states and where their production requires the exclusive use of materials which are to be classified under a different tariff sub-heading from that of the product”, however, there are exceptions.<sup>72</sup> In other instances, goods are not entirely produced in member states but “their production requires the use of materials which have received a value-added of at least 30% of the ex-factory price of the finished good”.<sup>73</sup> Originating products that are made up of materials “wholly produced or sufficiently transformed in one or several member states is considered as products originating from the member state in which the last processing or transformation took place”.<sup>74</sup> Other provisions of this protocol include operations that do not confer origin, which include simple tasks or necessary tasks on the products like preservation, cleaning or slaughtering; as well as provisions for the necessity for a certificate of origin, especially with industrial products, and other products.

Regulation C/REG.3/4/02 establishes a procedure for the approval of originating products to benefit under the ETLS.<sup>75</sup> The regulations include the approval procedure which grants authority to a designated body in each member state – the national approvals committee (NAC) – which makes recommendations on products to approve.<sup>76</sup> The committee is composed of the ministry of trade, industry and finance of member states and the ECOWAS national unit. It also includes the chambers of commerce and industry and other necessary institutions as decided by the member state. The committee is responsible for the screening of applications and the making of recommendations for the approval or otherwise of originating products to benefit under the ETLS, after the submission of completed application forms to the NAC. The regulation also includes provisions covering transition periods. Industrial products whose ECOWAS origin is determined by the criterion of value-added remains eligible for approval for a three-year transition period under certain conditions as laid out by the regulation.<sup>77</sup> The conditions encompass applying for approval to benefit from the preferential tariffs granted under the ETLS to authenticate the origin of the product.

Regulation C/REG.4/4/02 concerns the adoption of an ECOWAS certificate of origin. The ECOWAS origin of products manufactured within the sub-region is authenticated by a certificate of origin.<sup>78</sup> This, however, mostly encompass industrial products. According to the regulation, agricultural products, livestock, hand-made products and products manufactured “without the use of tools, instruments, or implements” are exempted from the requirement of an ECOWAS certificate of origin.<sup>79</sup> The certificate is issued by the national body identified by the member country for that purpose.

Another important regulation is Regulation C/REG.5/4/02, which relates to the assessment of the components which make up the ex-factory price of a product before tax, and

the value-added. The regulation defines value-added as “the difference expressed as a percentage of the ex-factory price before tax of the finished product concerned and the CIF value on raw material, consumables and packaging of foreign origin, utilized in obtaining the final product in the form under which it is released for consumption”.<sup>80</sup> It outlines certain components which embody the ex-factory price of a finished product before tax. They include, amongst others, the CIF value of raw materials employed in production, CIF value of consumables, wages and salaries, duties and taxes that the enterprise is supposed to pay, financial charges, transport and travel, and so on.<sup>81</sup> Tax on profit, value-added taxes and turnover taxes are excluded from calculating the ex-factory prices before taxes.<sup>82</sup>

Other key decisions and protocols of the ETLS focus on transportation or the movement of people and goods. Authority protocol A/P4/5/82 on interstate road transit of goods, protocol A/P1/5/79 relating to the free movement of persons, protocol A/P1/5/82 relating to the establishment of an ECOWAS Brown Card, decision A/DEC.2/5/81 relating to the harmonization of highway legislations among member countries to facilitate the free flow of inter-state highways, and so on, have been regulations and legislations meant to facilitate the movement of goods and people between the various countries in the region.

## 2.5 Conclusion

Africa’s integration agenda, especially related to its free trade agreements, is extensive and nearly covers the entire sub-Saharan Africa. From independence, Africa has sought integration programs that aim at the eventual unification of the continent some years to come. Focusing on just free trade areas, Africa has extensively created such schemes and arrangements towards the achievement of socio-economic development through the facilitation of trade in

goods and services across borders. The ECOWAS in West Africa, created for the purpose of economic integration, has made strides towards establishing a free trade area in the sub-region. Significant of some of its initiatives is the ETLS, aimed solely at establishing a free trade area in the sub-region. The question of the scheme's performance in establishing the free trade area is addressed in the next chapter using the WTO-plus framework.

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## CHAPTER THREE

### ASSESSMENT OF THE ECOWAS TRADE LIBERALIZATION SCHEME AS A VEHICLE FOR PROMOTING THE ESTABLISHMENT OF A FREE TRADE AREA IN WEST AFRICA

#### 3.0 Introduction

This chapter assesses the ETLS as a mechanism that ECOWAS employs for the promotion of a West African free trade area. This is accomplished by, first, determining whether or not the ETLS has been successful as a regional trade agreement in promoting a free trade area. Some provisions of the WTO-plus concept are applied to the scheme to determine whether the scheme is in compliance with the WTO provisions. Compliance in terms of the availability of the provisions and its implementation determines the success or failure of the scheme in creating a free trade area in West Africa. Therefore, the first part of the chapter will focus on taking on the individual components of the scheme, and conducting an assessment against the WTO-plus framework to determine whether or not they have succeeded in its implementation. The chapter, then, continues to explore some obstacles the scheme faces in its bid to create a free trade area in West Africa, as well as recommendations on the ways to better implement the scheme by the implementing body, ECOWAS.

#### 3.1 Establishing a Free Trade Area in West Africa

The main goal of the ETLS is to facilitate the workings of a free trade area in West Africa. Since its inception in 1979, and the eventual operationalization of the scheme in 1990, it has worked towards achieving a free trade area in West Africa with different regulations and protocols enacted towards achieving this aim. To assess the success of the scheme in promoting

the sub-region as a free trade area, the WTO-plus obligations is applied to the scheme. A qualitative assessment of the scheme is conducted by the researcher using the WTO-plus framework, which can help draw conclusions on the success or failure of the scheme in promoting a free trade area.

Using the framework, an assessment of the coverage of the scheme, the promotion of its institutional infrastructure, the availability of transparency mechanisms, the openness in decision making under the scheme, the harmonization of policies and standards under the scheme, the mutual recognition of standards under the scheme, regulatory discretion under the scheme and the reviews and remedies mechanisms under the scheme will inform the study's conclusions on the performance of the scheme in creating a free trade area in West Africa.

### 3.1.1 Coverage of the Scheme

Coverage of the scheme essentially relates to the application of non-discrimination as espoused in the WTO and the scheme's ability to go beyond the provisions of the WTO to create regional preferences, where third countries do not benefit from the non-discrimination.<sup>1</sup> Non-discrimination, in this context, means that individual states that are members of the WTO do not accord any undue advantage, favor, privilege or immunity to any product or service of another member country that they would not otherwise provide for other member countries under the WTO.<sup>2</sup> According to Qin, the preamble to the Marrakesh agreement, which establishes the WTO, proclaims the elimination of discriminatory treatment in international trade as one of the chief objectives of the WTO.<sup>3</sup> A number of exceptions are allowed under the non-discrimination principle, including regional trade agreements, like ECOWAS in its implementation of the ETLS, and government-administered protections based on human and animal health, and so on.<sup>4</sup>

The principle of non-discrimination is embodied under several WTO provisions, prominent of which are the Most Favored Nations (MFN) clauses and the National Treatment (NT) clauses, which basically carry the same message of not unduly favoring one states' products and services over others.<sup>5</sup>

#### 3.1.1.1 Most Favored Nations (MFN) Treatment

“The Most Favored Nations (MFN) treatment means that policy discriminates among nationals and foreigners but treats all foreigners equally.”<sup>6</sup> There is a distinction between conditional MFN treatment, where third parties bargain and provide equal compensation in order to benefit from MFN status; and unconditional MFN treatment, where the treatment is provided voluntarily to nations that are eligible for MFN status.<sup>7</sup> MFN treatment is historically linked to the instrument of reciprocity, which means that benefits of MFN treatment are not conferred freely, but is, in fact, “an exchange of trading privileges through bargaining.”<sup>8</sup> This implies discrimination among trading partners and it serves as the basis for the creation of cross-border agreements like a free trade area or a customs union.

Under the WTO, MFN clauses can be found in several agreements including GATT 1994, GATS, TRIPS, the Safeguard Agreement, and the agreement on the Technical Barriers to Trade (TBT) and so on. All these clauses provide that products, services, investment and so on of the territories of all WTO member states shall be accorded like treatments in all other territories of the other WTO member states. Thus, Article I.1 of GATT applies the MFN treatment to products<sup>9</sup>; Article II.1 of GATS applies it to services and service suppliers from all WTO member countries<sup>10</sup>; Article 4 of TRIPS applies it to protect the intellectual property of all other member states of the WTO equally<sup>11</sup>; and so on.

The ECOWAS revised treaty, communicated to the WTO, makes provisions for the MFN treatment in Article 43.1. It says that, in terms of trade, member states shall accord each other the MFN treatment.<sup>12</sup> It further explains that, under no circumstances should member states of ECOWAS accord more favorable tariff concessions to third parties than those applicable under the ECOWAS and its trade liberalization schemes and customs union.<sup>13</sup> It requires that copies of third party trade agreements be communicated to the executive secretary of the community upon arrival at the agreement to ensure that member states comply with article 43.1 of the ECOWAS revised treaty.

Tariff concessions under the ETLS cover unprocessed goods that include plant, mineral and animal products; traditional handicraft products, which include articles made by hand with or without tools; and industrial products originating from member states. The concessions granted under the scheme to these products include a total exemption from import duties and taxes<sup>14</sup>; no quantitative restrictions on community goods<sup>15</sup>; and a payment of compensation for loss of revenue for traditional handicraft products and unprocessed goods as a result of the trade agreement<sup>16</sup>. According to the ECOWAS revised treaty, these concessions, and other agreements under the scheme should be the most favorable concessions granted by the signatories of ECOWAS. Therefore, any other trade arrangement with a regional body or a state, like the EU-Ghana and Cote d'Ivoire arrangement under the Interim Economic Partnership Agreement (EPA) should not have better concessions than the scheme.

According to the Ministry of Trade and Industry (MOTI) of Ghana, member states of ECOWAS duly report other trade agreements it enters into to the ECOWAS Commission to ensure that concessions granted under the agreements with third parties are not better than those granted under the ETLS.<sup>17</sup> For instance, the agreement between Ghana and the EU; and Cote

d'Ivoire and the EU – the Interim EPA – has been duly reported to the ECOWAS Commission, according to the MOTI.

Comparing the concessions granted under the Interim EPA to the concessions granted under the ETLS, it clearly shows that Ghana treats ECOWAS countries better than it does European countries. According to the Interim EPA between Ghana and the EU Factsheet, the provisions on trade in goods cover “duty free quota access to the EU from all imports on Ghana excluding arms and ammunitions, asymmetric and gradual opening of Ghana’s market to EU goods, trade defense with bilateral safeguards, measures on SPS and TBT to help Ghana meet EU import standards and measures to facilitate trade”.<sup>18</sup> Ghana has liberalized some EU imports including industrial machines like pumps, generators and turbine; certain vehicles; and chemicals.<sup>19</sup> However, in the agreement, Ghana excluded a number of agricultural goods and non-agricultural goods from liberalization, pursuant to the provisions of the revised ECOWAS treaty.<sup>20</sup> Some of these goods include frozen fish, wheat, industrial plastics, sugar, tobacco, and so on, all of which are covered under the ETLS. Similar agreements exist under the Cote d'Ivoire-EU Interim EPA<sup>21</sup>, showing that provisions under the ECOWAS MFN treatment are complied with by member countries.

### 3.1.1.2 National Treatment

National Treatment (NT), on the other hand, says that once goods or services have passed customs and are in the country, they should be given the same treatment as like domestic goods.<sup>22</sup> Under this rule in GATT, member states must not accord discriminatory treatment in imports and “like” domestic products of all WTO member countries<sup>23</sup>, with GATS and TRIPS having similar provisions for services and intellectual property.<sup>24</sup> GATT stipulates the general

principle that member states under the WTO should not “apply internal taxes or other internal charges, laws, regulations, and requirements affecting imported products so as to afford protection to domestic like products”.<sup>25</sup>

ECOWAS addresses national treatment under Article 40.1 of the Revised ECOWAS Treaty under fiscal charges and internal taxation. It provides that, “member states shall not apply directly or indirectly to imported goods from any member state fiscal charges in excess of those applied to like domestic goods or otherwise impose such charges for the effective protection of domestic goods”<sup>26</sup>. Also, under internal legislation, ECOWAS countries are not to make regulations which will discriminate against the same or like products of another member state.<sup>27</sup> This essentially translates as member states of ECOWAS treating goods from other states as national products by not imposing different taxes and fiscal charges on those goods. Together, these two provisions of the revised ECOWAS treaty are supposed to remove any regulatory barriers to free trade within ECOWAS countries.

Some West African countries, particularly Nigeria, constantly make regulations that ban certain goods from being imported into the country to protect their local industries, which is against the provisions of the ETLs.<sup>28</sup> To this end, Nigeria possesses what it calls the Import Prohibition List, or the Exclusion List.<sup>29</sup> On the list are products like bagged cement, noodles, refined vegetable oils, pork, beef, frozen bird meat, some cocoa products and bottled mineral water, amongst others.<sup>30</sup> These products listed on the Nigeria customs website are prohibited from being imported into the country as part of measures to stop the importation of cheap items and to diversify the Nigerian economy, according the Nigerian government.<sup>31</sup> Nigeria can, however, export these products to other ECOWAS countries under the trade liberalization scheme. For instance, the ban on cement means that Nigeria can export its Dangote Cement to

Ghana and other West African countries, but Ghana cannot export its Ghacem to Nigeria because of the regulations against the importation of bagged cement into Nigeria from all countries including ECOWAS member states. Countries like Ghana, at some point, have also banned imports on certain products like crude oil, cement and pharmaceuticals from Nigeria and other countries.<sup>32</sup> These actions taken by ECOWAS countries against other ECOWAS countries go contrary to ECOWAS provisions on National Treatment embodied in the ECOWAS revised treaty, and negatively affects the application of non-discrimination in the region.

### 3.1.2 Institutional Infrastructures

Institutional infrastructures under WTO-plus, beyond looking out for the existence of institutional structures to implement the trade liberalization protocols and decisions, also looks out for the provisions of technical and financial assistance to signatories and a cooperation or twinning between regulatory authorities in the different signatory countries.

On the local level (within the individual member countries), the scheme provides for the existence of certain types of institutions that should be involved in the implementation of the protocols and legislations under the scheme.<sup>33</sup> In outlining the steps involved in the application by companies to benefit from the ETLs, there is a need for a national approval's committee, which approves of these companies and its products for export to other ECOWAS countries.<sup>34</sup> Among some of the bodies the scheme recommends for the member countries are the ministry of trade and industry, the ministry of foreign affairs, the chamber of commerce and industry, the ministry of finance and other necessary institutions as decided by the member states. In Ghana, the approvals committee includes the Ministry of Trade and Industry (MOTI); the Ministry of Finance's Customs, Excise and Preventive Service; the Ghana Exports Promotion Authority

(GEPA); the Ministry of Foreign Affairs and Regional Integration (MFARI); the Ghana Chamber of Commerce and Industry (GCCI); and the Ghana Standards Authority (GSA).<sup>35</sup> These bodies are coordinated by the Ministry of Trade and Industry at the national level in Ghana. They work in unison to grant approval of companies and products for export to other ECOWAS countries.

Through the Ministry of Foreign Affairs of the various ECOWAS countries, the bodies responsible for the implementation of the ETLs in the various signatory countries – the Ministry of Trade and Industry in Ghana – communicates the list of approved companies and products to the ECOWAS Commission.<sup>36</sup> The ECOWAS Commission's Trade, Customs and Free Movement of People Department validates the list from the various national approvals committees and then notifies all ECOWAS member states of the final list of approved companies and products.<sup>37</sup> Authorized bodies within the member states – the Chamber of Commerce and Industry in Ghana – issues a certificate of origin to the approved companies and products which would then be used in the export procedure.

Within the various member states, there are similar bodies including ministries of foreign relations, trade and commerce ministries, customs bodies, and so on who cooperate with each other to facilitate trade within the sub-region.<sup>38</sup> There are accredited conformity assessment bodies (CABs), public and private, who ensure that the products that are imported and exported conform to national and regional standards. There are also customs bodies in the various ECOWAS countries who work to facilitate the importation and exportation of goods to and from their various countries. The various Foreign Ministries work to facilitate, through diplomatic means, the implementation of the ETLs. In effect, there are similar bodies within the various member states that perform similar functions in the import/export procedure.

Ghana and other ECOWAS countries receive both technical and financial support from ECOWAS towards the promotion of trade and the implementation of the scheme.<sup>39</sup> According to the MOTI, ECOWAS provides Ghana and other ECOWAS countries with a percentage of the ECOWAS levy, some of which goes to the promotion of trade in their individual countries.<sup>40</sup> The community levy, covered under article 72 of the revised treaty, was instituted “for the purpose of generating resources for financing community activities”.<sup>41</sup> The community levy is “a percentage of the total value of import duty derivable from goods imported into ECOWAS countries”.<sup>42</sup> The protocol governing the application of the community levy, Protocol A/P1/7/96, allocates amounts collected as community budget as ordinary budget of the community and its institutions; compensation budget for loss of revenue arising from trade liberalization; funding for development projects; and other uses as directed by the Authority or Council of the community.<sup>43</sup> According to the MOTI, this financial support goes to the MFA, who uses it for ECOWAS-related activities, including towards the promotion of trade in the country.<sup>44</sup> Information gathered from the MFARI corroborated this claim by the MOTI, saying that such monies go into organizing trade fairs and other trade promotion activities in Ghana, with other ECOWAS member states doing similar with their financial support.<sup>45</sup>

On technical support, the revised ECOWAS treaty’s article 48.2 recommends measures for promoting the productivity and export capabilities of the signatory countries to enable them take full advantage of the benefits of the scheme.<sup>46</sup> This serves as the legal provision for the ECOWAS body’s responsibility to provide technical assistance to member states when they need it, so that all member states can benefit fully from the scheme. ECOWAS Commission’s Department of Trade, Customs and Free Movement has a technical directorate on trade and trade-related activities under ECOWAS.<sup>47</sup> The technical committee, amongst other things,

“monitors and facilitates the application of the provisions of the revised treaty and related protocols pertaining to trade within the region.”<sup>48</sup> According to the MFA and the MOTI, this body, provides technical assistance to states on trade, if they request for it.<sup>49</sup> They emphasized the fact that states would have to request for such technical assistance to be given. Technical assistance also comes in the form of training workshops for major stakeholders and beneficiaries of the scheme. The 2011 Annual ECOWAS Report detailed two training workshops organized by the ECOWAS Commission to educate conformance assessment bodies on the issuance of accreditation to enterprises for the benefit of the scheme.<sup>50</sup>

### 3.1.3 Transparency

Transparency under WTO-plus provisions in assessing regional trade agreements include looking out for improved notifications or regulatory acts or norms to the WTO through legal requirements.

The WTO has in existence a transparency mechanism which provides for the early announcement of all regional trade agreements and notifications to the WTO.<sup>51</sup> Under the mechanism, “the Committee on Regional Trade Agreements (CRTA) is responsible for regional trade agreements falling under Article XXIV of GATT and Article V of GATS”.<sup>52</sup> But, for trade agreements between developing countries under the Enabling Clause, like ECOWAS, the responsibility falls on the Committee on Trade and Development.<sup>53</sup> The mechanism also provides for the factual presentation and consideration of the other WTO member countries on the regional trade agreement and the subsequent notification and reporting.<sup>54</sup> The secretariat of regional trade agreements are supposed to report any changes which affects the implementation of the trade agreements as soon as those changes occur, and to submit a report on the

implementation of the regional trade agreement after the time specified in the agreement notified elapses.

ECOWAS is duly notified under the enabling clause in the WTO.<sup>55</sup> The date of notification is the 6<sup>th</sup> of July, 2005, with the permission of the current signatories of the trade agreement, who are all parties to the WTO. However, from information gathered from the WTO, besides the notification on the existence of the regional trade agreement, no other form of regulatory acts or norms, including the protocols establishing the ETLs and its relevant protocols and decisions have been reported to the WTO.<sup>56</sup> According to the WTO ECOWAS Factual Abstract, ECOWAS has no transparency mechanism, which would allow for improved notification on regulatory acts or norms through legal requirements.<sup>57</sup> This means that third countries do not have readily available information on ECOWAS and its policies, protocols and decisions to make informed trade decisions that the sub-region can benefit from.

#### 3.1.4 Openness in Decision-Making

Openness in decision-making under WTO-plus provisions imply the prior notifications of decisions that go towards the implementation of the regulations and protocols of the regional trade agreement, as well as the existence of provisions for the representation of interested parties in decision-making. Interested parties include the stakeholders of the trade agreement or bodies that will be affected by the decisions made by the secretariat of the regional trade agreement.

The interests of the parties within the trade and commerce industries of the various member states of ECOWAS gets represented through the delegation that convenes for the Council of Ministers on trade conferences and meetings.<sup>58</sup> According to officials at the MFARI, sometimes, these conferences have in attendance individuals or groups who are experts in certain

areas or who represent certain groups related to what the meetings are about. At other times, officers attending such meetings solicit the views and interests of those whose industries will be the focus of such Council of Ministers meetings and address their issues duly. Interviews with officials with the Ministry of Trade and Industry in Ghana confirmed this information.

According to the various Ministries, information about the various regulations, decisions and protocols are communicated duly to interested parties.<sup>59</sup> According to them, the ministries and other member-institutions of the national approval board are great sources of information on regulations, as well as the ECOWAS website. However, to these companies, information dissemination is not as prompt. Information gathered from exporters like Kasapreko, Alugan Company and Cocoa Processing Company of Ghana demonstrate the flaws in the information delivery system. According to some of these companies, new regulations are unknown to them until such time as the companies need to export products to other ECOWAS countries.<sup>60</sup> There is a lot of room for the improvement of notifications of regulations to enable a swift conduct of business.

### 3.1.5 Harmonization of Policies and Standards

Under the WTO-plus framework, considering the harmonization of national policies involves determining the degree to which RTAs go further than the WTO provisions in promoting policy, measures and standards harmonization within the region.

To harmonize national measures means “to transform two or more regulations into one, the result being that two or more countries recognize, establish and apply the same regulatory measures.”<sup>61</sup> The main goal of harmonization is to establish uniform trade measures on the international level. Full harmonization of standards will reduce the cost of adapting to multiple

regulations across multiple countries.<sup>62</sup> Also, trading conditions will remain the same for all companies regardless of their nationality.

In the WTO system, harmonization is enshrined in some agreements such as the Agreement on the Technical Barriers to Trade (TBT) in Article 2.4, which provides that “if international standards exist, WTO member states shall use them as basis for their technical regulations”<sup>63</sup> and Article 2.6, which also aims “to harmonize technical regulations internationally”<sup>64</sup>. The Agreement on the Sanitary and Phytosanitary Measures (SPS) in Article 3 also make provisions for harmonization of standards. It aims to “harmonize sanitary and phytosanitary measures on a wide basis based on international standards, guidelines or recommendations”.<sup>65</sup>

Within ECOWAS, some provisions under the aims and objectives of ECOWAS in the revised treaty focus on harmonization of national policies in a wide variety of areas, including in the promotion of integration programs, the protection of the environment, national investment codes, and standards and measures.<sup>66</sup> Throughout the revised treaty, there are numerous other provisions for the harmonization of national policies in the areas of transportation, agriculture, and so on. Relevant to the ETLS is the provision for the harmonization of standards and measures<sup>67</sup> and, to an extent, the harmonization of national policies and the promotion of integration programs<sup>68</sup>.

ECOWAS, however, currently does not have harmonized standards or policies related to trade, or investment and services.<sup>69</sup> In December 2012, ECOWAS adopted a Regulation C/REG. 14/12/12 adopting an ECOWAS standards harmonization model and procedures (ECOSHAM). The regulation formally adopted an ECOWAS standards harmonization model and procedures

which were meant to define the methodology for standards harmonization within ECOWAS.<sup>70</sup> ECOWAS's model is based on WTO/TBT regulations, ISO and the International Electro-Technical Commission directives.<sup>71</sup> The ECOWAS commission and the member states of the community were put in charge of the application of the standards and procedures.

ECOSHAM is based on the principles of openness, transparency, impartiality, and consensus, prioritization of categories, effectiveness, relevance and coherence.<sup>72</sup> The openness principle re-iterated the principle of non-discrimination, as espoused by the ECOWAS Revised Treaty, through representation and a public enquiry process on the Draft ECOWAS Harmonized Standards.<sup>73</sup> The development of the standards is to be a transparent process, with information made available to all interested parties. The ECOSHAM document outlines the notification procedure, where national standards bodies will notify their work programs to each other, and the ECOWAS Commission for their comments and suggestions twice a year.<sup>74</sup> It also outlined, in detail, the responsibilities of the various bodies responsible for the Harmonization Model, including the ECOWAS Commission, the Technical Management Committee, the Technical Harmonization Committee, the National Standards Bodies and a number of Sub-Committees and Working Groups, amongst others.<sup>75</sup>

There are six different stages of the adoption process namely; the preliminary stage, the proposal stage, the preparatory stage, the committee stage, the enquiry stage and the approval stage. As at April 2017, ECOWAS had reached the fifth stage of the adoption process – the enquiry stage, where the body wished to collect, from the largest audience possible, comments, opinions and remarks on the draft standard to be harmonized.<sup>76</sup> One public survey focused on three draft standards of the Technical Committee on Agricultural Products: Specification for

Groundnut; Code of Practice for the Prevention and Reduction of Aflatoxin Contamination in Groundnuts; and the Code of Practice for Processing Cassava.<sup>77</sup>

Therefore, the earlier assertion of the non-existence of harmonized standards under ECOWAS for the purposes of trade in goods is based on the fact that, as at July 2018, the final stages of approval or certification and publication had not been reached by ECOWAS. Individual states still applied, for a majority of products, different standards in terms of trade in goods in their dealings with other ECOWAS member states.

ECOWAS does have harmonized standards for certain goods. Examples include non-refined palm oil<sup>78</sup>, and rice grains<sup>79</sup> and so on. However, conducting trade from Ghana, Togo and Benin to Niger for imports and exports revealed that if these countries had harmonized trade policies, the documentation required to trade between these countries would be similar, or the same, because of the ETLS protocols.<sup>80</sup> In trading between these countries, documents like the certificate of origin are constant among all the countries involved in the trading process. However, numerous other documentations are only peculiar to specific countries in terms of both imports and exports. Some of these documentations include the Tax Identification Number (TIN), Import Permit, Packing List, Form C.59, and so on, which are specific to Ghana; Container Seal, Forwarding Order, and Bond, specific to Togo; and CRP, and Performance Invoice specific to Benin.<sup>81</sup>

In effect, there is some harmonization in terms of standards in trading in goods, but the policy document which is supposed to fully harmonize standards and policies is not yet in effect, as the final stages of its implementation have not been completed. With regards to the harmonization of trade policies and procedures, findings show that ECOWAS member countries

do not have harmonized policies as well, as the findings show that, if they did, documentations required to trade between member states will be similar, or the same.

### 3.1.6 Equivalence and Mutual Recognition of Standards

“Harmonization leads to a situation where states implement the same measures based on the same regulatory objectives.”<sup>82</sup> This is, however, difficult, almost impossible, to achieve. Equivalence and mutual recognition are known alternative trade facilitation techniques to harmonization, allowing for regulatory differences under certain conditions.<sup>83</sup> Currently, without a full harmonization policy in effect under ECOWAS, equivalence or mutual recognition of standards are viable trade facilitation techniques that ECOWAS can adopt in the implementation of the ETLS.

The equivalence concept is based on the fact that the regulatory goals of individual states, in practice, may be achieved by different methods.<sup>84</sup> Equivalence determination is a process involving judgments of whether two measures, although different, can achieve equivalent levels of protection or other stated objectives.<sup>85</sup> It is about accepting a different measure without compromising on the objectives of the local national regulations. “Under equivalence recognition, trade barriers are removed and the products are accepted on the basis that they fulfill the relevant policy objectives even though regulatory differences exist”<sup>86</sup>, thereby, performing similar functions as harmonization. Equivalence makes it possible to remove the trade restrictive effects of regulatory measures while maintaining distinct national regulations.<sup>87</sup>

Mutual recognition, on the other hand, is when two or more countries mutually accept each other’s rules and regulations.<sup>88</sup> Such acceptance is used “where differences in national regulatory measures and objectives are considered to be of no such nature as to allow for trade

restrictions.”<sup>89</sup> In this sense, mutual recognition embodies the notion that products that comply with the regulatory requirements of one country should automatically be allowed into another country, regardless of the regulations in both countries and their differences.<sup>90</sup>

“The parties mutually accept each other’s conformity assessment procedures as equivalent in order to ensure compliance with regulatory requirements.”<sup>91</sup> Conformity assessment procedures are procedures “used, directly or indirectly, to determine that requirements are fulfilled.”<sup>92</sup> These procedures include sampling, testing, inspection, evaluation, verification and assurance of conformity procedures; as well as registration, accreditation and approval and their combinations.

Mutual recognition does not presuppose harmonization or equivalence.<sup>93</sup> In the absence of harmonization or equivalence, states can still mutually recognize standards through conformity assessment procedures, to facilitate trade amongst them.

ECOWAS is advancing a quality infrastructure that makes it possible for conformance assessment of the various conformity assessment bodies (CABs) within ECOWAS to gain recognition within ECOWAS countries and on the international stage. In other words, these CABs will gain accreditation globally. It began with the adoption of the ECOWAS Quality Policy (ECOQUAL) through Supplementary Act A/SA.1/02/13, which also provides for the implementation framework of the policy.

ECOQUAL aims at “maintaining a solid industrial structure that is globally competitive, environmentally friendly and capable of improving the lives of the people in the region”; as well as, ensuring the economic competitiveness of the region through the provision of quality goods and services that can compete on a global scale.<sup>94</sup> It seeks to establish a framework for the

development and functioning of suitable, relevant and efficient infrastructure with a view to facilitating intra-regional and international trade, amongst other things.<sup>95</sup> The ECOWAS Commission was put in charge of the implementation of the policy.

Towards the implementation of the policy is the establishment of the West Africa Quality System Program (WAQSP), established with the help of the European Union (EU) and the United Nations Industrial Development Organization (UNIDO), which commenced in September, 2014.<sup>96</sup> This is the third phase of the EU/UNIDO quality program. It is preceded by phase one, the West Africa Quality Program (WAQP) established with the “objective to strengthen regional economic integration and trade by creating an environment that facilitates compliance with international standards”; and phase two, which was successful in advocating for ECOQUAL and fighting for accreditation for some conformance assessment bodies within West Africa.<sup>97</sup>

ECOWAS, in collaboration with the EU and UNIDO (WAQSP), constituted a Regional Accreditation System (RAS) and various committees in the areas of metrology, technical regulations and conformity assessment in November 2017.<sup>98</sup> The objective of RAS is to coordinate accreditation activities in the community by supporting the rapid operation of existing and future accreditation bodies which will operate according to international standards; by proposing mechanisms for the recognition of the various community conformity assessment certificates issued by ECOWAS member states to other member states and third countries; and by establishing cooperation arrangements between accreditation bodies established in the region to cover all conformance needs in the region.<sup>99</sup> Some accredited CABs in West Africa include MEDLAB and the Ghana Standards Authority (GSA) in Ghana; the PATHCARE Group in Nigeria; and Laboratoire Aiwa Technical Services in Benin, amongst others.

Based on these provisions under ECOWAS, with help from outside bodies like the EU and UNIDO, it is fairly evident that ECOWAS countries recognize conformance tests from accredited CABs within the region. This facilitates trade in goods within the ECOWAS free trade area.

### 3.1.7 Regulatory Discretion

Regulatory discretion under the WTO-plus framework concerns the existence of measures to reduce regulatory discretion in regional trade agreements like ECOWAS in its implementation of the trade liberalization scheme.

Regulatory discretion represents the level of freedom in the interpretation and implementation of rules and regulations. In Johnson's work concerning transition economies, he asserts that having a lot of discretion in the interpretation and implementation of rules leads to high effective burdens on businesses, corruption and a great incentive to move to the unofficial economy.<sup>100</sup> This necessitates the creation of certain measures that can reduce regulatory discretion in the implementation of schemes like the ETLs under ECOWAS.

In the course of this research, the researcher observed that issues of regulatory discretion in trade usually occur between ECOWAS member countries in the implementation of the various exemptions to trade under ECOWAS, or in cases where the National Treatment of companies and products are supposed to be implemented. Article 41.3 of the Revised ECOWAS Treaty provides that member states may introduce or continue to execute prohibitions to protect elements such as security, human health, plant health, animal health, culture, the protection of public morality and so on.<sup>101</sup> The provisions on National Treatment, as already explained, concerns treating foreign products as "like" domestic products after it passes through customs,

and it prohibits the establishment of legislation or the imposition of taxes that favor domestic products at the expense of foreign products.<sup>102</sup>

An example of a state that abuses regulatory discretion in West Africa is Nigeria in its trade relations with Ghana and other West African countries. The aforementioned Import Prohibition List is an instance of an abuse of regulatory discretion. The regulations on the exceptions to free trade related to the protection of human life, as well as the implementation of anti-dumping measures to protect one's state from cheap products from other ECOWAS countries are some of the reasons for Nigeria's establishment of the prohibitions list.<sup>103</sup> But, the researcher's assessment is that it qualifies as an abuse of regulatory discretion in the implementation of the provisions and protocols of ECOWAS related to trade. Talking to officials at the MOTI, there is no organ or institution to check regulatory discretion.<sup>104</sup> However, ECOWAS countries can apply countervailing measures that can check against National Treatment breaches and the abuse of the exceptions to free trade.<sup>105</sup>

Countervailing measures or anti-subsidy measures are "tariffs in addition to ordinary customs duties levied in order to offset unfair advantages gained by foreign exporters through bounties or subsidies bestowed on them by their governments, and when they cause or threaten to cause material injury to a domestic competing industry."<sup>106</sup> ECOWAS Regulation C/REG.05/06/13 relates to the imposition of countervailing duties. It provides the various ways that member states can impose countervailing duties on community states who create unfair advantages for themselves, or cause material injury to a domestic competing industry. Such ways include the imposition of tariffs and levies on the offending state.<sup>107</sup> To this end, Ghana, in the case of the bagged cement being on Nigeria's Import Prohibitions List, can impose tariffs on

Dangote cement that comes into the country to offset the unfair banning of Ghanaian cement products like Ghacem in Nigerian markets.

Other measures include anti-dumping measures included in the ECOWAS Treaty<sup>108</sup>, safeguard provisions under the treaty<sup>109</sup> and dispute settlement mechanisms which can serve as an avenue to report such abuses of regulations to the ECOWAS main body<sup>110</sup>. These actions can deter member states from abusing regulatory discretion, but when asked whether actual institutions have been set up to check and punish abuse regulatory discretion by member states, the response from the MOTI was that no such institutions or organs exist.

### 3.1.8 Effective Reviews and Remedies

Effective reviews and remedies concerns provisions for a periodic review of the scheme and efficient and effective ways of dealing with disputes that arise in the implementation of the provisions under the ETLIS.

#### 3.1.8.1 Dispute Resolution Mechanism

The ECOWAS Community has a court of justice established under Article 11 of the ECOWAS treaty, and the subsequent expansion under Protocol A/P1/7/91 on the Community Court of Justice. The court's function is to "ensure the observance of law and of the principles of equity in the interpretations and implementations of ECOWAS protocols and provisions".<sup>111</sup> It is also supposed to deal with disputes between member states on the implementation of any of the treaty provisions and protocols of ECOWAS; and after failed attempts at amicable solutions to issues between member states, the case can be referred to the court for deliberations.<sup>112</sup> It can also give legal opinions on the treaty of the community, upon requests by the Authority, Council

or member states.<sup>113</sup> The protocol provides for the means to resolve all issues between member states including those related to the ETLS and all of its relevant protocols.

However, according to the MOTI, trade disputes are settled between member states, and when that fails, the Department of Trade, Customs and the Free Movement of People under the ECOWAS Commission tries to resolve them.<sup>114</sup> According to the ministry officials, trade issues do not go to the ECOWAS Court of Justice. If anything, high level trade disputes go to the ECOWAS parliament for deliberations. An example was cited of a trade dispute between Ghana and Nigeria, where Ghana threatened to sack some Nigerian companies and products from their country. The dispute was taken to the ECOWAS parliament, where it was deliberated on. Hon. Alipui made the point that disputes have not been properly handled by ECOWAS, and called for the need to develop an effective dispute resolution mechanism to settle disputes, especially rules of origin disputes.<sup>115</sup>

#### 3.1.8.2 Review Mechanism

Both the MOTI and Hon. Alipui agreed on the fact that ECOWAS has no review mechanism for its policies and schemes like the ETLS. However, according to Hon. Alipui, ECOWAS sometimes reviews some of its schemes, and he cited a recent review that the community did by contracting a private company called Plunckett to review its trade policies, the results of which has not been made public yet. The MOTI, on the other hand, though agreeing that ECOWAS has no review mechanism, made the point that ECOWAS utilizes the review mechanism of the WTO.

The WTO trade policy review mechanism is meant to “enable member states to adhere to the rules, disciplines and commitments made under multilateral and plurilateral trade

agreements”.<sup>116</sup> The mechanism provides the member states and the various RTAs with the means to conduct a full evaluation and gain an appreciation of the effect of their trade policies and practices on the multilateral trading environment.<sup>117</sup> It requires member states and the RTAs to report to the mechanism at the WTO regularly for accurate evaluation of the effect of their trade policies and practices on the multilateral trading system. The current WTO dispute settlement mechanism is effective in ensuring that states obey the rules but it is too remote to have much impact on how national laws and guidelines are implemented by regulatory agencies.<sup>118</sup> Attempts to locate ECOWAS Reviews under this mechanism failed, as, truly, the community does not utilize this mechanism under the WTO.

### 3.1.9 Promotion of Competitive Markets

WTO-plus provisions on the promotion of competitive markets involve the existence of competition policies within the regional trade agreement.

“Competition policies relates to the application of rules, principles and standards to create a level playing field that encourages fair competition among companies or enterprises in a given market.”<sup>119</sup> Competition policies can be a means of allocating resources, building innovation within companies and industries, and creating options for goods purchase by consumers.<sup>120</sup> ECOWAS has a regional competition policy which establishes a competition authority under supplementary act A/SA.2/12/08. The authority is responsible for the implementation of the community standards and competition rules and regulations.

The community competitions rules and conduct itself are captured in Supplementary Act A/SA.1/06/08. It defines anti-competitive practices as “any practice coming from a physical or moral person, the object or effect of which is to restrain competition to the disadvantage of other

players in the common market”.<sup>121</sup> The objectives of the act are to promote, maintain and encourage competition and enhance economic efficiency in production, trade and commerce in the region; prohibit anti-competitive practices; ensure consumers’ welfare and protection; and expand opportunities for domestic enterprise in member states.<sup>122</sup> The rules cover agreements, practices, mergers and distortions caused by member states which are likely to affect trade in the sub-region.<sup>123</sup>

The supplementary act prohibits measures like, or those that affect, price fixing; limiting production, markets, technical development or investments; share markets, customers or sources of supply; and coercion or bribery in the signing of contracts and so on.<sup>124</sup> It also has provisions against state aid, illegal mergers and acquisitions, and the abuse of dominant positions, amongst others.<sup>125</sup>

Interviews with the various organizations and the experts showed that ECOWAS has no functioning competition policy.<sup>126</sup> These provisions are draft provisions that have not come into effect yet. The 2016 Annual ECOWAS Report says that the Gambia and the ECOWAS Commission signed an agreement on the Regional Competition Authority, and that the commission is putting plans in place for the implementation of the ECOWAS competition rules in 2017.<sup>127</sup> From the various interviews, the indication is that implementation has still not started yet.

### 3.2 Obstacles to the Attainment of a Free Trade Area in West Africa

After pouring through relevant literature, conducting interviews and gathering other forms of data during the research process, some obstacles to the attainment of a free trade area in West Africa were identified. They have been classified under five main headings; a lack of

diversification of production, corruption, lack of political will to implement the ETLS, lack of awareness of the trade liberalization scheme and inadequate cooperation between member states.

### 3.2.1 A Lack of Diversity in Production

Production diversification, in this context, involves producing more than one product, especially across different sectors of the economy. In this vain, states or a region do not just focus on one group of products, but produces to cover different range of goods.

According to Odularu, the impact of regional trade agreements on intra-African trade seems insignificant, when analyzed over the years.<sup>128</sup> Intra-ECOWAS trade has risen relative to their trade with other parts of the world. According to Odularu, production activities in the West-African sub-region have remained similar for years, implying that the various economies are not diversified in the production structures.<sup>129</sup> ECOWAS trade in goods is primarily centered on agricultural products. For instance, for countries like Ghana and Cote d'Ivoire, their largest export is cocoa, making up about 60% of world trade in cocoa. Other ECOWAS countries export goods like groundnuts, tomatoes, corn, and so on. Besides the fact that production is centered on agriculture, the agricultural products are mostly oriented towards Europe and North America, rather than to other West African countries.<sup>130</sup> Ghana and Ivory Coast's cocoa mostly goes to large companies like Cadbury and other chocolate makers in industrialized economies like Switzerland and other parts of Europe.

The lack of diversification in the individual economies would mean that member states, instead of trading with each other, will trade with western countries because to trade with each other would mean trading in like commodities. This is an obstacle to the attainment of the goal of a West African free trade area because for a free trade area to exist, member states would have to

trade with each other. In an interview with Mr. Alipui, he made the point that one of the biggest obstacles to the success of the ETLS is the problem of production in West Africa. Because all West African states basically produce the same thing, intra-ECOWAS trade does not improve.

### 3.2.2 Corruption

Corruption is a dishonest and fraudulent conduct by people in power. It is usually in relation to bribery. Corruption across the region serves as a serious obstacle to the attainment of a free trade area in West Africa.

A study by Uexkull considered corruption as an obstacle to trade between ECOWAS member countries.<sup>131</sup> Regional exporters in ECOWAS consider corruption as a major obstacle to trade within the sub-region. “Bribes and delays at checkpoints along various trade routes cripple West African free trade.”<sup>132</sup> On average, it takes over 54 US dollars and 42 hours to cross the border of Nigeria, and approximately 85% of customs, security and border officials stationed between Lagos and Abidjan forcefully take bribes from passengers and traders, even from those with correct documentation.<sup>133</sup> In March 2017, the ECOWAS Commission, at a conference, pledged to continue to promote and sustain a culture of protecting whistleblowers in an attempt to rid the sub-region of corrupt officials.<sup>134</sup>

Considering the fact that there are numerous ECOWAS regulations authorizing free movement of persons and goods across ECOWAS borders, this has become an obstacle to the achievement of said goals. ECOWAS businesses that cannot afford to pay the bribes, as well as pay for the costs of trading across the border, will simply not trade across the borders. This reduces intra-ECOWAS trade and serves as an obstacle to the attainment of a free trade area.

### 3.2.3 Lack of Political Will

The lack of political will refers to the general lack of interest shown by the various ECOWAS countries to implement some of the provisions of ECOWAS that could lead to the attainment of the free trade area in the region.

A major determinant of the success of the scheme is the genuine will of the member states of ECOWAS to see it successful. However, available evidence suggests that the implementation of some of the ECOWAS protocols and conventions have been slow in some member states. Member states readily ratify protocols, but do not implement the protocols in their countries, or contribute to its implementation in the region.

A study conducted by Ayamga found that attitudes and institutional weaknesses, amongst other factors, contributes to the slow implementation of the ECOWAS protocol on the free movement of persons, goods and services between Ghana and the Burkina Faso border.<sup>135</sup> These findings can be expanded to cover most West African states because the political will to publicize the ECOWAS free trade protocols is absent. With the low awareness, language barriers and the negative attitude towards the implementation of the protocols, achieving a free trade area in West Africa has become difficult.

### 3.2.4 Lack of Awareness of the Scheme

While conducting the research, one problem that beneficiaries of the scheme highlighted was the unavailability of information on the scheme and other trade-related information. For the ECOWAS goal of attaining a free trade area in West Africa to be successful, states within the region have to embark on a sensitization tour, where people, businesses, and the various

industries in their individual countries know about the scheme, its benefits and other trade-related information under the ECOWAS.

As it stands now, information about the scheme and its implementation is quite low. Company after company, and studies after studies have lamented on the fact that ECOWAS policies and programs are essentially unknown or unavailable to the public. In the 2016 Annual Report of ECOWAS, the body sought to address this issue by working towards developing a trade information database on the ECOWAS website.<sup>136</sup> The database is supposed to enhance transparency of trade policy development in the region and to provide member states with up-to-date information on the implementation of trade and trade-related protocols and supplementary protocols.<sup>137</sup> As at the time of conducting this research, the said database had not been provided on the website yet. There are, however, some links to some protocols, decisions and supplementary protocols of related to trade, but these links are not reliable, as some of them lead to bank pages.

The lack of information and awareness on the various trade protocols will limit ECOWAS's ability to achieve a free trade area in West Africa.

### 3.2.5 Inadequate Cooperation between Member States

Cooperation between member states on the implementation of the scheme, as well as other ECOWAS programs and policies, is very important.

On the implementation of the various protocols related to the scheme, member states do not work together to ensure its success. Some of the major problems related to the achievement, as illuminated in the previous points, can be solved with cooperation between member states. For instance, the problem of corruption, which showed studies that suggest that traveling from Abuja

to Abidjan can incur so much money that traders can choose not to make that journey, are issues that can be solved with cooperation between member states that are involved, including Ghana, Nigeria, Togo, Benin and Cote d'Ivoire. These states can adequately work together to crack down on corruption, but they do not.

Other instances where cooperation between member states can make a difference is in the implementation of the trade protocols, where states, instead of considering the overall integration of the region and the benefits that can come out of it, rather act selfishly to restrict trade within their borders. An example is the Import Prohibitions List of Nigeria, which restricts the imports of certain types of community products into the region.

The lack of adequate cooperation between member states prevents the sub-region from achieving a free trade area which can contribute to the growth of the entire region and its member states, and not just a few states.

### 3.3 Recommendations on Improving the Implementation of the Scheme

Following from the various obstacles identified as militating against the achievement of a free trade area in West Africa by ECOWAS, the following actions are recommended by the researcher to ECOWAS to address some of these obstacles and to satisfy the third objective of the research – to recommend ways in which ECOWAS can achieve its goal of a free trade area in the sub-region.

The researcher, first, recommends the acceleration and localization of public education on the ETLS and its benefits to the socio-economic development of the sub-regional organization and its member countries. This will address the obstacle of a lack of awareness on the ETLS and further educate businesses and individuals who already know about the ETLS on how to benefit

more from the scheme. The more people and businesses know about the scheme, the further the increased utilization of the scheme will lead to deeper and larger intra-ECOWAS trade and development.

The researcher also recommends the deepening of bilateral relations between member states in the region. Ghana has institutionalized bilateral relations with some ECOWAS member states including Nigeria under the Permanent Joint Council on Cooperation (PJCC). Further deepening of relations between ECOWAS member states can increase the areas of cooperation between them and improve trade, while eliminating the propensity for conflict or dispute amongst West African states in trading with each other.

Governments of the various West African states can contribute to the increase in trade and improve their gains from the ETLS, while further aiding ECOWAS in its bid to establish a free trade area in West Africa, by improving production within their individual countries through policies and programs, and the provision of financial and technical support to local production industries. The government of Ghana's provision of fertilizers and other incentives to local cocoa farmers can be considered an example of support that member states can provide to their private production base to boost production in their individual countries. It can increase exports for the countries in region to other countries in the regions. Without goods to trade, the scheme will fail.

The rules of origin within the ETLS are very strict, and it eliminates a lot of free trade opportunities between ECOWAS countries. Currently, the rules of origin cover goods that are wholly produced in member states; produced in member states, but with raw materials from other states provided that such materials have undergone processes that confer community origin status; and goods whose production requires the use of materials which have received a value-

added of, at least, 30% of ex-factory price. Lowering these rules of origin by, for instance, reducing the ex-factory price to, at least, 20% can open up the region to a lot more products to be traded amongst each other.

ECOWAS should establish research centers in the various universities across the region, fully funded, to conduct research into how to improve the implementation of ECOWAS protocols and programs including the ETLS. Research can even be conducted to determine what kind of regulations would be more favorable for the region, putting the West African unique situation into focus. Some of the very successful regional trade agreements like the EU, which, like the ECOWAS, identifies as a customs union, have research centers all over Europe that helps to identify problems and formulates solutions to solving such problems. It will enable the ETLS to improve upon its implementation mechanisms and help it to achieve its goals of establishing a free trade area and a customs union in West Africa.

Other recommendations include expanding the scope of the ETLS to include services, investment and intellectual property, which will significantly increase the volume of trade between ECOWAS countries. Finally, the private sector and civil society organizations should be involved in the decision-making and the implementation process of ECOWAS protocols, for a fair representation of their interests.

### 3.4 Conclusion

Towards determining the success or failure of the ETLS in attaining a free trade area in West Africa, the WTO-plus framework has been applied to the ETLS and its related protocols that cover coverage, institutional infrastructure, transparency, openness in decision-making, standards harmonization, mutual recognition of standards, measures against the abuse of

regulatory discretion, its competition policies and effective reviews and remedies to conflict in the implementation of the scheme. Five obstacles to the attainment of a free trade area in West Africa have also been identified, along with some recommendations towards how to improve the implementation of the scheme by ECOWAS. The next chapter summarizes these findings, provides a conclusion of the study and gives recommendations on how to better implement the scheme to attain the goal of a free trade area in the region.

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## CHAPTER FOUR

### SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

#### 4.0 Introduction

This chapter summarizes the findings of the work, draws conclusion on the research questions and recommends ways that the ECOWAS Trade Liberalization Scheme can improve its implementation to maximize efficiency and effectiveness in the West African sub-region.

#### 4.1 Summary of Findings

Pursuant to meeting the first objective of the study, the researcher applied the WTO-plus framework obligations to the ETLS to assess whether the scheme has succeeded in establishing a free trade area in West Africa. This was achieved by considering the scheme's provisions and implementation of the principles of non-discrimination, which includes the MFN and National Treatment. There was also an assessment of the scheme's transparency mechanism to determine whether or not the scheme possesses legal provisions to notify the WTO and other relevant bodies of its provisions and implementation. Other aspects such as open decision-making, which checked the inclusiveness of decision-making and prompt information dissemination; promotion of institutional infrastructure, which checked for financial and technical assistance to member states towards the implementation of the scheme and cooperation between regulatory agencies; harmonization of national standards; mutual recognition of conformance testing and accreditation; the existence of measures to reduce regulatory discretion; and the existence of effective dispute resolution mechanisms were also assessed using the framework.

Coverage in terms of the application of the principles of non-discrimination found that, in terms of MFN treatment, member states abide by the regulations of ECOWAS and the ETLS. WTO provisions make some exceptions which makes possible the application of MFN treatment in regional trade agreements like ECOWAS. It, however, goes further than the WTO to restrict states from giving more favorable concessions to third party states and other regional groupings. From the study, the findings show that, for products that the ETLS covers, ECOWAS member states have more favorable concessions. However, on National Treatment, states like Nigeria and Ghana implements policies and regulations that restrict the products from other ECOWAS countries from being imported into their countries. This goes against the provisions of the ECOWAS treaty and the protocols related to the ETLS.

On transparency, ECOWAS is duly notified under the WTO as a regional trade agreement operating under the enabling clause of the WTO. It, however, does not possess any transparency mechanisms which would allow the body to regularly report on the implementation of the trade agreements, and any changes thereof, to the WTO and other relevant bodies. With the information available, the only available documents on the ECOWAS free trade implementation is a copy of the revised treaty, retrieved from the WTO website.

On promoting institutional infrastructure, however, the findings show that ECOWAS member countries do receive technical and financial assistance from ECOWAS. Members receive financial assistance because of their contributions to the community levy. These monies obtained from ECOWAS can go towards the promotion of trade and the implementation of the ETLS in member states. The technical assistance is also offered by the directorate of trade under the ECOWAS Commission to willing member states who struggle with implementation. Member countries also cooperate with each other, through the ECOWAS Commission, with the various

national approvals committees. There is also cooperation between their customs bodies, as well as a diplomatic relationship between their foreign affairs ministries which ensures that relations between both states are good, and also provides an avenue to address grievances with each other in the course of trading.

Findings on the harmonization of standards and policies in the region show that ECOWAS does not have harmonized standards and policies when it comes to trading in goods, as the harmonization model (ECOSHAM) has not been approved yet, and therefore, has not officially come into force. It is still in the process of formulation. The body, however, has harmonized standards in some specific areas and on some specific products.

On mutual recognition of standards and equivalence, there is a Regional Accreditation System which aids member states in the recognition of conformance testing and accreditation. Under this system, several CABs across the region have received accreditation and are issuing conformance certificates that are recognized within and outside the region.

Findings on regulatory discretion showed that ECOWAS faces an abuse of regulatory discretion in member states' implementation of mostly national treatment provisions and the various exceptions to trade. However, measures to address regulatory discretion, including countervailing measures and anti-dumping rules, sometimes fail because these measures are only meant to deter and does not seriously punish perpetrators. For instance, in spite of these measures, Nigeria and Ghana still breach the national treatment provisions by prohibiting certain goods from being imported into their countries to protect their local industries.

Finally, on effective reviews and remedies, findings show that there is no review mechanism, but there is a dispute resolution mechanism. Under the dispute resolution

mechanism, disputes are handled, first, between the disputing parties, and then by the ECOWAS Commission upon the failure of the mechanism. At a higher level, the disputes are sometimes referred to the ECOWAS Parliament. The community has a court of justice but rarely uses it to settle disputes related to trade.

Investigating the factors that militate against the creation of an effective free trade area in West Africa, some of the major problems identified include the problem of diversification of production, corruption, a lack of political will to pursue the free trade agenda, a lack of awareness on the scheme, and inadequate cooperation between member states. A summary of these obstacles identified are as follows;

- There cannot be a free trade area without any products to trade, as said by Hon. Alipui in his interview. The lack of export diversification has been a major obstacle to attaining a free trade area in West Africa. Since most ECOWAS countries produce similar products, intra-ECOWAS trade is low.
- The problem of corruption in member countries has led to a reduction in intra-ECOWAS trade, while rendering moot many of the regulations and protocols of ECOWAS towards achieving a free trade area in West Africa.
- A lack of political will by the various member states within ECOWAS to properly implement the ECOWAS protocols in their countries, as well as contribute to the implementation of the protocols and regulations across the region has been a major obstacle to the attainment of a free trade area in West Africa.
- The knowledge that people have on the scheme is scanty because of the lack of centralization on information about the scheme. There are also a good number of people

who has no knowledge of the ETLs and its goals, as well as other ECOWAS policies and programs. People cannot benefit from a policy they do not know about.

- Member states do not cooperate with each other enough towards the implementation of the goals of ECOWAS, which negatively impacts the achievement of a free trade area in the region.

With these obstacles to the implementation of the scheme identified, some recommendations were made to the regional body, and member countries of ECOWAS, in the implementation of the scheme to improve the economic conditions and the integration agenda of the sub-region. A summary of these recommendations are as follows;

- The acceleration and localization of public education on the ETLs, and its benefits to the socio-economic development of the sub-regional organization and its member states
- The deepening of bilateral relations between member states
- An improvement in the levels of production in individual member states through policies and programmes, as well as financial and technical assistance from the local governments and ECOWAS to support local production industries
- The relaxation of the rules of origin
- Establishment of research centers in West African universities to find new ways to improve the scheme and the integration of the region
- An increase in the scope of the scheme to cover intellectual properties, services and so on
- The involvement of the private sector and civil society in decision-making and the implementation of the scheme

## 4.2 Conclusion

The rationale of the study was to assess the current status of the trade liberalization scheme in West Africa, the ETLs, as this will help inform decision makers when decisions are being made and actions are being taken regarding trading in the sub-region. Following from this rationale, the study sought to address the progress that the ETLs has made so far in establishing West Africa as a free trade area, while exploring any obstacles to attaining a free trade area, and whether the researcher can offer any recommendations to improve upon the ways in which the regional body is going about establishing the free trade area.

Following from this mandate, the data gathered, and the discussions in chapter three, it is the conclusion of the researcher that the regional body has mainly failed in the creation of a free trade area. This conclusion is based on findings which point to the inability of the regional body to implement many of the different indicators which indicate that a free trade scheme is successful. Such indicators the body failed to implement include the national treatment clause, a proper harmonization of standards, dispute resolution and review mechanisms, competition policies, and transparency mechanisms. According to the researcher's findings, the regional body has only had success, though limited, in the implementation of the MFN Treatment clause, the mutual recognition of standards and accreditation, as well as the reduction in regulatory discretion.

With due consideration and proper implementation of the recommendations outlined by the researcher in the next section, it is possible for the scheme to improve. However, based on the analysis of the information gathered, ECOWAS has made very little progress in the implementation of the scheme.

#### 4.3 Recommendations

Based on the findings and conclusions of the research into the implementation of the ETLS by ECOWAS in West Africa, the researcher has a few recommendations outlined in the following paragraphs.

It is the recommendation of the researcher that periodic, scholarly assessment and review of the implementation of the ETLS like this research work should be done to ensure that the implementation of the scheme is done the right way for the benefit of West African economies, and the overall regional integration agenda of ECOWAS, and the African Union.

Further research could be made exclusively into improving the implementation and the overall benefits of the scheme. There have been numerous reviews on the implementation of the scheme. Since we know what the regional body is doing wrong, the researcher recommends that research be conducted, with extensive data to back it up, into ways to correct the wrongs of ECOWAS and the scheme's implementation for potential.

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## **APPENDICES**

### **APPENDIX 1**

#### **INTERVIEW GUIDE FOR INTERVIEW WITH HON. FREDERICK ALIPUI**

##### **Coverage**

- a. Does the coverage of the scheme extend beyond those spelt out in the agreement – traditional handicraft products, unprocessed goods and industrial products – to include services, investments, intellectual property and so on?

##### **Transparency**

- a. Are there provisions that require prior notifications to member states on new regulations or legislations?
- b. Are there provisions that prior require notifications to the WTO on new regulations and legislations?
- c. How are decisions made on the day-to-day implementation of the scheme? (This is a question to the Ministry of Foreign Affairs' (MFA) Africa Bureau, but I would like to hear your take on it)
- d. How is information disseminated to interested parties? (This is also a question to the MFA, but I would like to hear your take on it)

##### **Openness in Decision-Making and Due Process**

- a. Is there a structured decision-making process/procedure?
- b. Is the procedure for decision-making under the scheme inclusive? (Does it include foreign suppliers, consumers, civil society and other NGOs?)

##### **Regulatory Discretion**

- a. Is there a body that enforces ETLs regulations and interprets the laws or legislations of the scheme?
- b. How much discretion do signatory states have in implementing the regulations of the scheme?

- c. Are there any recognized institutions that have been set up to reduce regulatory discretion by signatory states? How effective have these institutions been, if any?
- d. Under the scheme, are there competition policies?

**Implementation, Enforcement and Review**

- a. Is there a dispute resolution mechanism under the scheme?
- b. Are there any enforcement mechanisms under the scheme?
- c. Are there provisions to review the implementation of the scheme to measure its effectiveness or efficiency in achieving its goals? (review mechanism)

APPENDIX 2

INTERVIEW GUIDE FOR INTERVIEW WITH OFFICIALS AT THE MINISTRY OF  
FOREIGN AFFAIRS AND REGIONAL INTEGRATION - GHANA

**Institutional Infrastructure**

- a. Does Ghana receive technical and financial assistance on the implementation of the ETLS from ECOWAS?

**Coverage**

- a. Does Ghana duly report other trade agreements it enters into, like the EU-Ghana trade agreement, to the ECOWAS Commission per the requirements of the ECOWAS revised treaty Article 43.1? If yes, please provide instances.
- b. How are Ghanaian products received in other ECOWAS countries? Favorably? Or are there regulations in these other ECOWAS countries that restrict the sale of Ghanaian products within their countries?

**Openness in Decision-Making**

- a. Do Ghanaian parties get their interests represented at the ECOWAS level during the decision-making process?
- b. How does Ghana receive notifications of new regulations? Is there enough time between receiving the notifications and the appropriate time to implement them?
- c. How quickly does Ghana communicate new regulations to local companies and industries?

**Regulatory Discretion**

- a. Are there any measures that check Ghana's use of regulatory discretion in the implementation of the ETLS?

**Implementation, Enforcement and Review**

- a. What does Ghana do when it has a problem with another ECOWAS country on the implementation of the scheme?
- b. Are there any enforcement mechanisms under the scheme, to ensure that states implement the agreements and regulations of the ETLS?

APPENDIX 3

INTERVIEW GUIDE FOR THE INTERVIEW WITH OFFICIALS WITH THE MINISTRY OF  
TRADE AND INDUSTRY – GHANA

**Institutional Infrastructure**

- a. Does ECOWAS provide technical and financial assistance to Ghana towards the implementation the ETLS?

**Coverage**

- a. Does Ghana duly report individual trade agreements, like the EPAs member states have signed with the EU, to the ECOWAS Commission per the requirements of the ECOWAS revised treaty Article 43.1? If yes, please provide instances.
- b. How has the implementation of the MFN treatment and National Treatment clauses under the ECOWAS revised treaty been? Does any ECOWAS member state enact regulations and legislations to restrict Ghanaian products within their countries in favor of like domestic products?

**Openness in Decision-Making**

- a. Is the procedure for decision-making under the scheme inclusive? (Does it include foreign suppliers, consumers, civil society and other NGOs?)

**Regulatory Discretion**

- a. Is there a body that enforces ETLS regulations and interprets the laws or legislations of the scheme?
- b. How much discretion do signatory states have in implementing the regulations of the scheme?
- c. Are there any recognized institutions that have been set up to reduce regulatory discretion by signatory states? How effective have these institutions been, if any?

**Implementation, Enforcement and Review**

- a. Is there a dispute resolution mechanism under the scheme?
- b. Are there any enforcement mechanisms under the scheme, to ensure that states implement the agreements and regulations of the ETLS?

- c. Are there provisions to review the implementation of the scheme to measure its effectiveness or efficiency in achieving its goals? (review mechanism)