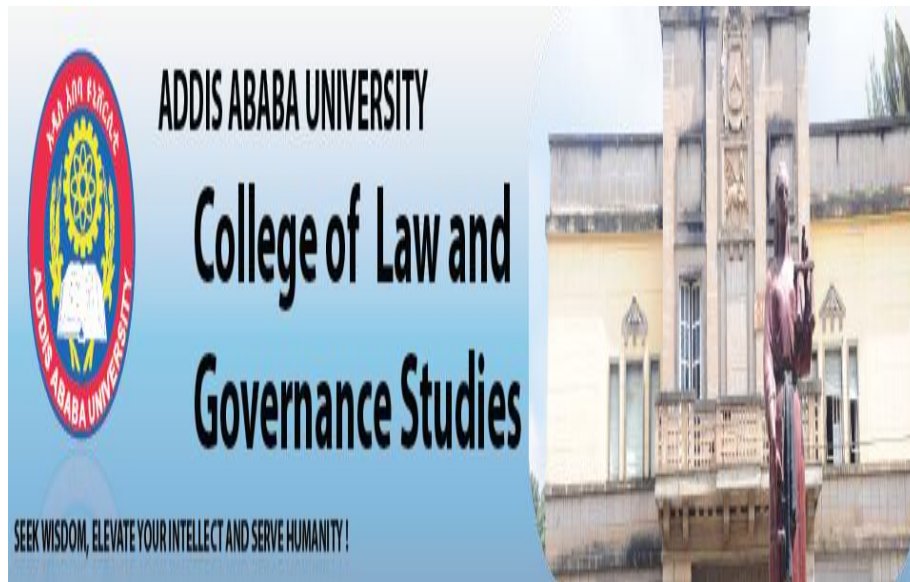


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**THE IMPLICATION OF AFRICAN CONTINENTAL
FREE TRADE AREA AGREEMENT ON ETHIOPIA'S
FOREIGN TRADE REGULATION**

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SEP, 2020

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THE IMPLICATION OF AFRICAN CONTINENTAL FREE
TRADE AREA AGREEMENT ON ETHIOPIA'S FOREIGN
TRADE REGULATION

Thesis

Submitted in Partial Fulfillment of the Requirements for the Degree of
Masters Laws (LLM) in Public International Law at the School of Law
and Governance, Addis Ababa University.

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Declaration page

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Declaration

I, the undersigned, declare that the thesis comprises my own work. In compliance with widely accepted practices, I have duly acknowledged and referenced all materials used in this work. I understand that non-adherence to the principles of academic honesty and integrity, misrepresentation/fabrication of any idea/data/fact/source will constitute sufficient ground for disciplinary action by the University and can also evoke criminal sanction from the State and civil action from the sources which have not been properly cited or acknowledged.

Signature

Dereje Amlaku

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0454/2010

Date

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Acknowledgement

I do not like to remember that long and cumbersome journey to conduct this paper due to the international disorder created by the COVID pandemic. Till this time I am always swimming in a dramatic ocean but it is only because of the spirit of GOD and his mother St. Mary, this paper becomes viable. GOD, I preferred to be silent rather than embarking on you by throwing my silly thanks. I have no words to express my indebtedness to my families. Dear my families, it is your support which enables me to accomplish this long and cumbersome journey. I do not have any more words to express your deeds for me. Doctor Solomon Abay, not only as my advisor but also as a close family starting from a day of my acquaintance of the school, supported me to make my dream viable. Dear Doctor, this paper will not be real without your valuable comment, so you too, deserve my credited. My thanks further goes to Ato Mussie Mundy, Ato Dessalegn Wendmu, Ato Daniel G/Egziyabher, Ato Getnet tsegamlak, Ato Misganaw Tsegaye, Ato Kasahun Desta, and Ato Tages Mulugeta for the valuable interview and expertise explanation you gave me on your expertise area by exhausting your time without any hesitation. This is your result. I do have great thanks also for my classmate Kidus Merkorious, Yosef Samuel, Meqdelawit Kibebew and the rest of others. Lastly but not least, my thanks is deep to my beloved friends of sharing happiness and sadness in the normal course of things to mention some, Hailessilassie Amare Gite, Eyayu Nurbeje, Bantegize Alem Desta, Getachew Kebede, Maru Demelashi, Yilak Tessema, Kidanie Belay, Tsegaye Hailessilassie and others I am constrained to mentioned you.

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Abstract

On 21 March 2018 in Kigali, Rwanda, at the 10th Extra-ordinary and ever historic summit of the AU, representatives of African state members with strong political devotion and commitment, have adopted the African Continental Free Trade Area Agreement (AFCFTA) to boost intra-African Trade and bring radical economic development among member states through creating a liberalized single continental market facilitated by the movement of natural persons and capital mainly for the free flow of trade in Goods and trade in Services by dismantling tariff and non-tariff barriers of trade. Ethiopia, a country within Africa, has become a member and ratified actively the AFCFTA agreement in order to tackle poverty and transform its citizens from poverty shelf story to the betterments of tomorrow. Accordingly, in this Paper, I argue Ethiopia as LDC, as a member to COMESA, was awarded a market access opportunity, but that was insignificant to attain competitiveness of the export sector. She also tried to balance its foreign deficit by providing incentives for the export sector but not that much meaningful. So that, the foreign trade regulation regime has to be reformed to benefit from AFCFTA Agreement. As a result, the AFCFTA agreement will have an implication on Ethiopia's foreign trade regulation; first, it enables Ethiopia to reform its policy and strategy, legal and institutional frameworks in a way to host trade liberalization and avoidance of tariff and non-tariff barriers of trade. Second, it would have an implication to assess and restructure regulatory tools of foreign trade regulation regime. First, I argue that liberalization of tariff, quantitative restriction and export duties as per AFCFTA Agreement positively implies to have more trade flow to drive economic growth, but it will pose a problem of government revenue loss and impact on the competitiveness of the domestic industry. Second, harmonization of technical measures as per the AFCFTA enables the country to have a competitive export sector through quality assurance and enhance food safety and security even though it requires its technical costs. Third, legislating trade remedy laws and domestic arrangements as per AFCFTA is pertinent, since it protects the domestic industry from unfair and unintended trade practice. Fourth, sticking to AFCFTA's rules of origin enables the country to intercept the regional supply chain and promote value addition. Fifth, having a simplified customs regulation enables to have an effective and efficient customs regime though it requires investing infrastructure and automated technologies. Finally, liberalization of the service sector including the financial sector and the foreign exchange regime is valuable to facilitate business transaction, attract FDI and to generate economic growth, but it requires capacity building of the domestic industry in order to protect it from floating by foreign companies.

Keywords: - *Foreign trade regulation, Tariff, Non-Tariff Barriers, Free Trade Agreement, Technical measure, Contingent Trade remedies, Trade facilitation, quantitative restriction, Export duties, Foreign Exchange, and Customs Regulation.*

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Acronyms

WTO – World Trade Organization

ESA – Ethiopian Standards Agency

GAAT – General Agreement on Trade and Tariffs

GATS – General Agreement on Trade in Services

TBT- Technical Barriers to Trade

SPS – Sanitary and Phytosanitary Barriers to Trade

AFCFTA – African Continental Free Trade Area Agreement

HS – The International Harmonization or Coding system of tariff classification

AU – African Union

WCO – World Customs Organization

TF- Trade Facilitation

RO – Rules of Origin

SG – Safeguard

COMESA – Common Market for Eastern and Southern Africa

NTB – Non-Tariff Barrier

RECs – Regional Economic Communities

MFN – Most favored nations Treatment

NT – National Treatment

TR – Trade Remedy

CCMAA – Customs Cooperation and Mutual Administrative Assistance

LDC – Least Developed Country

NBE – National Bank of Ethiopia

MOF – Ministry of Finance

MOIT – Ministry of Trade and Industry

MOH – Ministry of Health

MOA – Ministry of Agriculture

FDI – Foreign Direct Investment

MOR - Ministry of Revenue

MOFA – Ministry of Foreign Affairs

ECC – Ethiopian Customs Commission

NQIs – National Quality infrastructures

ECE – Ethiopian Conformity Assessment Enterprise

EMI – Ethiopian Metrology Institute

EAE – Ethiopian Accreditation Enterprise

CHAPTER ONE

INTRODUCTION

1.1. Background and Problem

Ethiopia has a surface area of 1.13 million square kilometers¹, and a population estimated at 115 million² with diverse custom and culture, making it the second most populous country in Africa. In 2018 Ethiopia had \$86.67B GNP and \$790 Per Capita with 6.70% growth rate.³She is bordered by Eritrea to the north, Sudan and South Sudan to the west, Kenya, and Somalia on its southern border and Djibouti, and Somalia to the East. When Eritrea becomes independent in 1993, Ethiopia lost its direct access to the sea, leaving it as the most populous landlocked country in the world. As a result, 96% of its external trade takes place through the ports in Djibouti.⁴But currently, with the reform of government and outlook in Ethiopia, the “no war no peace” situation of the two countries seemed to be ended and devoted themselves to bilateral economic negotiation.

Ethiopia is considered as ancient trading nation. It had long-standing trade routes to Asia and the Middle East. However, compared to other developing and developed countries, she does not have a strong trading position in the world.⁵Needless to mention, she is among one of the Least Developed Countries in the world. Its economy is based on agriculture.⁶Even if the Agricultural sector’s share declines to 33.3% in GDP, and the service Sector and the

¹ ‘Ethiopia country profile’ *BBC news* (24 June 2019) available at <https://www.bbc.com/news/world-africa-13349398> [Retrieved in April, 2019]

² ‘Ethiopia GNP 1983-2020’ *Macro trends*, Available at <https://www.macrotrendsethiopia/population> [Retrieved in May, 2019]

³ Ibid

⁴ ‘Ethiopia: company perspectives’ *International trade center*, an ICT series on non-tariff measures, PP. 2 available at <http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/Ethiopia%20NTM%20surveyLow-res.pdf> [Retrieved in February, 2020] [Here in after International Trade center]

⁵ Amdissa Teshome, ‘The Compatibility of Trade Policy with Domestic Policy Interventions in Ethiopia’ (May 2007) *draft Paper Presented at a Workshop* PP. 5 available at https://pdfs.semanticscholar.org/7cf5/fd040cb3ace_9a6d0e_494ce47_cce067a80dfa.pdf [Retrieved in April, 2020] [Here in after Amdissa Teshome]

⁶ ‘Foreign Trade Promotion Manual for Ethiopian Diplomatic Missions’ Ministry of Foreign Affairs of the Federal Democratic Republic of Ethiopia Economic and Business Affairs General Directorate, (Addis Ababa, November 2007) available at https://www.hebrezema.info/files/trade_promotion_manual_for_ethiopian_diplomatic_missions.pdf [Retrieved in November, 2019] [Here in after Foreign trade promotion manual]

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industry sector grow to 39.8% and 28.1% share in GDP respectively in 2018/2019 fiscal year, it is difficult for the economy to be viable without the overall dimensional role of the agriculture sector even these days.⁷

Ethiopia had formally opened to international trade its economy in 1903 after the end of the Ethio-Italian War. During this period, the country earned some surplus that exports accounted for 13 percent of GDP while imports contributed 12 percent to national income.⁸ Under military rule during the period that spanned nearly two decades, Ethiopia's economy was excessively regulated, virtually closed to international trade and hosts massive deficit. Overall exports declined to 8% of GDP, and imports rose to 21%. Fast-forward today, Ethiopia has opened its economy to international trade, though, it continues to experience significant deficit in its foreign trade balance.⁹ The total balance of payments shown USD 941.6 million deficits in 2018/19 compared to USD 201.6 million, deficits a year earlier.¹⁰ Currently, international trade accounts to 31.5% of GDP.¹¹

Ethiopia has now been a founding member of the AFCFTA Agreement. The AFCFTA Agreement aimed to create a liberalized single continental market mainly for trade in goods and trade in services through dismantling of tariff and non –tariff barriers in order to boost intra-African trade. On the one hand, the AFCFTA Agreement necessitated the member states to dismantle barriers to international trade to bring a liberalized economic order and avoid domestic protectionism. In other words, liberalization of trade is the main objective of the AFCFTA agreement expected from member states. As a result, this treaty obligation needs member states to voluntarily limit their sovereignty.

On the other hand, member states as a sovereign entity have autonomy to regulate foreign trade on several grounds of justifications including infant domestic industry protection, and loss of revenue protection, national security protection, public health and safety protection. Those, to achieve these policy goals, member states resort to unilateral

⁷ National Bank of Ethiopia, *2018/2019 annual report* (Addis Ababa, 2019), PP. 9 available at https://nbebank.com/wp-content/uploads/pdf/annual_bulletin/report-2018-2019.pdf [Retrieved in April, 2020]
[Here in after annual report]

⁸ Yonnas kifle “International trade and Ethiopia’s experience,” *Reporter magazine* (Addis Ababa, 1 December 2018) available at <https://www.thereporterethiopia.com/article/international-trade-and-ethiopias-experience> [Retrieved in December, 2019][Here in after Yonnas Kefle]

⁹ Ibid at PP. 3

¹⁰ See annual report (n 7) at p. 72

¹¹ See Yonnas Kifle (n 8)

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trade measures. This is the essence of foreign trade regulation. So that foreign trade regulation is a mechanism, policy or strategy of regulating or restricting the free flow of international trade in the borders of a state for legitimate purpose.

However, unilateral measures of trade regulation differ from country to country. This, in turn creates obstacles for the trading regime of liberalization of trade. It is also used to shelter protectionism. Thus, it is pertinent to devise a mechanism to minimize the cost of excessive regulation. Accordingly, the AFCFTA agreement contained a provision for regulatory harmonization mechanisms for bringing uniformity and for avoiding unnecessary barrier to trade while taking unilateral measure of regulation. These regulatory guiding mechanisms are loopholes to allow member states strike two competing interests, on the one hand, liberalization of trade, and on the other hand, member states autonomy to regulate foreign trade for legitimate purpose. Accordingly, in this thesis, I will try to analyze exhaustively the implication of AFCFTA Agreement on Ethiopia's foreign trade regulation.

The Thesis has four Chapters and Sections, and Sub-sections. The First Chapter is all about Introduction, the Second Chapter deals on examining foreign trade regulation under AFCFTA Agreement, the Third Chapter focuses on the implication of AFCFTA Agreement on Ethiopia's foreign trade regulation, and the Fourth Chapter is about Conclusion and Recommendation. Finally, the Thesis contains Bibliography and Appendixes at the end.

1.2. Research Question

The study has the following major and related questions in which my research will be viable to discuss exhaustively:

- Is foreign trade regulation governed or regulated under the AFCFTA agreement? If so, what will be the implication of the AFCFTA agreement on Ethiopia's foreign trade regulation regime?

1.3. Objective and Significance

The research has a general objective of performing a surgical operation on the implication of AFCFTA Agreement on Ethiopia's foreign trade regulation. It examines AFCFTA's Agreement foreign trade regulation regime. It will make a deep assessment on the domestic policies and strategy, legal and institutional frameworks as well as regulatory tools and mechanisms to examine the implication of AFCFTA's on Ethiopia's foreign trade regulation.

The findings of this research will help as an input for institutions and persons who wanted to strengthen the study on Ethiopia's foreign trade regulation. I am of the opinion that

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this paper will provide insights for the government of Ethiopia for further negotiations on AFCFTA and progressive liberalizations of trade. Generally, this research paper will serve as a stepping stone for any dealing on implication of AFCFTA Agreement on Ethiopia's foreign trade regulation.

1.4. Time Table and Limitation

As per to my expectations, this research will be finalized and submitted according to the time limit set by the school. And the costs till the final paper completion will be surely incurred by the researcher. Due to the COVID 19, most institutions including AAU library, governmental institutions and experts were difficult to access.

1.5. Methodology, and Citation

The research is mainly a doctrinal research; since it tries to analyze and interoperate legal frameworks related the AFCFTA, and domestic regime with regard to foreign trade regulation. But it may have recourse on outside doctrinal research. Consequently, the research is mainly conducted in qualitative base. For the purpose of this paper the Oxford University Standard for Citation of Legal Authorities (OSCOLA) to be used.

CHAPTER TWO

EXAMINING THE AFRICAN CONTINENTAL FREE TRADE AREA AGREEMENT WITH REGARD TO FOREIGN TRADE REGULATION

2.1. Intra-Regional Trade and Regional Economic Integration in Africa

Africa ranks near rock bottom when it stands to competing within the global economy, held back by fragmented markets that inhibit efficiency and constrain economic development.¹²The continent accounts for fewer than 3 percent of world trade.¹³

Intra-Regional trade has been also generally low. Intra-Regional exports were 16.6% of total exports in 2017, while 68% in Europe and 59% in Asia, indicating to untouched potential.¹⁴With regard to the justifications, Marek Dabrowski and Yana Myachenkova contended that:

There are several reasons behind regional under-trading: the low development level of African economies and their excessive dependence on commodity production and exports, protectionist trade policies, weak transport infrastructure, poor trade logistics, and high security risks.¹⁵

This is also an issue raised by an Action Plan for Boosting Intra-African Trade prepared by African Union as follows:

The growth of intra-African trade has been constrained by a number of factors. These include differences in trade regimes; restrictive custom[s] procedures, administrative and technical barriers; limitations of productive capacity; inadequacies of trade related infrastructure, trade

¹² Hippolyte Fofack, 'Economic integration could make the continent a global player' (December, 2018) *IMF finance and development magazine*, PP. 49 available at <https://www.imf.org/external/pubs/ft/fandd/2018/12/pdf/afcfta-economic-integration-in-africa-fofack.pdf> [Retrieved in November, 2019]

¹³ 'Boosting Intra-African Trade: Implications of the African Continental Free Trade Area Agreement'(Cairo, 2018) *African Trade Report 2018 by African Import-Export Bank*, PP. 15 available at <https://www.tralac.org/documents/news/2042-african-trade-report-2018-afreximbank/file.html> [Retrieved in November, 2019]

¹⁴ Kim Cloete, 'Africa's new free trade area is promising, yet full of hurdles'(September 06, 2019) *World Economic Forum on Africa*, Available at <https://www.weforum.org/agenda/2019/09/africa-just-launched-the-world-s-largest-free-trade-area/> [Retrieved in January, 2020]

¹⁵ Marek Dabrowski and Yana Myachenkova , 'Free trade in Africa: An important goal but not easy to achieve' (April, 2018) available at https://www.researchgate.net/publication/324561345_Free_trade_in_Africa_An_important_goal_but_not_easy_to_achieve [Retrieved in December, 2019]

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finance, and trade information; lack of factor market integration; and inadequate focus on internal market issues.¹⁶

In addition, the United Nations Conference on Trade and development at its Sixtieth session tried to analyze this issue as follows:

...the approach to regional integration on the continent has so far focused more on the elimination of trade barriers and less on the development of the productive capacities necessary for trade. While the elimination of trade barriers is certainly important, it will not have the desired effect if it is not complemented with policy measures to boost supply capacities. The limited role of the private sector in regional integration initiatives and efforts has [have] also contributed to the weak trade performance of the continent....¹⁷

Accordingly, boosting up intra- regional trade and deepening of regional market integration set up an essential response to the constraints confronting Africa within the multilateral trading system, and the global economy by fostering competition among African countries, and will this in turn support in improving their capacity and prepare them to compete more successfully on the worldwide market.¹⁸ Additionally, intra-African trade has enormous potential to generate employment, catalyze investment and raise growth in Africa.¹⁹

All African Countries except Ethiopia and Liberia were under colonial rule. Accordingly, the journey towards African cooperation in development efforts and unity began soon after most African countries gained independence in the late 1950s to 1960s.²⁰ The AU and its predecessor the OAU have championed continental and regional

¹⁶ AU, ‘Action Plan for Boosting Intra-African Trade’ (Addis Ababa, Ethiopia), PP. 4 available at https://www.au.int/web/sites/default/files/newsevents/pressreleases/26498-pr-action_plan_for_boosting_intra-african_trade_f-english.pdf [Retrieved in November, 2019]

¹⁷ UNCTAD, ‘Economic development in Africa, Intra-African Trade: Unlocking private sector dynamism’ (Geneva, September 2013) Trade and Development Board Six Session Conference Item 6, TD/B/60/04, PP.2 available at https://unctad.org/meetings/en/SessionalDocuments/tdb60d4_en.pdf [Retrieved in March, 2020][Herein after UNCTAD conference on Intra-African Trade]

¹⁸ AU, ‘BIAT – Boosting Intra-African Trade’ available at <https://au.int/en/ti/biat/about> [Retrieved in June, 2020]

¹⁹ See UNCTD conference on Intra-African Trade (n 17) PP. 2

²⁰ Théophile Albert, ‘The African Continental Free Trade Agreement: Opportunities and Challenges’ (Geneva, 2019) *CUTs International*, PP. 4 available at <https://www.tralac.org/documents/resources/cfta/3181-afcta-opportunities-and-challenges-cuts-international-study-2019/file.html> [Retrieved in January, 2020][Herein after Théophile Albert]

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integration efforts for over three decades.²¹ With regard to the path undertaken for African regional economic integration effort, a joint report published by UNECA, AU, and UNCTAD in 2019, titled *Assessing Regional Integration in Africa*, stipulated that:

... This vision arose during the formative years of the Organization of African Unity (OAU), took shape as a systematic political programme embodied in the 1980 Lagos Plan of Action and was given legal expression in the 1991 Abuja Treaty. Its importance was reaffirmed by various continental integration initiatives—the 2000 constitutive act of the African Union, the 2012 Boosting Intra-African Trade action plan and, most recently, the agreement establishing the African Continental Free Trade Area (AfCFTA), signed in 2018.²²

The AfCFTA, therefore, has its origins rooted in a half-century of continental integration efforts.²³ The Agreement establishing AfCFTA was signed at the 10th Extraordinary Summit of the AU Assembly on 21 March 2018 in Kigali, Rwanda. The AfCFTA Agreement comes into force on 30 May 2019.²⁴ The Agreement establishing AfCFTA marks significant milestone in the AU's history, and its aspirations of realizing a continental FTA and customs union.²⁵

For the Agreement to be implemented, at least twenty-two member states must sign it. The pace of the AfCFTA ratification was extraordinary. It was reached specifically on April 29, 2019, when Sierra Leone and the Saharawi Republic dropped their instruments of ratification of the agreement.²⁶

The instruments were signed by 54 of 55 African States (only Eritrea has not yet signed). To date, 28 countries have ratified the agreement as per to my knowledge, so that still the job is not completed. Even if the AfCFTA was planned to be fully implemented and

²¹ Mbakiso Magwape, 'The AfCFTA and Trade Facilitation: Re-Arranging Continental Economic Integration' (University of Pretoria, 2018) PP. 2 available at https://repository.up.ac.za/bitstream/handle/2263/68116/Magwape_AFCFTA_2018.pdf?sequence=1&isAllowed=y [Retrieved in November, 2019][Herein after Mbakiso Magwape]

²² UNECA, AU, and UNCTAD, 'Next Steps for the African Continental Free Trade Area' (Addis Ababa, July 2019), *Agreement Assessing Regional Integration in Africa ARIA IX Report*, PP. 2 available at https://www.uneca.org/sites/default/files/PublicationFiles/aria9_report_en_4sept_fin.pdf [Retrieved in January 2020]

²³ See Mbakiso Magwape (n 21) PP. 3

²⁴ 'The African Continental Free Trade Area' (Tralac Guide 6thed, November, 2019), *Tralac Trade Law Center*, PP. 2 available at <https://www.tralac.org/documents/resources/booklets/3028-afcfta-a-tralac-guide-6th-edition-november-2019/file.html> [Retrieved in January, 2020] [Here in after Tralac Guide 6thed]

²⁵ See Mbakiso Magwape (n 21) PP. PP. 1

²⁶ See Théophile Albert (n 20) PP. 6

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the commencement of trade under AFCFTA arrangement is expected to start on July 2020 due to the COVID 19 pandemic, it is postponed to early January 2021, as per to the wordings of Wamkele Mene, Secretary-General of AFCFTA.²⁷

2.2. Legal and institutional frameworks of AFCFTA Agreement

Trade in goods, Trade in services, Investment, Intellectual Property Rights and Competition Policy are framework areas covered and dealt by AFCFTA.²⁸ These framework areas form an integral part of the Agreement and form part of a single undertaking. Any additional instruments, within the scope of the Agreement concluded in furtherance of the objectives of the AFCFTA also form an integral part of the Agreement.²⁹ The Protocols on Trade in Goods and Trade in Services each have its own Annexes dealing substantive disciplines (see Appendix I).³⁰

Trade in Goods and Trade in Services being negotiated in Phase I; with negotiations on a number of issues (e.g. Schedule of tariff concessions, origin rules for goods and specific commitments for services) still ongoing.³¹ Phase II of the negotiations will be on Investment, Competition Policy and Intellectual Property Rights. Phase II negotiations, and the draft texts of the Protocols are estimated to be complete by January 2021.³²

The institutional framework for the execution, supervision, facilitation, observation and evaluation of the AFCFTA comprise the Assembly, the Council of Ministers, the Committee of Senior Trade Officials and the Secretariat with its own functions and responsibilities.³³

2.3. Objectives and Principles of AFCFTA

The agreement has general and specific objectives as well as stated principles in order to become viable and attain the intended aim of the architects. Accordingly, it has a main

²⁷ SABC News 'African Continental Free Trade Area implementation delayed by COVID-19' (July 22, 2020) *You Tube online video mix*, available at <https://www.youtube.com/watch?v=2rWeNJL6JV8> [Retrieved in August, 2020]

²⁸ Agreement Establishing the African Continental Free Trade Area, Consolidated Treaties Adopted by the 10th Extraordinary Session of the Assembly in Kigali, Ruanda, (May 30, 2019) Article 2 available at https://au.int/sites/default/files/treaties/36437-treaty-consolidated_text_on_cfta_-_en.pdf [Retrieved in March, 2020][Herein after AFCFTA establishing Agreement]

²⁹ Ibid Article 8

³⁰ See Tralac Guide 6thed (n 24) PP. 4

³¹ Ibid

³² Ibid and See AFCFTA Establishing Agreement Article 7

³³ See AFCFTA Establishing Agreement Article 8

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objective to create a liberalized single continental market mainly for goods and services through successive rounds of negotiation, lying down basis for Continental Customs Union and promoting industrial development.³⁴ For realizing those objectives, the Agreement aimed mainly to progressively eliminate tariff and non-tariff barriers to trade in goods and liberalize trade in services.³⁵

Finally, the AFCFTA has stated principles to be maintained to achieve the above objectives.³⁶ Without having maintained these principles, the objectives would not have been fruitful. Accordingly, first, the agreement is driven by Member States of the African Union. As such, consensus in decision-making is at the heart of AFCFTA. Second, RECs' Free Trade Areas (FTAs) as building blocks for the AFCFTA, and as a result, best practices in the RECs bind the African Union. Accordingly, preservation of the *acquis*, is stipulated as a principle, which means that what has already been achieved as part of the implementation of REC obligations will have to be respected.³⁷ Next, Most-Favoured-Nation (MFN) Treatment, National Treatment (NT), Reciprocity and substantial liberalization are stipulated as guiding principles of the agreement. Additionally, flexibility and special and differential treatment as well as variable geometry is also the stated principle of AFCFTA.³⁸ By doing so, ensuring the vulnerability of small economies and weaker countries is taken into account.³⁹ Finally, transparency and disclosure of information are also the main guiding principles of AFCFTA.⁴⁰ State Parties can strengthen transparency by revealing information publicly.⁴¹

2.4. Foreign Trade Regulation under AFCFTA

2.4.1. Regulation in Trade in Goods

2.4.1.1. Tariff, Quantitative Restrictions and Export duties

³⁴ See AFCFTA Establishing Agreement Article 3

³⁵ Ibid Article 4

³⁶ Ibid Article 5

³⁷ 'African Continental Free Trade Area (AfCFTA)' Tralac Questions and Answers No.1 (2018), *Tralac Trade and Law Center*, PP. 7 available at <https://www.tralac.org/resources/by-region/cfta.html#legal-texts> [Retrieved in December, 2019][Herein after Tralac Questions and Answers on AFCFTA No.1]

³⁸ See AFCFTA Establishing Agreement Article 5

³⁹ See Théophile Albert (n 20) PP. 9-10

⁴⁰ AFCFTA Establishing Agreement Article 5

⁴¹ See Théophile Albert (n 20) PP. 10

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Import duty is a tax on imports levied when goods cross the border or a tax on foreign goods, paid by the foreign producer or the importer.⁴²With regard to tariff, progressive elimination of import duties or charges and non-imposition of new import duties or charges for products subject to liberalization having equivalent effect on goods originating as per to the schedules of tariff concessions are required under the AFCFTA.⁴³As per to the AFCFTA, an import duty include any duty or charge of any kind imposed on or in reference to the importation of goods including any form of surtax or surcharge. But this does not include a) charges equivalent to internal taxes imposed consistently with Article III (2) of GATT 1994 and its interpretative notes b) antidumping, or countervailing duties in accordance with the GAAT/WTO provisions c) duties or levies imposed in relation to safeguards in accordance with GAAT/WTO provisions d) other fees or charges imposed consistently with Article VIII of GATT 1994.⁴⁴This exception is copied word by word from Article II (2) of the GAAT provision. The only difference that is not mentioned in the GAAT but covered by the AFCFTA agreement is duties and levies imposed in relation to safeguards.⁴⁵As per Annex 1(1) of the protocol State Parties shall develop Schedules of Tariff Concessions in accordance with the approved modalities for tariff liberalization.⁴⁶

By September 2017, most elements of the Modalities for Tariff Liberalization were agreed. These modalities provide a framework for negotiations. Accordingly, the negotiating parties are individual member states or customs unions. Countries will allocate products to 3 product categories; ‘Non-Sensitive’ products, ‘Sensitive’ products and the ‘Exclusion List.’⁴⁷Tariffs on non-sensitive products have to be eliminated after five years for non-LDCs and ten years for LDCs and tariffs on sensitive products to be eliminated after ten years for non-

⁴² Simon Lester, Bryan Mercurio, et al, *World Trade Law Text, Material and Commentary*, (2nd ed, Hart publishing, Oxford, Portland and Oregon 2012)

⁴³ Protocol on Trade in Goods, Agreement Establishing the African Continental Free Trade Area, Consolidated Treaties Adopted by the 10th Extraordinary Session of the Assembly in Kigali, Ruanda, (May 30, 2019) Article 7(1) and (2) [Herein After Protocol on Trade in Goods]

⁴⁴ Ibid Article 7 (3)

⁴⁵ The General Agreement on Tariffs and Trade 1947, 61 Stat. A-11, 55 U.N.T.S, (October 30, 1947) article II (2) available at https://www.wto.org/english/docs_e/legal_e/gatt47.pdf [Retrieved in November, 2019][Here in after GAAT]

⁴⁶ See Protocol on Trade in Goods Annex 1

⁴⁷ Peter Lunenborg, ‘Phase 1B’ of the African Continental Free Trade Area (AFCFTA) negotiations’ (June, 2019) *South Center Policy Brief No. 63*, PP. 4 available at https://www.southcentre.int/wp-content/uploads/2019/06/PB63_Phase-1B-of-the-AfCFTA-negotiations_EN-1.pdf [Retrieved in March, 2020]

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LDCs and fifteen years for LDCs (see Appendix II). Accordingly, they agreed to liberalize 90% of their tariff lines on goods (non-sensitive). The rest 10 % will be apportioned between sensitive products (7 percent), for which State Parties are given a longer liberalization timeframe, and excluded products (3 percent), which will be exempted from liberalization altogether and remain under each Member States' existing tariffs.⁴⁸ The exclusion list has to comply with an 'anti-concentration' clause. This is to ensure that members are not able to include entire sectors in their exclusion lists.⁴⁹

Imposing quantitative restrictions on imports or exports is prohibited except as otherwise provided for in the Protocol, its Annexes and Article XI of GATT 1994 and other relevant WTO Agreements.⁵⁰ Regulation of Export duties or charges having equivalent effect on goods originating is allowed so long as it does not create a disguised trade restriction.⁵¹ Tariffs and quotas are also imposed on exports, often to make sure adequate supply of a product that a domestic producer uses as an input.⁵²

2.4.1.2. Non-Tariff Barriers

As per to Article 1(r) of the AFCFTA establishing agreement, "*Non-Tariff Barriers means barriers that impede trade through mechanisms other than the imposition of tariffs.*"⁵³ There is no agreed classification of non-tariff regulatory mechanisms of foreign trade in international standards. Under AFCFTA agreement, NTBs are classified into six categories which includes (a) Government Participation in Trade and Restrictive Practices tolerated by Governments; (b) Customs and Administrative Entry Procedures; (c) Technical Barriers to Trade; (d) Sanitary and Phytosanitary Measures; (e) Specific Limitations; and (f) Charges on Imports (see Appendix III).⁵⁴

⁴⁸ Landry Signé and Colette van der Venkey, 'Key to Success for the AFCFTA Negotiations' (May, 2019) Africa Growth Initiative at Brookings Policy Brief, PP. 5 available at https://www.brookings.edu/wp-content/uploads/2019/05/Keys_to_success_for_AfCFTA.pdf [Retrieved in January, 2020][Herein after Landry Signé]

⁴⁹ See Tralac Questions and Answers on AFCFTA No.1 (n 37) PP. 6

⁵⁰ See Protocol on Trade in Goods Annex 1 Article 9

⁵¹ Ibid Article 10

⁵² See Simon Lester (n 42)

⁵³ See AFCFTA Establishing agreement Article 1 (r)

⁵⁴ Annex on Non-Tariff Barriers of Protocol on Trade in Goods, Compiled Annexes on the Establishment of the Continental Free Trade Area, (May, 2019) draft A-5, Article 3 and Appendix one of the Annex available at <https://www.tralac.org/documents/resources/african-union/2163-compiled-annexes-to-the-afcfta-agreement->

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In order to tackle NTBs, the AFCFTA has adopted this Annex and developed an online mechanism accessible for any interested party to report and submit compliant on NTBs.⁵⁵ A subcommittee on NTBs with having a function to develop working procedure, monitoring, and any other related activities are established.⁵⁶ The state parties are required to establish National Monitoring Committees and National Focal Points on NTBs. So that, The National Monitoring Committees and the National Focal Points together form part of the Institutional Structures at the National level for the Elimination of NTBs.⁵⁷ The main function of the NTB Coordination Unit is to coordinate the elimination of NTBs working alongside with the NTB Sub-Committee, National Focal Points and Regional Economic Communities (RECs) NTB Units, and any other forum working within the same area.⁵⁸ It is important to notice that the AFCFTA NTB mechanism will function in close cooperation with REC NTB monitoring mechanisms.⁵⁹

2.4.1.2.1. **Technical Barriers to Trade (TBT)**

TBT under AFCFTA applies to standards, technical regulations, conformity assessment procedures, accreditation, and metrology.⁶⁰ The WTO TBT Agreement forms the foundation and the guide lines.⁶¹ This entails that the challenge of TBT regulation set by governments to satisfy their objectives regarding health, safety, and the environment, and for market-driven standards, set within the private sector, will continue.⁶²

[legally-scrubbed-version-signed-16-may-2018/ file.html](#) [Retrieved in January, 2020][Herein after Annex on NTBs]

⁵⁵ Gerhard Erasmus, 'dealing with Non-Tariff Barriers under the AFCFTA: What are the Prospects?' (December 18, 2019) *Tralac Blog Perspectives on Africa's Trade and Integration*, available on <https://www.tralac.org/blog/article/14345-dealing-with-non-tariff-barriers-under-the-afcfta-what-are-the-prospects.html> [Retrieved in May, 2019][here in after Gerhard Erasmus]

⁵⁶ See Annex on NTBs Article 4 and 5

⁵⁷ Ibid Article 6

⁵⁸ Ibid Article 7

⁵⁹ See Gerhard Erasmus (n 55)

⁶⁰ Annex on Technical Barriers to Trade, Compiled Annexes on the Establishment of the Continental Free Trade Area, (May, 2019) draft A-6 Article 2 (2) [Herein after Annex on TBT]

⁶¹ Ibid Article 3

⁶² Sheila Kairu, 'The AFCFTA, the Benefits, the TBTs Challenges, the Opportunities and the role of ARSO' (May 10, 2019), *ARSO Newsletter*, available at <https://www.arso-oran.org/the-afcfta-the-benefits-the-tbts-challenges-the-opportunities-and-the-role-of-arso/> [Retrieved in May, 2020][Herein after Sheila Kairu]

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Technical regulation is a document which lays down product characteristics or their related processes, and production methods with which compliance is mandatory while Standard means document approved by a renowned body that delivers, for common and recurring use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. Any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are satisfied is named Conformity assessment procedure.⁶³

Thus, the main objectives of the Annex is facilitating trade through cooperation in the development, and implementation of standards, technical regulation, conformity assessment, accreditation and metrology and in the elimination of unnecessary trade barriers through reinforcing best practices with harmonization and Equivalence, transparency and mutual recognition.⁶⁴In their transparency duty state parties are required to provide notification and to establish Enquiry points.⁶⁵

If the AFCFTA is not molded as a comprehensive legal framework suitable for the 21st century challenges, including reducing TBTs which have been long-standing challenges to Africa's integration, given the diverse trade policy Challenges among the RECs and African countries, the trade profits of the AFCFTA, will remain hard to achieve.⁶⁶

2.4.1.2.2. Sanitary and Phytosanitary Measures (SPS)

SPS under AFCFTA applies to measures that directly or indirectly affect trade. Here like TBT, the WTO agreement serves as a guideline in application of SPS measures.⁶⁷As per the WTO agreement on SPS, SPS measures include:

all relevant laws, decrees, regulations, requirements and procedures including, inter alia, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on

⁶³ Agreement on Technical Barriers to Trade, 1994, Marrakesh Agreement establishing the World Trade organization, Annex 1A, 1868 U.N.T.S. 120, I.L.M 33:1125, Annex 1 (1), PP.132 (April, 2020) available at https://www.wto.org/english/docs_e/legal_e/17-tbt.pdf [Retrieved in April, 2020]

⁶⁴ See Annex on TBT Article 4 and 5

⁶⁵ Ibid Article 11

⁶⁶ See Sheila Kairu (n 62)

⁶⁷ Annex on Sanitary and Phytosanitary Measures, Compiled Annexes on the Establishment of the Continental Free Trade Area, (May, 2019) draft A-7 Article 2 (2) [Herein after Annex on SPS]

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relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labeling requirements directly related to food safety.⁶⁸

The objectives of the Annex on SPS under AFCFTA are to: (a) facilitate trade while safeguarding human, animal or plant life or health; (b) enhance cooperation, and transparency in the development, and implementation of SPS measures to ensure that they do not become unjustifiable barriers to trade; and (c) enhance technical capacity of members while encouraging the use of international standards in the elimination of barriers to trade.⁶⁹ To achieve these objectives, the Annex stipulated procedures to be employed. These are a) Equivalence and Consultation; b) Harmonization; c) Transparency; d) Technical Consultation; e) Cooperation and Technical Assistance; f) Audit and Verification; and g) Import or Export Inspections and Fees.⁷⁰

Assessment of risk as stipulated under Article 5, is the other obligation required by AFCFTA. Risk assessment is the assessment of the likelihood of entry, establishment or spread of a pest or disease according to the SPS measures which might be applied, and of the associated potential biological and economic consequences; or the evaluation of the potential for adverse effects on human or animal health arising from the presence of additives, contaminants, toxins or disease-causing organisms in food, beverages or feed stuffs.⁷¹ Finally, recognition of adaption to regional conditions of pest- or disease-free areas, and areas of low pest or disease prevalence as enshrined under Article 6 of the Annex is required from member states by taking into account geography, ecosystems, epidemiological surveillance and the effectiveness of SPS controls. The Annex stipulated emergency SPS measures under Article 13 in case of urgent situation.⁷²

2.4.1.2.3. Trade Remedies

The Trade remedies (TRs) stipulated under AFCFTA contained Anti-dumping Measure, Countervailing Measure, Global Safeguard Measures, and Preferential

⁶⁸Agreement on the Application of Sanitary and Phytosanitary Measures, 1994, Marrakesh Agreement Establishing World Trade Organization, Annex 1A, 1867 U.N.T.S. 493, I.L.M. 1125 (April, 1994), annex A (1) available at https://www.wto.org/english/docs_e/legal_e/15-sps.pdf [Retrieved in December, 2019][Herein after SPS Agreement]

⁶⁹ See Annex on SPS Article 4

⁷⁰ Ibid Articles 7-14

⁷¹ See SPS agreement Annex A (4)

⁷² See Annex on SPS Article 13 (1)

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Safeguards.⁷³In the application of Global Safeguard Measures, state parties confirm their rights and obligations under Article XIX of the GATT 1994 and the WTO Agreement on Safeguards.⁷⁴ Professor Gerhard Erasmus at the University of Emeritus contends that:

TRs do not feature in intra-African trade. Most African Governments do not have the required domestic arrangements to undertake TR investigations. They claim that these investigations are cumbersome, not a priority, or that they lack the technical capacity and resources. The consequence is that domestic industries are not protected in a rules-based manner...⁷⁵

In order to resort to Preferential Safeguards, it is required to demonstrate that a product is being imported in surge quantities (absolute or relative to domestic production) and under such circumstances as to cause or threaten to cause serious injury to domestic industry that produces like or directly competitive products.⁷⁶The preferential safeguard measure has to be used only to the degree essential to prevent or remedy Serious Injury or threat thereof and to facilitate adjustment following an investigation. A global safeguard measure could not be concurrently applied with the preferential safeguard measure on identical product within the AFCFTA.⁷⁷In serious situations provisional preferential safeguard measure is permitted in accordance to initial determination there is clear evidence that increased imports have caused, or are threatening to cause Serious Injury.⁷⁸

A state of international price discrimination where the price of a product when sold in the importing country is less than the price of that product in the market of the exporting country is called dumping.⁷⁹A member state has to ascertain three basic questions before resorting to anti-dumping: 1) is there dumping? Is there injury? And 3) is there a causal link between the dumping and injury? This all three must be proved through investigation.⁸⁰It is not indicated that in what circumstances a state party is allowed to take a countervailing

⁷³ Annex on Trade Remedies, Compiled Annexes on the Establishment of the Continental Free Trade Area, (May, 2019) draft A-9 [Herein after Annex on Trade Remedies]

⁷⁴ Ibid Article 2 and Article 3

⁷⁵ Gerhard Erasmus, 'are Trade Remedies important for achieving the AFCFTA Goals?' (February 23, 2018) *Tralac*, available at <https://www.tralac.org/discussions/article/12764-are-trade-remedies-important-for-achieving-the-afcfta-goals.html> [Retrieved in May, 2020][Herein after Gerhard Erasmus on TRs]

⁷⁶ See Annex on Trade Remedies Article 1(i) and 4(1)

⁷⁷ Ibid Article 4

⁷⁸ Ibid Article 5(1)

⁷⁹ Eun Sup Lee, *World trade regulation: International Trade under the WTO Mechanism*, (Springer, Berlin Heidelberg 2012) PP. 116

⁸⁰ See Simon Lester (n 42)

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measure in the Annex. Since the WTO agreement is the guiding principle, the circumstances to apply countervailing measures required to be followed. Accordingly, member states have to determine the existence of subsidized imports, injury to a domestic industry, and a causal link between the subsidized imports and the injury before imposing countervailing measure.⁸¹

There are procedural requirements to be complied while conducting investigation for the application of anti-dumping, countervailing, global and preferential safeguard measures. These are Notification, Consultation, Confidentiality, Transparency, Technical Assistance, and Capacity Building and Cooperation.⁸²

2.4.1.2.4. Rules of Origin

Rules of origin (RO) are criteria that determine the origin of a product and, by doing so, establish which products are eligible to receive preferential tariffs.⁸³The AFCFTA's RO are planned to be finalized by the first half of 2019 but not yet.⁸⁴It is not yet clear what RO will be in place under the AFCFTA RO Annex, however it is expected to take a mixed approach, with both a general rule and product specific rules in sensitive categories.⁸⁵RO should not be too restrictive, but also not be too flexible.⁸⁶Compliance with RO will be necessary to access preferential tariffs under the AFCFTA, since it has its own implication.⁸⁷Accordingly, another factor that must be kept in mind during the RO negotiations is harmonization. Africa's RECs have taken different approaches to ROs. To demonstrate, COMESA only applies a general rule, requiring that 35 percent of value addition must take place within a COMESA country while SADC applies product-specific rules RO.⁸⁸

With regard to origin conferring criteria a product shall be considered as originating if it has: (a) been wholly obtained; or (b) undergone substantial transformation in the

⁸¹ See Eun Sup Lee (n 79) PP. 145

⁸² See Annex on Trade Remedies Articles 6-12

⁸³ See Landry Signé (n 48) PP. 7

⁸⁴ 'AFCFTA Phase 1 Negotiations: Issues and Challenges for Eastern Africa' (2019) *Third world Network Africa*, PP. 45 available at <http://twnafrica.org/wp/2017/wp-content/uploads/2019/10/AfCFTA-Phase-1.pdf> [Retrieved in February, 2020][Herein after AFCFTA Phase 1 Negotiations]

⁸⁵ See Tralac Questions and Answers No.1 (n 37) PP. 6

⁸⁶ See AFCFTA Phase 1 Negotiations (n 84) PP. 46

⁸⁷ See Tralac Questions and Answers No.1 (n 37) PP. 6

⁸⁸ See Landry Signé (n 48) PP. 7

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originating country.⁸⁹ Products which are not wholly obtained are considered to be sufficiently worked or processed when they fulfilled one of the following criteria: (a) Value Added; (b) non-originating Material content; (c) change in tariff heading; or (d) specific processes.⁹⁰ There are however works or process which are insufficient to confer origin criteria, even if the above requirement is fulfilled. To mention some, breaking-up or assembly of packages; simple painting or polishing operations; and operations exclusively intended to preserve Products in good condition are not considered to confer origin criteria.⁹¹ For the purposes of determining whether a Product is originating, it shall not be necessary to determine the origin of the following, which might be used in its production: (a) energy and fuel; (b) plant and equipment; (c) machines and tools; and (d) Materials which do not enter and which are not intended to enter into the final composition of the Product.⁹²

Products originating on importation benefit from the stated preference by producing either: (a) a Certificate of Origin or (b) through 'Origin Declaration', given by the Exporter on an invoice, a delivery note or any other commercial document.⁹³

2.4.1.2.5. Customs Cooperation and Mutual Administrative Assistance

. Customs Cooperation and Mutual Administrative Assistance (CCMAA) under AFCFTA has an objective of bringing cooperation on all areas of customs regulations and administrations to ease trade around the custom more than ever before.⁹⁴ In order to achieve these objectives, it is required to adopt a) Harmonization of Customs Tariff Nomenclatures and Statistical Nomenclatures based on the HS system; b) Harmonization of Valuation system based on GAAT Article VII; c) Simplification and Harmonization of Customs Procedures; d) Automation of Customs Operation; e) Exchange of information; f) Communication of Customs information; g) Protection and Confidentiality; h) Technical Cooperation and i) cooperation on Prevention, Investigation and Suppression of Customs Offences.⁹⁵

⁸⁹ Annex on Rules of Origin, Compiled Annexes on the Establishment of the Continental Free Trade Area, (May, 2019) draft A-2 Article 4

⁹⁰ Ibid Article 6

⁹¹ Ibid Article 7

⁹² Ibid Article 15

⁹³ Ibid Article 17 (1) and (3)

⁹⁴ Annex on Customs Cooperation and Administrative Assistance, Compiled Annexes on the Establishment of the Continental Free Trade Area, (May, 2019)

⁹⁵ Ibid Article 13

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2.4.1.2.6. Trade Facilitation

Trade Facilitation (TF) entails the simplification, modernization, and harmonization of import and export procedures. TF is critical for enhancing Africa's competitiveness.⁹⁶ The objectives of the Annex on TF are to: (a) simplify and harmonize international trade procedures and logistics to expedite the processes of importation, exportation, and transit; and (b) expedite the movement, clearance and release of goods.⁹⁷ The provisions of the Annex shall be interpreted and applied in accordance with the principles of transparency, simplification, harmonization, and standardization of customs law, procedures and requirements.⁹⁸ State parties are required to publicize relevant information in relation to importation/exportation, laws, taxes and other data on the internet in a non-discriminatory and easily accessible manner for interested parties.⁹⁹ Establishing and maintaining Enquiry points and issuing, prior to the importation of a good into its territory, a written Advance Ruling is required from state parties.¹⁰⁰ The purpose of the Advance Ruling is to apply for preferential treatment, rules of origin, tariff rates and other similar issues.¹⁰¹

It is also required to adopt and maintain procedures for Pre-arrival processing, electronic payments of taxes, duties, and charges and risk management systems for customs controls, post-clearance audits, average release time of goods, expedited shipment of goods for air cargo facilities are to be accorded, and preventive measures are to be applied on perishable goods. To use international standards, information technology, and single window system are required to ensure freedom of transit. To apply uniform documentation, and to set procedure for review and appeal are also required.¹⁰²

2.4.1.2.7. Transit

The AFCFTA required States to permit all transit traffic freedom to navigate their respective territories by any means of transport suitable for that purpose. They undertake not

⁹⁶ Talkmore Chidede, 'Trade facilitation and the African Continental Free Trade Area' (annual conference, 2019) *Tralac*, available at <https://www.tralac.org/documents/events/tralac/2740-tralac-brief-trade-facilitation-and-the-african-continental-free-trade-area-march-2019/file.html> [Retrieved in May, 2020]

⁹⁷ Annex on Trade Facilitation, Compiled Annexes on the Establishment of the Continental Free Trade Area, (May, 2019) draft A-4, Article 2 [Herein after Annex on Trade Facilitation]

⁹⁸ Ibid Article 3

⁹⁹ Ibid Article 4

¹⁰⁰ Ibid Article 6

¹⁰¹ See Mbakiso Magwape (n 21) PP. 17

¹⁰² See Annex on Trade Facilitation Articles 7-22

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to levy any import or export duties on the transit traffic unless administrative and service charges equivalent to the service rendered.¹⁰³ Additionally, it creates national obligation with respect to the treatment of goods, persons and means of transport coming from or bound to state parties, and rates and tariffs for the use of their facilities.¹⁰⁴ They are importantly peculiar to African continent given the fact that Africa had a number of landlocked countries.¹⁰⁵

2.4.2. Regulation in Trade in Service

Trade in service is the other domain of AfCFTA Agreement regulation. It governs the four modes of supply: 1) Cross-border supply; 2) Consumption abroad; 3) Commercial presence; and 4) Presence of natural person.¹⁰⁶ It was agreed that negotiations on Trade in Services would proceed on the basis of progressive liberalization that combines GATS-type scheduling of specific commitments, on the one hand, with regulatory cooperation, on the other hand, in a mixed approach.¹⁰⁷ The first round of negotiations shall cover the five services sectors, namely: business services, communication services, financial services, tourism and travel related services, and transport services. Subsequent negotiations will cover all other services sectors. The method of negotiation of specific commitments shall be the request-offer approach.¹⁰⁸ The positive list approach shall be used for the scheduling of commitments. For the member states that are WTO members, the starting point for negotiations of trade in services would be GATS plus, based on reciprocity. For those that are

¹⁰³ Annex on Transit, Compiled Annexes on the Establishment of the Continental Free Trade Area, (May, 2019) draft A-8, Article 2

¹⁰⁴ Gbadibo O.A. Odularu, Mena Hassan and et al, *Fostering Trade in Africa: Trade relations, business Opportunities and Policy Instruments*, Advances in African Economic, Social and Political Development, (Springer, Switzerland 2020) PP. 51,

¹⁰⁵ Ibid PP. 51

¹⁰⁶ 'Report on the African Continental Free Trade Area (AfCFTA), BY H.E. Mahamadou Issoufou, President of the Republic of Niger and Leader on AfCFTA,' Assembly of the Union Thirty-Second Ordinary Session 10 – 11 (February 2019 Addis Ababa, Ethiopia) Assembly/AU/4(XXXII) Annex two PP. 7 available at <https://www.tralac.org/documents/resources/african-union/2830-report-on-the-afcfta-by-mahamadou-issoufou-with-annexes-february-2019/file.html> [Retrieved in May, 2020][Herein Mahamadou Issoufou's report]

¹⁰⁷ 'Report to the Specialized Technical Committee on Trade, Industry and Minerals: Progress on the African Continental Free Trade Area (AfCFTA) for the period from May 2016 TO December 2018' AUC/DTI/AfCFTA/STC/Rep/D, available at https://au.int/sites/default/files/newsevents/_workingdocuments/_35970-wd-ti23937_e_progress_report_on_the_afcfta-_may_2016_to_dec._2018.pdf [Retrieved in May, 2020]

¹⁰⁸ See Mahamadou Issoufou's report (n 115) Annex 2 Page 2

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non-WTO Members, it would be the autonomous liberalization at the national level, based on reciprocity. Each Member State would be required to commit to a minimum threshold of sectors, sub-sectors and sub-sub-sectors of the priority sectors, based on reciprocity. Such threshold should reflect: i) Substantial liberalization of sectors/sub-sectors, on reciprocal basis; and ii) Effective elimination of barriers to trade in services. Horizontal commitment and sector specific commitment is also required to be applied by member states.¹⁰⁹ Accordingly, member states are required to set out in a schedule, the specific commitment that it undertakes with respect to market access, national treatment and relating to additional commitment.¹¹⁰ Modification of schedules of commitment is allowed as long as it fulfilled certain procedural requirements.¹¹¹ It is expected that annexes on the protocol will be finalized soon, and becomes operational to create conducive environment for intra-African trade.

¹⁰⁹ Ibid PP. 3-4

¹¹⁰ Protocol on Trade in Services, Agreement Establishing the African Continental Free Trade Area, Consolidated Treaties Adopted by the 10th Extraordinary Session of the Assembly in Kigali, Ruanda, (May 30, 2019), Article 22

¹¹¹ Ibid Article 23

CHAPTER THREE

THE IMPLICATION OF AFRICAN CONTINENTAL FREE TRADE AREA AGREEMENT ON ETHIOPIA'S FOREIGN TRADE REGULATION

3.1. Foreign Trade Regime Policy, legal and Institutional Framework in Ethiopia and Implication of AFCFTA Agreement

Ethiopia as least developed country of the world has no option rather than exploiting trade for achieving economic growth and in order to be erased from the history shelf of poverty and to meet its people's aspiration of having a far-reaching livelihood. Accordingly, she has recognized the importance of trade more than four decades ago when it formulated the "Commercial Code" in 1960, even if the policy is highly influenced by the types of government's ideology.¹¹² Coming to the Imperial regime, foreign trade was slightly addressed. It pursued a trade strategy that resembles more to import substitution but which equally encompass some important elements of export promotion such as export tax incentives and duty drawbacks.¹¹³

The Derg regime's policy of trade overtly pursued an inward looking import substitution industrialization.¹¹⁴ During this period, import trade of Ethiopia remained severely restricted through a combination of high tariffs up to 230% and a plethora of quantitative restrictions.¹¹⁵

Finally, the EPRDF opted to have a reform program including liberalization of foreign trade and exchange regimes, transfer of certain enterprises, financial market reform and opening the gate for foreign investors.¹¹⁶ In 2010 the EPRDF introduced an agriculture-led industrialization strategy, labeled the Growth and Transformation Plan (GTP) a five-year

¹¹² See Amdissa Teshome (n 5) PP. 4

¹¹³ Henok Birhanu, 'Multilateralism versus Regionalism: An Appraisal of Ethiopia's Foreign Trade Policy Options' (LLM Thesis, Addis Ababa University 2010) PP. 54-56 [Herein after Henok Birhanu]

¹¹⁴ Ibid PP. 56-57

¹¹⁵ 'Ethiopia Trade and Transformation'(July, 2004), *Diagnostic Trade Integration Study Synthesis V.2* PP. 21 available at <https://www.enhancedif.org/ft/file/372/download?token=VtKHIfb> [Retrieved in January, 2020][Herein After Diagnostic Trade Integration Study]

¹¹⁶ Ibid PP. 13

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economic strategy, and currently, it is implementing the second GTP plan (2015/16-2019/20) which builds on the first GTP.¹¹⁷

Generally, Ethiopia's foreign trade policy basically has three general objectives: (1) developing and ensuring broad international market for the country's agricultural products in particular; (2) generating sufficient foreign exchange and (3) improving the efficiency and global competitiveness of domestic producers.¹¹⁸In line with this, the export-promotion strategy of Ethiopia has three main pillars: (i) focusing on priority exportable products; (ii) providing all-round support to exporters; and (iii) executing export promotion activities.¹¹⁹For a country like Ethiopia, which has little market power, open trade policies are an instrument available for the transformation to a modern economy.¹²⁰

However, Ethiopia's foreign trade policy and strategy have its own defects, since most of the policies and strategies enshrined in this regard are sector specific in nature, lacked consistency and comprehensiveness and scattered here and there. Secondly, it does not bother about quality and standards only in GTP II; the quality issue is recognized as a problem and trade remedy issues are not included. Lastly, Ethiopia, even if a member to COMESA, she did not join to the zero tariff zones and not moving as intended. Additionally, even if she is on the way to accede to WTO, there was an interruption. These ensure that the policy commitment given for trade integration was minimal from the part of the government.

The laws and regulations that currently have the most restrictive impact on foreign trade transactions include the foreign exchange regulations, the monopoly power of the State in service areas, and the lack of formal trade facilitative legal infrastructure such as transparency and due process provisions.¹²¹Additionally, the legal frameworks are also not comprehensive, consistent, and they are scattered. Some laws like the commercial code and

¹¹⁷ 'Ethiopia: Intra-Africa Trade and Tariff profile' (July, 2018) *Tralac Trade data Update Issue No.5* PP. 1 available at <https://www.tralac.org/documents/publications/trade-data-analysis/2036-ethiopia-intra-africa-trade-and-tariff-profile-july-2018/file.html> [Retrieved in May, 2020]

¹¹⁸ See Foreign trade promotion manual (n 6) PP. 12

¹¹⁹ Ibid

¹²⁰ See Diagnostic Trade Integration Study (n 115) PP. 21

¹²¹ Nita K. Solanki and Jignesh N. Vidani, 'The Study Legal Aspects of Trade in Ethiopia' (January, 2016) *Zenith International Journal of Multidisciplinary Research Vol.6 (1)*, PP. 271 available at https://www.researchgate.net/publication/320373122_THE_STUDY_LEGAL_ASPECTS_OF_TRADE_IN_ETHIOPIA/link/59e093500f7e9bc5126a7718/download [Retrieved in December, 2019][Herein after Nita K. Solanki]

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the civil code are almost non-existent with regard to foreign trade regulation. Like policies trade remedy law except dumping (even if not comprehensive), is not yet legislated.

The House of Peoples Representative (HPR) has vested the power to enact specific laws on foreign trade and the Council of Minister has the power to ensure the implementation of laws and decisions adopted by the HPR and also responsible for formulating and implementing economic and foreign policies.¹²² Among the major institutions of foreign trade regulation regulatory bodies MOIT, MOF, MOA, MOH, MOR, NBE and ECC can be mentioned (see Appendix IV).¹²³ There is poor coordination and cooperation among foreign trade regulatory bodies. Finally, I agree with Nita K. Solanki and Jignesh N. Vidani's finding that:

.....the trade regime will have to become much more transparent. Although proclamations and Council of Ministers-issued regulations must be published in the Ethiopian *Federal Negari Gazetat*, the official gazettes, directives issued by ministries and agencies do not have to be published, and many are not. Further, some ministries and agencies do not have websites, and even those that do have websites do not always include on them the consolidated updated versions of their laws, regulations, and directives.¹²⁴

As you recall as per Articles 3 and 4 of the Establishing Agreement of the AFCFTA, as per Article 2 of Protocol on Trade in Goods and as per Article 3 of Protocol on Trade in Service, creating a liberalized single continental market mainly for goods and services through elimination of tariff and non-tariff barriers is the fundamental objective for the establishment of the free trade agreement of the architects. The AFCFTA Agreement enables Ethiopia, to reform its foreign trade regulation regime policy and strategy, legal and institutional framework in a way to have a liberalized trade and able to tackle protectionism especially the non-tariff barriers which create disguised trade currently. So long as Ethiopia intended to benefit and cultivate the fertile outcomes of the implementation of the AFCFTA Agreement, she is required to gradually liberalize its foreign trade regime without hesitation and needed to undertake a reform at the heart of liberalization.

There is no doubt that Ethiopia will benefit a market access from the coming into force of the AFCFTA's Agreement, but it has to be emphasize that this is a means to an end rather not an end by itself. As it is shown, Ethiopia as least developed country was awarded a

¹²² Ibid PP. 275

¹²³ Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation, 2018, *Negarit Gazzetta*, Extraordinary issue, Proc. No. 859, 25th year No. 8, Article 33(10) [Herein after Definition of Powers and Duties of the Executive Organs Proclamation]

¹²⁴ Ibid PP. 273

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market access privilege in US and EU market as well as a member to REC, especially by means of a COMESA member from COMESA members market, but the outcome is not that much vital for its foreign trade regime. Additionally, she has also for long period awarded incentives for the export sector to make competitive and efficient in the global market, even if the outcome is insignificant. Accordingly, policy reform has to be undertaken, especially in the areas of quality and standards, financial sectors, service sectors, trade remedies, and in the sphere of legal frameworks as well as foreign trade regulating bodies. Liberalization of the foreign trade regime will have a positive implication to Ethiopia to drive sustainable economic growth through increasing trade flows, generating employment opportunities, and attracting FDI boost by creating market access for Ethiopian agricultural, industrial products and service providers.

However, liberalization of foreign trade regime will have its own costs or negative implications. The First challenge is that Ethiopia will incur revenue loss. The second challenge is that its infant domestic economy and domestic producers will face competition with economically strong and industrialized member states. It is difficult to expect equal market access and ability to enter the supply chain for goods or services exported in Ethiopia and those originated in South Africa, Egypt or Nigeria.

What is more promising and encouraging to become a member or accede or permanently walk together being stick hand to hand with the AFCFTA Agreement is that it also recognized this practical problem and devised a guiding principle as per Article 5 of the Establishing Agreement to create a favorable and equal footing of competitive environment for all economies including developing and LDCs. The most important principles are variable geometry as well as flexibility and special and differential treatments. The special and differential treatments are also stipulated under Article 6 of the Protocol on Trade in Goods and under Article 7 of the Protocol on Trade in Service. By adopting these principles the AFCFTA has recognized the varied economic disparity and has devised sort of flexibility and differential treatments in the journey towards liberalization of trade. Ethiopia as an LDC and as a country grouped under G-6 of countries which requires flexibility, has been endowed with certain privileges. In the next section we will try to analyze exhaustively the implication of AFCFTA Agreement on each regulatory tools of foreign trade regulation regime in detail.

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3.2. Regulatory of Foreign Trade Regime in Ethiopia and Implication of AFCFTA Agreement

3.2.1. Implication on Tariff, Quantitative Restriction and Export Duties

The Ethiopian Tariff System is based on the internationally accepted Harmonized Commodity Description and Coding System or Harmonized System (HS).¹²⁵The legal framework for the application of the HS is article 4 of the International Convention on the Harmonized Commodity Description and Coding System and Ratification Proclamation No. 67/1993, article 5 of the Definitions of Power and Duties of the Council of Ministers, and the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 4/1994 and article 51 (1) of Proclamation 60/1997.¹²⁶All customs tariff revisions and amendments since 1993 have been done based on the HS. The current version of the national tariff book is in accordance with the 2012 version of the HS.¹²⁷

The maximum import tariff has been decreased step by step from 230 percent to 35 percent. The average tariff rate has also been reduced from 41.6 percent to 17.5 percent and tariff bands from 23 to 6 including the zero rate bands. As per Regulation No.80/2002, the existing customs tariff amendment has been done in January 2003.¹²⁸Import tariffs are ad valorem (i.e., proportional to the value of the product) and all export taxes have been abolished except the export tax on coffee, which has been suspended since 2003.¹²⁹ Quantitative import restrictions in the form of import bans are applied only to five categories of imports: used clothing, certain drugs, seeds with terminator gene technology, organic fertilizer, and soil and ethyl and denatured alcohols.¹³⁰

The tariff classification is also conducted based on Description of the commodity; composition and other technical specification; manner of presentation (e.g., packing for retail sale); degree of manufacture; and function or use.¹³¹The customs valuation system is also done according to international standards. Accordingly, the valuation system is based on the

¹²⁵ ‘Ethiopian Customs Guide’ Prepared by Ethiopian Revenues and Customs Authority March 2017, available at http://www.mor.gov.et/images/Documents/Customs/Others/Ethiopia_Customs_Guide.pdf [Retrieved in November, 2019][Herein after Ethiopian Customs Guide]

¹²⁶ See Foreign trade promotion manual (n 6) PP. 27

¹²⁷ See Ethiopian Customs Guide (n 125)

¹²⁸ See Foreign trade promotion manual (n 6) PP. 27-28

¹²⁹ See Nita K. Solanki (n 121) PP. 272

¹³⁰ Ibid

¹³¹ See Ethiopian Customs Guide (n 134)

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following methods in respective order: a) Transaction Value; b) Valuation of Identical Goods; c) Valuation of Similar Goods; d) Deductive Value Method; e) Computed Value Method; and f) Fallback Method.¹³²The basic trade regime with regard to goods is, in general, non-discriminatory, and imported goods appear to be treated no less favorably than domestic goods with respect to internal taxes and regulations.¹³³

Ethiopia endowed with a privilege in the AFCFTA agreement with the liberalization of tariff, not only as LDC, but also treated as a G-6 group of countries that require flexibility. Accordingly, Ethiopia is required to liberalize its tariff for non-sensitive products as LDC 10 years and as G-6 8 years for 85% of tariff lines, and the other 15% tariff lines for 15 years, for sensitive products of 7% tariff lines 13 years as LDC, but not determined as G-6 yet and not required for 3% tariff lines as exclusion list. Ethiopia undertakes a tariff reforms policy and the tariff regimes are sufficiently liberalized. Even if the tariff regime, export duties and quantitative restriction in Ethiopia is sufficient, but, the AFCFTA agreement as a free trade agreement has an implication which requires progressive full liberalizations of tariff for non-sensitive and sensitive products in accordance with the time frame agreed as per Article 7(1 and 2) of the protocol on trade in Goods, to generally eliminate quantitative restrictions as per Article 9 of the mentioned protocol and to regulate export duties in a way not to create disguised trade restriction as per Article 10 of the same protocol. Ethiopia is also expected to come up with schedules of tariff concession as per Article 8 and annex I of the protocol on trade in Goods in which she is required to be bound. Accordingly, she is required to give treatment to the other members no less favorable than agreed in the schedule of tariff concession. This will in turn implies to have more trade flows to drive economic growth. But this may have its negative implication on government revenue loss and impact on domestic industry competitiveness, since it may cause dumped products to flood in the Ethiopian market. But this problem can be substituted by more production and diversification as well as capacity building for increasing domestic industry competitiveness.

¹³² Customs Proclamation of Ethiopia, 2014, Negarit Gazzetta, Extraordinary issue, Proc. No. 859, 20th year No. 82, Articles 90-95 [Herein after Customs Proclamation No. 859/2014]

¹³³ See Nita K. Solanki (n 130) PP. 271-272

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3.2.2. Implication on Non-Tariff Regulatory Measures

3.2.2.1. Technical Measures

In Ethiopia TBT and SPS regulation is a shared responsibility of MOTI, MOH, MOA, MIT and other institutions. Since TBT under AFCFTA agreement is applicable to Technical regulation, Standards, Conformity Assessment, Accreditation and Metrology, it is pertinent to assess Ethiopia's foreign trade regime in this regard. Coming to technical regulation in Ethiopia, it is difficult to find one institution which is shouldered with this task. Different regulatory bodies have practically devising technical regulations of their areas of regulation. Even if the laws with regard to technical regulations are scattered here and there and no institution is established to organize them, technical regulations are mandatory in Ethiopia.

The Previous Quality and Standards Authority of Ethiopia (QSAE) were portioned into four organizations in 2011. These are 1) the Ethiopian Standards Agency (ESA); 2) the Ethiopian Conformity Assessment Enterprise (ECAE); 3) the Ethiopian Metrology Institute (EMI); and 4) the Ethiopian National Accreditation Office (ENAO). And they all are called National Quality Infrastructures (NQIs).¹³⁴ These institutions are currently accountable to MOTI.¹³⁵ These institutions are tasked to monitor, coordinate, and support quality and standard-related issues.¹³⁶

In Ethiopia, Standards are two types which are mandatory and voluntary Standards. There are preconditions for a product standard to be mandatory. Among other things this may include, product standards for human health, for economic security, for national interest, and other reasons.¹³⁷ Much work is done in this regard, as shown by multiple Codex Alimentarius guide lines, and the establishment of National Codex Committee (NCC).¹³⁸ Currently, in

¹³⁴ World Bank 'Ethiopia: National Quality Infrastructure Development Project' (March 6, 2017) Report No. PAD2097, PP.3 available at <http://documents.worldbank.org/curated/en/356301491184824880/pdf/Ethiopia-PAD-03142017.pdf> [Retrieved in March, 2020]

¹³⁵ See Definition of Powers and Duties of the Executive Organs Proclamation

¹³⁶ UNTCAD 'Diagnostic Trade Integration Study of Ethiopia' (United Nations update, June 2016) PP. 88 available at https://www.enhancedif.org/en/system/files/uploads/dtis-update-june_2016_ethiopia.pdf?file=1&type=node&id=5357 [Retrieved in February, 2020]

¹³⁷ Interview with Ato Daniel Gebregziabher, Senior Expert within ESA expert, with in Ethiopian Standards Agency (April, 2020) [Herein after Interview with Ato Daniel]

¹³⁸ Melese Temesgen and Melese Abdisa, 'Food Standards, Food Law and Regulation System in Ethiopia: A Review' (March, 2005) *Public Policy and Administration Research Vol.5, No.3*, PP. 65 available at https://www.researchgate.net/publication/320583953_Ensuring_the_quality_and_safety_of_food_in_Ethiopia [Retrieved in December, 2019]

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Ethiopia there are 10000 standards.¹³⁹ These Standards may be either adopted and adapted from international Standards or set domestically by Ethiopian experts. With regard to this a senior expert within EQSA clarified that:

The applicable Standards could be International set by ISO and the like, Regional like AFRIMA and ARSO, National like German and Britain, and Organizational, or institutional standards. The domestic Standard has to fulfill certain processes. These processes are first there must be a standard claim either from the government or the private sector, second, a technical committee will be established consisting of different committee in the areas of standard with a chair person from ESA, third, the claim of standard will be investigated by the technical committee and after documentation work open for public hearing, and finally, presented to the council submitted by the MOTI minister for decision and if decided by the council, it becomes a standard.¹⁴⁰

The ECAE is established to assess the conformity of technical regulations issued by regulatory bodies and mandatory standards. Currently, this institution is functioning well compared to the other NQIs with regard to inspection, testing and certification.

ENAO is established in Ethiopia for providing accreditation service following internationally accepted standards developed in the area for supporting regulation. Ato Getinet Tsegamlak, a deputy director of ENAO, emphasized that:

Quality policy is not present in our country. The Accreditation is voluntary. It is required to bring institutions for accreditation. Regulatory bodies have to push quality accreditation to this institution. There is low attitude, low commitment and coordination. Even the other NQIs are not effectively implement international standards and harmonization. In fact, accreditation has technical problems like cost and others, since the logistics are from abroad.¹⁴¹

EMI is established for the calibration or measurement of quality. Averagely, 3000 calibration service is provided per year for governmental and private sector. It is voluntary and struggled with low levels of awareness, old, and non-developed system are challenges of the institution. It is also required to increase the scope of calibrations to bring quality assurance and competitiveness.¹⁴²

Finally, it is pertinent to analyze Ethiopia's foreign trade regime with regard to SPS. According to USAID

¹³⁹ Interview with Ato Daniel G/Egziabiher, a Senior Expert Within EQSA, (Aril, 2020)

¹⁴⁰ Ibid

¹⁴¹ Interview made with Ato Getinet Tsegaamlak, Deputy Director of Ethiopian Accreditation Enterprise (April, 2020)

¹⁴² Interview conducted with Kassahun Desta and Misganaw Tsegaye, electrical metrologies within Ethiopian Metrology Enterprise (April, 2020)

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Overall, SPS systems in Ethiopia are not clearly integrated in policy and SPS infrastructure is dysfunctional with redundant roles and responsibilities across agencies. Staffing shortages at various enforcement agencies, coupled with insufficient funding, could have serious detrimental impacts on domestic food safety and trade in the coming years. Where there are laws and regulations governing SPS systems, they are often applied haphazardly or not specifically.¹⁴³

Ethiopia enacted its first proclamation on public health back in 1947 that contained the surveillance of foodstuff and beverages, and also the sanitation of building and facilities. Recently, two new proclamations on trade practice 329/2003 and consumers' protection 685/2010 were announced with the aim to contribute towards achieving better results in food safety assurance.¹⁴⁴The Public Health Proclamation No. 200/2000; Plant Quarantine Regulation No. 4/1992; and Plant Protection Decree No. 56/1971; can also be mentioned as SPS regulation laws.¹⁴⁵

As I tried to show you in the above, we conclude that in Ethiopia there is no policy on quality and standards as well as on food safety issues. The other problem is there is lack of coordination on the side of regulatory institutions, lack of awareness, weak implementation of international standards and harmonization. Additionally, the laws with regard to these types of regulation are inadequate and some of them are outdated. Finally, inadequate logistics and outdated equipment as well as poor infrastructure can also be mentioned as a challenge to the NQIs in Ethiopia. These would create a disguised trade restriction. Accordingly, As per Articles 22 and 23 of the protocol on trade in goods, Articles 4 to 10 of Annex 6 of the protocol as well as Articles 4, 7, 8, 11 and 14 of Annex 7 of the protocol, Ethiopia as a member to the AFCFTA is required first to facilitate trade through cooperation in the development, and implementation of the areas of standards, technical regulation, conformity assessment, accreditation and metrology as well as to facilitate trade while safeguarding human, animal and plant life or health. Second she is required to facilitate trade by the elimination of unnecessary and unjustifiable technical barriers to trade including disguised

¹⁴³ USAID, 'Ethiopia Sanitary and Phytosanitary (SPS) Capacity Building Needs Assessment' (July, 2018) Food Security PAPA, PP. 3 Available at https://www.agrilinks.org/sites/default/files/resources/ethiopia_sps_capacity_building_needs_assessment_2018.pdf [Retrieved in November, 2019]

¹⁴⁴ Henok Ayalew, Amare Birhanu and et al, 'Review on food safety system: Ethiopian perspective' (December, 2013) *African Journal of Food Science* Vol. 7(12), PP. 435 available at <https://academicjournals.org/journal/AJFS/article-full-text-pdf/1029A7342009> [Retrieved in March, 2020]

¹⁴⁵ Codex Alimentarius Commission, 'National Food Control Systems and Consumer Participation in Food Standards Setting' (24-27 February, 2019) CX/Africa 09/18/05/, Joint FAO/WHO Food Standards Program FOA/WHO Coordinating Committee for Africa, 18th Session, Agenda Item 5, Accra, Ghana, PP. 5

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SPS measures through adopting best practices of international standards and harmonization as well as through enhancing transparency, mutual recognition and equivalence. Third, As per Articles 5 and 6 of Annex 7 of the protocol on trade in Goods, Ethiopia is obliged to conduct risk assessment and to adopt regional conditions of pest or disease free areas or areas of low pest or disease prevalence while conducting SPS measures. The mentioned problems with regard to NQIs in Ethiopia would also create a problem on the competitiveness of the export sector on market access and on import side will have an impact on the quality and standards of products entering into Ethiopia. So implementing the AFCFTA agreements commitment, with good national policy, adequate laws, efficient institutional framework, as well as good governance and administration is due consideration to be given on the side of Ethiopia. By doing so, the AFCFTA Agreement will have a positive implication for Ethiopia's foreign trade regulation, to improve/increase agricultural and industrial productivity, creates competitiveness of the export sector within the continent, enhances food security, and safety for strengthening health protection, as well as contributes for the overall economic growth of the country through increased foreign trade opportunities. Especially bringing food security and safety for LDC like Ethiopia having many peoples struggling with food related diseases mainly in the rural society has to be emphasized. However, it may have its technical costs like budget, logistics and infrastructure costs and need convincing policy makers and law drafters.

3.2.2.2. Contingent Trade remedies

As we have seen in the previous chapters, the contingent trade remedies are Anti-Dumping (AD), global and preferential Safeguard (SG) and Countervailing (CVD) measures as per Articles 17, 18 and 19 of the protocol on trade in Goods and Articles 2 and 3 of Annex 9 of the same protocol. I have conducted an analysis of the Ethiopian laws, and an interview with the pertinent regulatory bodies in this regard. An interview with Mussie Mindaye, a director general on multilateral trade negotiation and bargain in MOTI, and negotiating team in AFCFTA agreement, contends:

Currently, in Ethiopia there is no Legal frameworks and institutional setup for trade remedies. And there is lack of statics about Ethiopia's measure in this regard. If Ethiopia has encountered a situation to take anti-dumping, countervailing and safeguard measure, no one is able to predict and know as to the possible measure that has to be undertaken.¹⁴⁶

¹⁴⁶ Interview conducted with Mussie Mndaye, Director General on Multilateral Trade Negotiation and Bargain in the Ministry of Trade and Industry, and Negotiating Team on AFCFTA Agreement (April, 2020)

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However, the Trade Practices Proclamation identifies dumping as an anti-competitive practice, even if it does not require investigations to follow the procedures established by WTO rules.¹⁴⁷ As per Article 10 (2) (h) of Trade Practice Proclamation number 329/2003, dumping dealt as follows:

The importation of any goods from any foreign country into Ethiopia at a price less than the actual market price or wholesale price of such goods in the principal markets of the country of their production with the intent to destroy or injure the production of such goods in Ethiopia or to restrict or monopolize any part of trade in such goods.¹⁴⁸

The definition given for dumping is does not clearly define injury, the domestic industry, and the determination of dumping. Ethiopia faced no AD investigations during 1987-1997.¹⁴⁹ Currently, in Ethiopia there is no law and domestic arrangements with regard to CVD and SA measures of trade remedies. But there is a commencement with regard to AD, even if it lacks comprehensiveness and domestic arrangement.

We are living in a globalized and interconnected world of complex trading system which necessitated us to survive our domestic producers, and the domestic industry/economy at large from the evil effects of unfair and unintended trade practice. At the same time, we are required to avoid trade protectionism through the use of trade remedies. Accordingly, devising laws and instituting domestic arrangements for the application of trade remedies in case of unfair or unintended trade effects is a very important tool in foreign trade regulation. Accordingly, the AFCFTA agreement means two things for Ethiopia's foreign trade regulation in this regard. On the one hand, the agreement enables to apply the devised trade remedies in case when Ethiopia encounters unfair or unintended trade practice unilaterally and as a forum for initiating AD, CV and SG complains to the dispute settlement body, on the other hand, it necessitated to devise legal and institutional frameworks for conducting investigation for injury to the domestic industry and to comply with procedural requirements like Consultation, Notification, Transparency, and Confidentiality as well as cooperation and exchange of information to the other members to avoid disguised restriction of trade and bring harmonization. But this also has negative implication for Ethiopia's foreign trade

¹⁴⁷ See Nita K. Solanki (n 121) PP. 274-275

¹⁴⁸ Trade Practice Proclamation of Ethiopia, 2003, *Negarit Gazzetta*, Extraordinary issue, Proc. No. 329, 9th year No. 49, Article 10 (2)

¹⁴⁹ P.K.M. Tharakan, 'The Problem of Anti-Dumping Protection and Developing Country Exports' (September 2000) *UNU World institute for Development Economics Research (UNU/WIDER), working paper N. 198*, PP. 16-17

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regulation due to its economic constraints for conducting investigation and come up with domestic arrangements and convincing policy makers and drafters to come up with laws, policies, and institutions will be required.

3.2.2.3. Rules of origin

The rule of origin (RO) is regulated under the terms of Articles 104-108 of the Customs Proclamation in Ethiopia.¹⁵⁰ And it is regulated by ECC. The Customs proclamation stipulated the two types of rules of origin which are preferential and non-preferential. The country that has wholly produced the goods is deemed to be the country of origin. Where two or more countries are participated in a good's production, the origin of the product is the country in which the last substantial manufacturing or transformation process of economic value has taken place.¹⁵¹ Change of Tariff Classification, the Ad Valorem percentage criterion, and the criterion of manufacturing or processing operation criterion may be used to determine the origin of goods.¹⁵² However, there are operations not normally taken into consideration when determining the origin of imported goods which includes operations carried out to ensure that the goods are preserved in good condition during transport or storage; operations carried out to facilitate the transportation of goods; operations carried out to package or prepare the goods for sale; simple operations on goods such as ventilation, spreading out, drying, cooling, crushing, etc.; simple assembly of parts; and any combination of the above.¹⁵³ The Customs Authority may order the production of documents that show the country of origin of goods and if it has doubts as to the authenticity of documents presented, it may require any additional proof in respect of the country of origin of goods.¹⁵⁴ This implies that a declarant must submit documents proving the country of origin of goods, such as a certificate of origin.¹⁵⁵ The name of the country of origin of imported goods is required to be affixed, in English, on each good, and the package thereof.¹⁵⁶ If it does not meet the origin marking requirement, it will be returned to the exporting country.¹⁵⁷ But the origin marking requirement is not applicable to personal effects not destined for commercial use.¹⁵⁸

¹⁵⁰ See Ethiopian Customs Guide (n 125) and Proclamation No. 858/2014

¹⁵¹ Ibid and Customs Proclamation No. 858/2014 Article 104 (1)

¹⁵² See Customs Proclamation No. 858/2014 Article 104 (2)

¹⁵³ Ibid Article 105

¹⁵⁴ Ibid Article 106

¹⁵⁵ See Ethiopian Customs Guide (n 125) PP. 115

¹⁵⁶ See Customs Proclamation No. 859/2014 Article 107 (1)

¹⁵⁷ Ibid Article 107 (2)

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The rules on preferential origin of goods shall be determined in accordance with rule of country of origin contained in international, Regional, or Bilateral agreements providing for reduction or relief from duties or taxes.¹⁵⁹ In Ethiopia, special customs tariff rates of 10% are applicable to goods produced in and imported from COMESA member countries. Zero tariff rates are imposed to goods imported from Sudan. To benefit from these preferences, a good's origin must be proven. With respect Exports in Ethiopia, goods produced in Ethiopia benefit from special treatment by a range of unilateral preference regimes in different trading partners, such as AGOA in the United States, Everything But Arms in the European Union, and General Systems of Preferences (GSPs) of other countries, such as Duty-Free Tariff Preference (DFTP) of India or the duty free treatments granted by China and South Korea.¹⁶⁰

The AFCFTA agreement RO has not yet agreed up on and it is expected that it will be based on a mixed approach on general rule and product specific on sensitive products and will be finalized soon. However, Annex 2 of the protocol on trade in Goods contained as to origin conferring criteria, proof of origin and other related issues. Ethiopia is currently applying a general rule of RO as a COMESA member. As such, this would not create unnecessary obstacles for the implementation of the agreement. It does not also put difficulty since, one the hand, the AFCFTA is a free trade agreement, and on the other hand as we have seen in the above the Ethiopian rules of origin under the Customs Proclamation recognizes preferential origin of Goods contained in Regional, Bilateral or International Agreements in addition to non-preferential origin of Goods. The Origin conferring criteria, proof of origin and related issues are also compatible with what has been enshrined under the annex of rules of origin of the protocol on Trade in Goods of AFCFTA. Ato Dessalegn Wendimu, tariff expert within ECC and a negotiating team on AFCFTA agreement argued that:

Since the AFCFTA agreement is a free trade agreement, what is needed from Ethiopia is implementing the rules of the agreement as enshrined by the architecture. If the Ethiopian rules of origin domestic laws become inadequate and not comprehensive, that has to be complimented and filled by the AFCFTA rules of origin. As such, it does not create unnecessary obstacles in this regard of trade regulation.¹⁶¹

So the implication of the AFCFTA agreement in this regard is driving the Ethiopian rules of origin more a market integration and value chain oriented. It will drive the Ethiopian

¹⁵⁸ Ibid Article 107 (3)

¹⁵⁹ Ibid Article 108

¹⁶⁰ See Ethiopian Customs Guide (n 125) PP. 15-16

¹⁶¹ Interview conducted with Ato Dessalegn Wendimu, a Tariff Expert, within ECC, (April, 2020)

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foreign trade regime to intercept in the regional supply chain and boosts intra-regional trade experience. It positively enhances value addition, encourages invention and the capacity to produce or manufacture as well as fosters skills of entrepreneurship and creates jobs in Ethiopia.

3.2.2.4. Customs Procedure, Trade Facilitation and Transit

As you know, in logically speaking, liberalization of trade in goods is impracticable without achieving oversimplified customs procedure, trade facilitating mechanisms and transit systems. Since they created disguised trade restriction, the AFCFTA recognized and devoted one-third of its Annexes. Accordingly, it becomes pertinent to examine Ethiopia's customs regulation and implication of AFCFTA in this regard.

In Ethiopia, customs regulation has comprehensive custom laws and its well-structured regulatory body. It is regulated through ECC and mainly through Proclamation number 854/2014. It has various regulations and decrees to facilitate import and export trade. The ECC has also adopted a modern system of customs operation in collaboration with World Customs Organization (WCO). Accordingly, it applied simplified customs clearance procedure. The HS system, risk management, self-assessment method, enquiry points, advance ruling, publication of necessary documents, pre-arrival process, Electronic single window system, procedure for review and appeal, post clearance audit, and security for taxes and duties are adopted by the Ethiopian customs system of trade facilitation.¹⁶² Additionally, the commission is currently developing different modern technologies including electronic custom management system, cargo tracking and modern cargo scanning technologies to facilitate foreign trade.¹⁶³ Transit is dealt under the customs proclamation from article 16 to 22.¹⁶⁴ Accordingly, there is no transit tax or duty imposed on goods in transit, and it is based on non-discrimination principle. With regard to this, Ato Dessalegn stated:

Our customs regulation is highly compatible with the AFCFTA Agreement. It applied the HS, advance ruling, and single window system. It is on the way to establish one border system of customs station with neighboring custom stations. The law is also comprehensive in this regard even if it contained some unnecessary provisions. But it is required to work with the other regulating bodies to establish a broad band connectivity system of database, and to construct infrastructure services in order to benefit from the AFCFTA agreement.¹⁶⁵

¹⁶² see Customs Proclamation 854/2014

¹⁶³ See Ethiopian Customs Guide (n 125) PP. 11

¹⁶⁴ Ibid

¹⁶⁵ Interview conducted with Ato Dessalegn Wendimu, a Tariff Expert, within ECC, (April, 2020)

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Even if the current legal and domestic arrangements in this regard are better, still work is needed to strengthen the system. As per to *US Trade Representative Office 2019 National Trade Estimate Report* on foreign trade barriers:

Logistics backlogs occur regularly, in part because the customs process remains paper-based, and also because of structural inefficiencies. Private sector contacts reported that logistics costs comprise approximately 22 to 27 percent of the product cost. Other contacts allege that shipping and freight costs are approximately 60 percent higher than in neighboring countries. Equally important, 95 percent of the land-locked country's foreign trade passes through a single port in neighboring Djibouti, the Port of Djibouti, which has incomplete infrastructure projects that contribute to the delays in the movement of goods from the container, dry goods, and oil terminals to overland transportation.¹⁶⁶

The AFCFTA Agreement thus, is pertinent for Ethiopia with regard to customs regulation also since it will enable the customs regulation to be efficient and effective enough and to expediently facilitate trade. In other words, it will ease trade around the port more than ever before. By doing so, it attracts more trade flows and reaching the market at the real time, especially for perishable products faster. This is valuable advantage for a landlocked country like Ethiopia. But Ethiopia is required to comply with the objectives of the customs cooperation and administrative assistance, trade facilitation and transit annex. In other words, Ethiopia is required to have a common and harmonized standard of customs regulation and domestic arrangement as well as investing infrastructure and logistics to expedite the movement and clearance of Goods. It is also required to work on Automation of Customs Operation, Communication and exchange of Customs information, cooperation on Prevention, Investigation and Suppression of Customs Offences, and electronic payments of taxes and, as well minimizing logistics and freight costs to expedite trade. According to the integrated study, "the 'nominal transport rate' relative to merchandise exports and imports are very high for Ethiopia. It is two three times higher than similar ratios of other littoral developing countries in Africa."¹⁶⁷ The other big problem associated with Ethiopian customs regulation is Ethiopia detached from access to port in the aftermath of Ethio-Eretria war. As a result, the country is obliged to relay on a single port of Djibouti for its 96% foreign trade transaction. By recognizing the problem, there is a move on the part of Ethiopian government to obtain access to port in Eretria through diplomatic means. Additionally, the Ethiopian

¹⁶⁶ National Trade Estimate Report on 'Foreign Trade Barriers' (2019) by Office of United States Trade Representative, PP. 162 available at https://ustr.gov/sites/default/files/2019_National_Trade_Estimate_Report.pdf and [Retrieved in March, 2020][Herein after National Trade Estimate Report by US]

¹⁶⁷See Diagnostic Trade Integration Study (n 115) PP. 65

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government is striving to gain alternative port access in the port of Somalia in joint venture. It is expected that these efforts of the government will cure soon the headache's illness of port access in the country. But it is a means to an end but not an end by itself, since it is also required to construct road infrastructure, invest budget, possessing skilled human resource and adopting automated technology.

3.2.3. Financial Measure, and Service Regulation

In this section, we tried to analyze monetary and Service regulation which are the most complained areas of foreign trade regulation regime in Ethiopia. Currently, in Ethiopia subsequent measures were taken to liberalize the foreign exchange market.¹⁶⁸ NBE carefully controls foreign exchange transactions under the Bank of Ethiopia Establishment Proclamation and associated directives, guidelines, and letters. The delegation of the management of foreign exchange operations to commercial banks was realized through the issuance of Directive FXD/07/1998. Since, then fifty foreign exchange directives have been issued. These are complemented by numerous letters and guidelines. The NBE last published a consolidated version of foreign transaction guidelines and Directives in 2004.¹⁶⁹

The main problems currently associated with foreign exchange regime are mainly two-folds. First, the strict foreign exchange control regime which requires all imports, exports, and any other foreign payments have to gain foreign exchange permit from the commercial banks. As such, the local currency cannot be easily convertible, and it gives priorities for certain sectors to access foreign currency over others. By doing so, it controls foreign trade. Second, the regime is challenged with chronic foreign currency shortage. Even if the foreign exchange directives do not prohibit allocation of foreign currency to invest or make business outside the country in commercial presence, the long time it takes to gain foreign currency allocation constrains the business indirectly.

Ethiopia as a state party to the AFCFTA agreement is expected to conduct more work to make the foreign exchange regime flexible in order to accommodate and harmonize with the AFCFTA's foreign trade regime. Having recognized this problem, the NBE has drafted

¹⁶⁸ Alemayehu kuma, 'Manufacturing Sector and Trade Liberalization in Ethiopia' (LLM Thesis, Addis Ababa University 2012) PP. 50-51

¹⁶⁹ James Lloyd and Bisrat Teshome, 'Foreign Exchange Allocation and Access for Businesses in Ethiopia' (Redacted version, October 2018) *Business Environment Reform Facility*, PP. 6 available at https://assets.publishing.service.gov.uk/media/5c90aa9240f0b633fc95f6d4/BERF_Ethiopia_Foreign_Exchange_for_Businesses_.pdf [Retrieved in January, 2020][Herein after James Lloyd and Bisrat Teshome]

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directives which enable the domestic banks to borrow foreign currency from international financial institutions and to provide as a form of loan to business persons or entities which engaged in foreign currency generating activities. They also permitted the banks to act as intermediaries for local borrowers.¹⁷⁰ According to economic expert D/r Eyob Tesfaye, “foreign currency loan has to be supplemented with strict regulation, credit analysis capacity and multiple currency management, since it leads to currency risks.”¹⁷¹ However, it cannot solve the problem entirely. Further work has to be done with regard to enhancement and diversification of production, quality assurance procedure for the export sector to attract adequate foreign currency and import substitution to save inappropriate expenditure of foreign currency as well as shifting the domestic economy towards investments which are pertinent for value addition for the eradication of foreign currency shortage or to strengthen import substitution. Liberalization of this regime will positively enable Ethiopia to attract more foreign trade flows, ease doing business, facilitates business transactions, attract FDI and these will in turn enables to attain economic growth.

Ethiopia’s old investment proclamation prohibits foreign investment in the financial service industry including banking and insurance.¹⁷² Critics contend that the financial sector reform has not gone far enough. The government also recognizes that Ethiopia remains one of the under-banked and under-insured developing countries.¹⁷³ The main contention for the introduction of foreign banking is that it will increase competition and lead to improvements in service delivery by the domestic banks.¹⁷⁴ The government contends that improvement in service delivery could not be a justification for the introduction of foreign banking. This could be achieved through capacity building of the local banking system.¹⁷⁵ According to the *US 2019 national foreign trade report*:

The banking sector is composed of 16 private commercial banks and two public banks. Financial transactions are predominately in cash. Ethiopia’s Automatic Teller Machine network has

¹⁷⁰ Licensing and Supervision of Banking Business Directives for Foreign Currency Intermediation by Banks Directives NO.SBB/77/2020 available at <https://nbebank.com/wp-content/uploads/pdf/directives/bankingbusiness/sbb-77.pdf> [Retrieved in August, 2020]

¹⁷¹ FBC “ባንኮች በውጭ-ግጭት ያለ ፊንጳንሲያዊ ስራ ላይ ለማስፈጸም ስራ ላይ ለማስፈጸም” *Fana Television News* (August 20, 2020) YouTube online video mix, available at <https://www.youtube.com/watch?v=tEfnu33qUP4&list=WL&index=17&t=0s> [Retrieved in August, 2020]

¹⁷² See National Trade Estimate Report by US (n 166) PP. 163

¹⁷³ See Amdissa Teshome (n 5) PP. 12

¹⁷⁴ Ibid

¹⁷⁵ Ibid

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expanded rapidly and has become accessible to customers of all banks and credit card holders, though there are frequent service interruptions due to the unreliable Internet network. In addition, agent-banking services tied to mobile phones have been introduced by several providers, and more than a million users of agent-banking services are registered. Few international banks maintain representative offices...¹⁷⁶

The other challenge with respect to bank sector service is all trade private banks are ready to surrender their 30% deposit to NBE and all trade finances have to pass through the Ethiopian banks. Lastly, outdated service delivery, internet connection interruption, crowdedness can also be mentioned as a constraint for the banking sector.

Ethiopia is also required to undertake a reform for the progressive liberalization of its financial sector especially the banking, insurance, and microfinance sector for foreign trade regime, so long as it is committed to implement the AFCFTA's Agreement. Foreign nationals of Ethiopian origin are allowed to invest in the banking sector through the amendment proclamation 1159/2019.¹⁷⁷ The same is permitted for insurance sector. The Ethiopian government has currently enacted a new investment proclamation which enables substantial liberalization of the financial sector. The NBE also issued two directives which enable the private sector to involve and invest in the national payment system.¹⁷⁸ But still the financial sector is not opened for foreign trade. What is required from Ethiopia based on the AFCFTA Agreement is an autonomous liberalization based on reciprocity. Accordingly, she is required to commit to a minimum threshold of sectors, sub-sectors and sub-sub-sectors of the priority sectors, based on reciprocity. Since the financial sector is one of the prioritized sectors, it is required to liberalize as a minimum threshold according to its schedules of commitment and negotiation. As an initial step, the actions currently taken by the government are sufficient. But it requires a further work for substantial progressive liberalization based on the schedules of specific commitment agreed. The positive implication of liberalizing of the financial sector includes improvement in service delivery through competition, bring new technology, ease trade and facilitate business transaction. But liberalization of the financial sector has its negative implication. If they are fully opened, the foreign competitors having the technology, the money and the knowledge, will snatch the sectors from the public. The domestic industry

¹⁷⁶ See National Trade Estimate Report by US (n 166) PP. 163

¹⁷⁷ Amendment Proclamation on Banking Business, 2019, *Negarit Gazzetta*, Extraordinary issue, Proc. No. 1159, 25th year No. 88

¹⁷⁸ See Licensing and Authorization of Payment Instrument Issuers Directive No. ONPS/01/2020; Licensing and Authorization of Payment System Operators Directive No. ONPS/02/2020 available at <https://nbebank.com/payment-system/> [Retrieved in August, 2020]

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is not capable to compete with foreign competitor. Accordingly, capacity building has to be done in line with liberalization of these sectors.

Ethiopia still has a number of State enterprises engaged in the production, and commercialization activities of goods and services. Ethio-Telecom, Ministry of Defense, National Lottery Administration and Ethiopian Cigarette and Tobacco Enterprise can be mentioned.¹⁷⁹The Ethio-Telecom monopolized telecommunication services of the country. Most goods continue to be transported by trucks to the Port of Djibouti; Ethiopia's government-owned trucking companies dominate the market, and the overall number of trucks is insufficient to meet demand.¹⁸⁰This business empire is said to be an endowment of the people of a single administrative region and a challenge to competition of the private sector. The DTIS stated that "*importers interviewed have stated that they are facing unfair competition from party owned enterprises.*"¹⁸¹

As per to the AFCFTA, the prioritized areas of services include business services, communication services, tourism and travel related services, and transport services including the financial service regulated by the four modes of supply. The government opened the logistics sector for foreign companies operating jointly with local partners holding minority shares and approved National Logistics Strategy, which permits the private sector to engage in multimodal transportation system.¹⁸²Ethiopia currently through adopting a homegrown economic reform has started partially liberalizing the giant government owned enterprises. Accordingly, the government planned to sell 40% share of Ethio-Telecom for the private sector. Civil Aviation, Electricity, and related sectors are part of the plan of liberalization. As we have seen in the above, the country additionally enacted a new investment proclamation which widened the sphere of liberalization and the involvement of foreign investors in the prohibited service areas by the previous investment proclamation. The new proclamation adopted a negative list approach and left prohibited businesses by the foreigners to be decided by regulation, even if the regulation is not yet enacted. Liberalization of trade brings competition, and this will in turn brings quality service and low price for customers. As such, this has to be strengthened to fully privatize them gradually and to include other service

¹⁷⁹ See Nita K. Solanki (n 121) PP. 274

¹⁸⁰ See National Trade Estimate Report by US (n 166) PP. 164

¹⁸¹ 'Policy-induced Barriers to Competition in Ethiopia'(2008) 25years CUTS Centre for Competition, Investment & Economic Regulation No. 0810, PP. 14 available at https://cuts-ccier.org/pdf/Policy-induced_Barriers_to_Competition_in_Ethiopia.pdf [Retrieved in March, 2020]

¹⁸² See National Trade Estimate Report by US (n 166) PP. 164

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sectors based on the specific commitment negotiated. In these areas of regulation, what is expected from Ethiopia by AFCFTA agreement, on the first negotiation is not cumbersome and the current measures are sufficient, since it is on the way to fulfill the minimum threshold. But gradual full liberalization is required. Capacities building of domestic competitors have to be recognized.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATION

4.1. Conclusion

When you thought about Africa, what would remain in your mind? Surely, you may think as a continent of home for colonialism, poverty, backwardness, slavery, poor technology and infrastructure, cheap human resource as well as a home for instability and insecurity or relative peace only. You are not mistaken and defiantly true you are. Even today in this twenty-one century or within an Era of innovation, and technological advancement, in Africa, we lost lives of people due to famine and poverty. As you know, within a day we lost a lot of babies and mothers, with reversible and curable diseases. Still, we are alienated from our brothers and sisters with a light speed due to transmitted and non-transmitted diseases. Though we counted the modern education, we couldn't reach to our rural parents to gain access to a drop of cleaned water to survive cholera. Even if today, we are free of colonialism and slavery, we are restlessly, with death and live passion, struggling with intra-state conflicts. At the same time we are short of reaching to terminate bullet whistle and the death of a child and old parents due to shooting of internal armed conflicts. Here in Africa, we have unstable politics. Till today, we could not avoid the death of lots of citizens due to political unrest. We are the only people, watching a daily suspense movie acting a script of bad politics, and fake democracy, in this twenty-one century. This is the image of our continent. Poverty, Death, Dictatorship, War, Backwardness, and the like seemed to be our dresses fitted for us like Stickney and miniskirt. The question here is up to when? The answer is clear we have to work together with harmony and high cooperation until we reached to attain sustainable development. We need to strive and endeavor until we can change our image and bad precedent. For the time being let me borrow an African traditional proverb, "*if you want to go fast, go alone but if you want to go far, go together.*" So that regional economic integration for us or for Africa cannot be compromised. Let me also share George Aiyte's saying that, "*the solutions to Africa's problems lay in Africa.*" It seemed due to this rationale that the heads of states of Africa with strong devotion and commitment, reached a consensus around the bench to have a free trade area agreement today. These only enable us to step on the ground with our two legs and to minimize a parcel of wheat thrown for us from the white people as well as allow us to build hegemony and support to eradicate poverty. We have to

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work to boost intra-African trade ever riding through the strong gears of the new historic AFCFTA machine.

The overall objective of the agreement is mainly creating a liberalized single continental free trade zone by dismantling tariff and non-tariff barriers. With regard to tariff, the agreement required the progressive elimination of import duties or charges and required not to impose new import duties or charges for products subject to liberalization. Currently, the Schedules of tariff concessions have not completed yet, but the modalities are agreed. Accordingly, for non-sensitive products (90% tariff lines) the time frame for liberalization is 5 years for non-LDCs and 10 years for LDCs and 15 years for G-6, for sensitive products (7% tariff lines) the timeframe is 10 years for non-LDCs and 13 years for LDCs but not decided yet for G-6, and for the excluded (3% tariff lines) liberalization is not required. General elimination of quantitative restriction is required having only the provided exceptions. With regard to export duties, it is allowed to regulate export duties so long as it does not create disguised restriction to trade.

Ethiopia undertakes a tariff reforms policy. Accordingly, the tariff regime including tariff classification and valuation, the tariff lines and bands currently available in Ethiopia are based on the HS system, as such sufficiently liberalized one. Quantitative restriction is applicable only to five products and export tax is abolished except coffee which is now suspended. Even if the tariff regime, export duties and quantitative restriction in Ethiopia are sufficiently liberalized, but, the AFCFTA agreement as a free trade agreement has an implication which requires gradual full liberalizations of tariff for non-sensitive and sensitive products in accordance with the time frame agreed, to generally eliminate quantitative restrictions having regard to the exceptions provided and to regulate export duties in a way that will not create disguised trade restriction. Ethiopia is also expected to come up with schedules of tariff concessions in which she is required to be bound and to provide no less favorable treatment for products originating. Liberalization of this regime positively implies to have more trade flows to drive economic growth. But this may have its negative implication on government revenue loss and impact on domestic industry competitiveness.

Coming to non-tariff barriers of trade in goods regulation, the AFCFTA agreement gives much and detailed emphasis on it. The Annex classified NTBs to six categories. TBT is classified as one of NTB. In TBT regulation state parties are required to facilitate trade through cooperation in the areas of technical regulation, standards, conformity assessment, and metrology and accreditation regulation and avoid or eliminate unnecessary barriers to trade through reinforcing and adopting best practices of harmonization and international

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standards. SPS is the other category of NTBs. In SPS state parties are required to facilitate trade while safeguarding human, animal or plant life or health, to enhance cooperation, and transparency in the development, and implementation of SPS measures to ensure that they do not become unjustifiable barriers to trade, and encouraging the use of international standards in the elimination of barriers to trade. It required risk assessment and regional adaptation duty.

In Ethiopia TBT and SPS sustained with notable problems. Accordingly, in Ethiopia there is no policy on quality and standards as well as on food safety issues. There is lack of coordination on the side of regulatory institutions, lack of awareness, weak implementation of international standards and harmonization. Additionally, the laws with regard to these types of regulation are inadequate and some of them are outdated. Finally, inadequate logistics and outdated equipment as well as poor infrastructure can also be mentioned as a challenge to the NQIs in Ethiopia. These would create a disguised trade restriction and pose a problem on the competitiveness of the export sector as well as it will have an impact on the quality and standards of products entering into Ethiopia. Accordingly, the AFCFTA agreement enables for Ethiopia to rectify existing gaps of TBT and SPS regime to avoid unnecessary barriers to trade through adopting best practices of harmonization and international standards. In other words, the AFCFTA agreement will have a positive implication for Ethiopia's foreign trade regulation, to improve/increase agricultural and industrial productivity, creates competitiveness of the Export sector within the continent and in the global market, enhances food security, and safety for strengthening health protection. But it requires investing budget and convincing policy makers.

With regard to trade remedies, the AFCFTA agreement stipulated preferential safeguard, global safeguard, anti-dumping and countervailing measures as a remedy to unfair or unintended trade practices. It required state parties while taking trade remedies, not to create disguised restriction to trade. Accordingly, it required to follow Notification, Consultation, Confidentiality, Transparency principles while taking these measure and during investigation.

Currently, in Ethiopia there is no law and domestic arrangements with regard to CVD and SA measures of trade remedies. Even if there is a law on AD measure, the law is not comprehensive, and it lacks domestic arrangement. Accordingly, the AFCFTA agreement means two things for Ethiopia's foreign trade regulation in this regard. On the one hand, the agreement enables to apply the devised trade remedies in case when Ethiopia encounters unfair or unintended trade practice unilaterally and as a forum for initiating AD, CV and SG

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to the dispute settlement body, on the other hand, and it necessitated Ethiopia to devise legal and institutional frameworks for conducting investigation for injury to the domestic industry and to comply with procedural requirements in order to avoid disguised restriction of trade. It enables to protect the domestic industry from the evil effects of unfair or unintended trade. Economic constraints for conducting investigation and to come up with domestic arrangements can be mentioned as a negative implication.

Rules of origin are the other NTB dealt under the agreement. Even if the AFCFTA rules of origin is not yet agreed it is expected to follow a mixed approach of general rule and product specific rule. The annex also contained basic rules on origin conferring criteria, proof of origin, and administrative cooperation.

In Ethiopia RO is regulated by ECC through the custom's proclamation. The laws and domestic arrangements in this regard are able to accommodate the AFCFTA commitment and do not create disguised trade restriction. So the implication of the AFCFTA agreement is that it will drive the Ethiopian foreign trade regime to intercept in the regional supply chain and boosts market integration. It positively enhances value addition, encourages invention and the capacity to produce or manufacture as well as fosters skills of entrepreneurship and creates jobs in Ethiopia. But this may have a negative implication to cause dumped products to flood in the Ethiopian market, and this in turn affects the domestic industry.

Finally, the AFCFTA Agreement gives three of its vast annexes to customs cooperation and administrative assistance, trade facilitation and transit. It aimed bringing cooperation on all areas of custom regulation, to simplify and harmonize international trade procedures and logistics to expedite the processes of importation, exportation, and transit; and expedite the movement, clearance and release of goods on the one hand, and to grant all transit traffic on non-discrimination basis without charges and fees unless administrative for rendered services on the other hand.

In Ethiopia, customs is regulated through ECC and mainly through Proclamation number 854/2014. It has various regulations and decrees to facilitate import and export trade. The ECC has also adopted a modern system of customs operation in collaboration with World Customs Organization (WCO). Accordingly, it applied simplified customs clearance procedure, trade facilitation mechanisms and a non-discriminatory transit system.

However, still it is not detached from problems which create disguised restriction to foreign trade. The problems associated with these types of regulation are high logistics, and freight costs, logistic backlogs, single port, inadequate and poor infrastructure as well as outdated technologies. The AFCFTA Agreement thus, is pertinent for Ethiopia with regard to

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customs regulation also since it will enable the customs regulation to be efficient and effective enough and to expediently facilitate trade. In other words, it will ease trade around the port more than ever before. By doing so, it attracts more trade flows and reaching the market at the real time, especially for perishable products faster. But it requires investing trade facilitating infrastructures and technologies.

Coming to Trade in service regulation, the AFCFTA agreement adopted its own protocol, but not yet come up with annexes. The prioritized areas of services include business services, communication services, tourism and travel related services, and transport services including the financial service. The negotiation is expected to be based on GATS Specific commitment plus regulatory cooperation and based on request-offer, positive list approach and horizontal commitment. The starting point is different for WTO members and non- WTO members. For non-WTO members it is an autonomous minimum threshold.

The main problems currently associated with foreign exchange regime are mainly two-folds. First, the strict foreign exchange control regime which requires all imports, exports, and any other foreign payments have to gain foreign exchange permit from the commercial banks. Second, the regime is challenged with chronic foreign currency shortage. Liberalization of this regime will positively enable Ethiopia to attract more foreign trade flows, ease doing business, facilitates business transactions, attract FDI.

The first main problem associated with financial service sector is foreign nationals are not allowed to invest in the financial sector in Ethiopia either to own bank or insurance in Ethiopia. The other challenge with respect to bank sector service is all trade private banks are ready to surrender their 30% deposit to NBE and all trade finances have to pass through the Ethiopian banks. Lastly, outdated service delivery, internet connection interruption, crowdedness can also be mentioned as a constraint for the banking sector. As per the AFCFTA Agreement, Ethiopia is required to gradually liberalize, since the financial sector is priority sector. Liberalization of this regime enables to ease doing business, attract FDI and facilitate business transaction. But it has its negative implications. If it is fully opened, the foreign competitors having the technology, the money and the knowledge, will snatch the sector from the public. The domestic industry is not capable to compete with foreign competitor. Accordingly, capacity building has to be done in line with liberalization of the sector.

Coming to other service sectors the AFCFTA agreement requires the government to leave the trade and privatize to the private sector in order to enable a fair trade competition. Currently, the Ethiopian government by understanding these has started to partially liberalize

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the giant government-owned enterprises. Even if as an initial step is sufficient but work has to be done to gradually liberalize them fully according to the specific commitment to be agreed. Liberalization of these regimes would bring quality service and low price. But still it requires complimenting the domestic industry through capacity building.

Generally speaking, there is no doubt that Ethiopia will benefit a market access from the coming into force of the AFCFTA's Agreement, but it has to be emphasize that this is a means to an end rather not an end by itself. As it is shown, Ethiopia as least developed country was awarded a market access privilege in US and EU market as well as a member to REC especially by means of a COMESA member from COMESA members market, but the outcome is not that much vital for its foreign trade regime. Additionally, she has also for long period awarded incentives for the export sector to make competitive and efficient in the global market, even if the outcome is insignificant. Accordingly, policy, legal frameworks and foreign trade regulating bodies' reform has to be undertaken, especially in the areas of quality and standards, monetary and financial areas, service sectors, trade remedies area and trade facilitative infrastructures.

4.2. **Recommendations**

My finding finally causes to propose the following recommendations:

- **Tariff Regulation:**
 - Enhancing production and diversification of production to sett of the revenue loss that has been created as a result of liberalization of tariff.
- **Technical Regulation:**
 - Incorporating Quality and Standard to foreign trade policy.
 - Enacting comprehensive laws with regard to TBT and SPS.
 - Encouraging foreign trade regulating and complimenting institutions to adopt and apply best practices of harmonization and international standards.
 - Fulfilling the necessary logistics, infrastructures, and technological advanced equipment for laboratories to conduct testing.
 - Awareness creation for accreditation, calibration, conformity assessment and standard for the public, the private sector, even for governmental institutions.
 - Strengthening Coordination among the regulatory and other complementing institutions of foreign trade regulation.

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- Bringing governmental institutions and the private sector for accreditation and calibration for increasing quality competitiveness.
- Giving due consideration for quality and standard institutions from the government.
- Contingent Trade remedies Regulation:
 - Incorporating Trade remedies in foreign trade policy and strategy.
 - Drafting countervailing and safeguard laws.
 - Complementing the existing dumping provision through amendment to include determination of dumping, determination of injury, domestic industry, procedure for investigation, due process rights.
 - Establishing trade remedy investigating, and monitoring institutions.
- Customs Regulation:
 - Adopting common and harmonized customs regulation, and investing infrastructures, and logistics to expedite the movement and clearance of goods as well as cooperate in matters of customs regulation.
 - Revising logistics, shipping, and freight costs surrounding the custom for facilitating trade.
 - Strengthening efforts to gain alternative port access.
 - Automation of modern systems and technologies, convenient administrative bureaucracies and favorable services as well as skilled and competent experts to effectively expedite and facilitate trade has to be developed and adopted.
 - Establishing one broadband Connectivity system among regulatory bodies.
- Foreign Exchange Regulation:
 - Enhancement of the export sector by increased, diversified and quality based production as well as focusing the export sector outlook on more value adding products for generating hard currency.
 - Implementing import substitution strategy through domestically produced products for saving inappropriate expenditure of foreign currency.
 - Shifting the domestic economy, and convincing the local investors towards investing in areas of investment that will enable value addition, especially in areas that generate foreign currency.
 - Working in the enhancement of remittance with creating convenient ground for the diaspora by adopting laws and diplomatic discussions.

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- Combating black market and contraband trade or bringing them to the legal exchange regime.
 - Complementing the foreign exchange regime with an amendment of laws which confer flexibility.
 - Strict regulation has to be effected for foreign currency loan from international financial institutions starting from insurance coverage to credit analysis to avoid currency risk.
- Financial Service Regulation:
- Enacting further laws and enshrining policies which enable the substantial liberalization of the sector.
 - Working on capacity building of the domestic investors to make them competitive with foreign investors.
 - Applying a sort of controlling valve while liberalizing the sector in order to save it from snatching by those who have knowledge and wealth foreigners.
 - Joining the digital market, and applying automated technologies to ease foreign trade and business transaction as well as eradicating system problems.
- Other Service Regulations:
- Strengthening of enacting laws and policies which enables to privatize and liberalize state-owned enterprises.
 - Adopting laws and policies which restrain government's participation in trade, and the business environment to create leveled playing field for competition and to minimize government's role in the excessive regulation of the regime.
 - acquainting and taking the private sector and the domestic producers to the regional supply chain and complimenting them with capacity building side by side with liberalization of the domestic market has to be recognized and employed.
 - Strengthening of further liberalization of service sectors, sub-sectors and sub-sub-sectors as well as areas outside the prioritized areas.
- Others
- Publicizing decrees issued by government institutions with regard to foreign trade regulation either in the Negarit Gazzetta or effectively publicizing in each government's homepage.

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- Establishment of enquiry points, Publication, and Notification in decision-making should be applicable to make the foreign trade regime more transparent and efficient.
- Strengthening policy commitment, and implementation of regional economic integration.
- Devising a policy management for reducing the ‘spaghetti blow’ effect of different treaty commitment.
- Actively involving the private sector in the regional integration initiatives.

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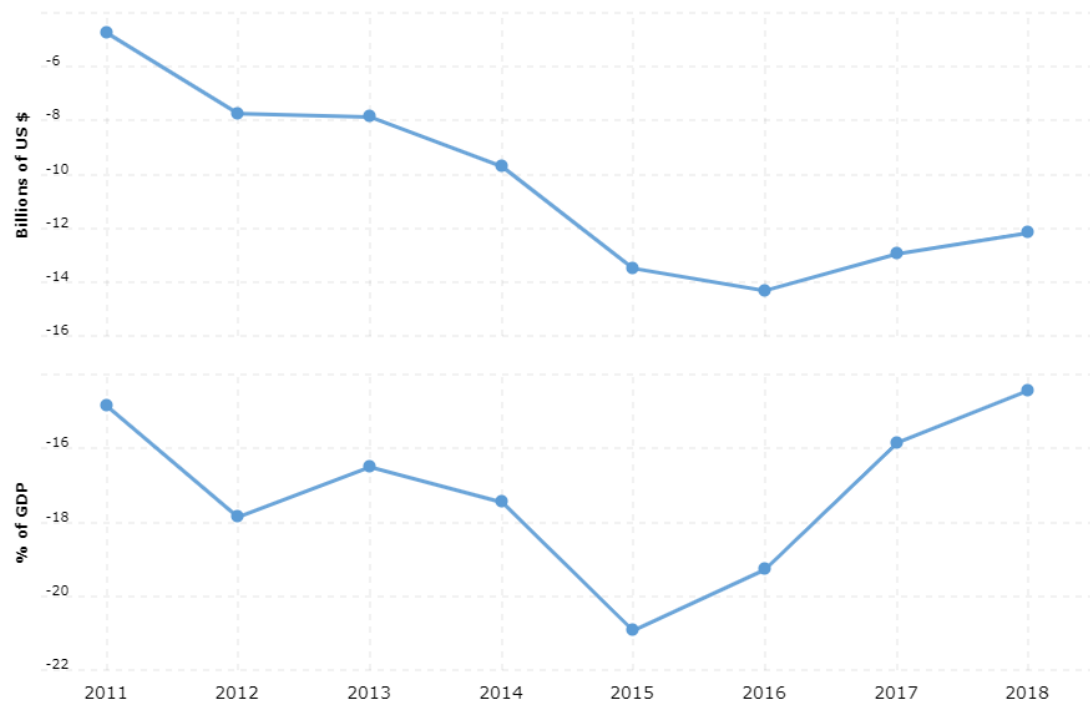
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Appendix I

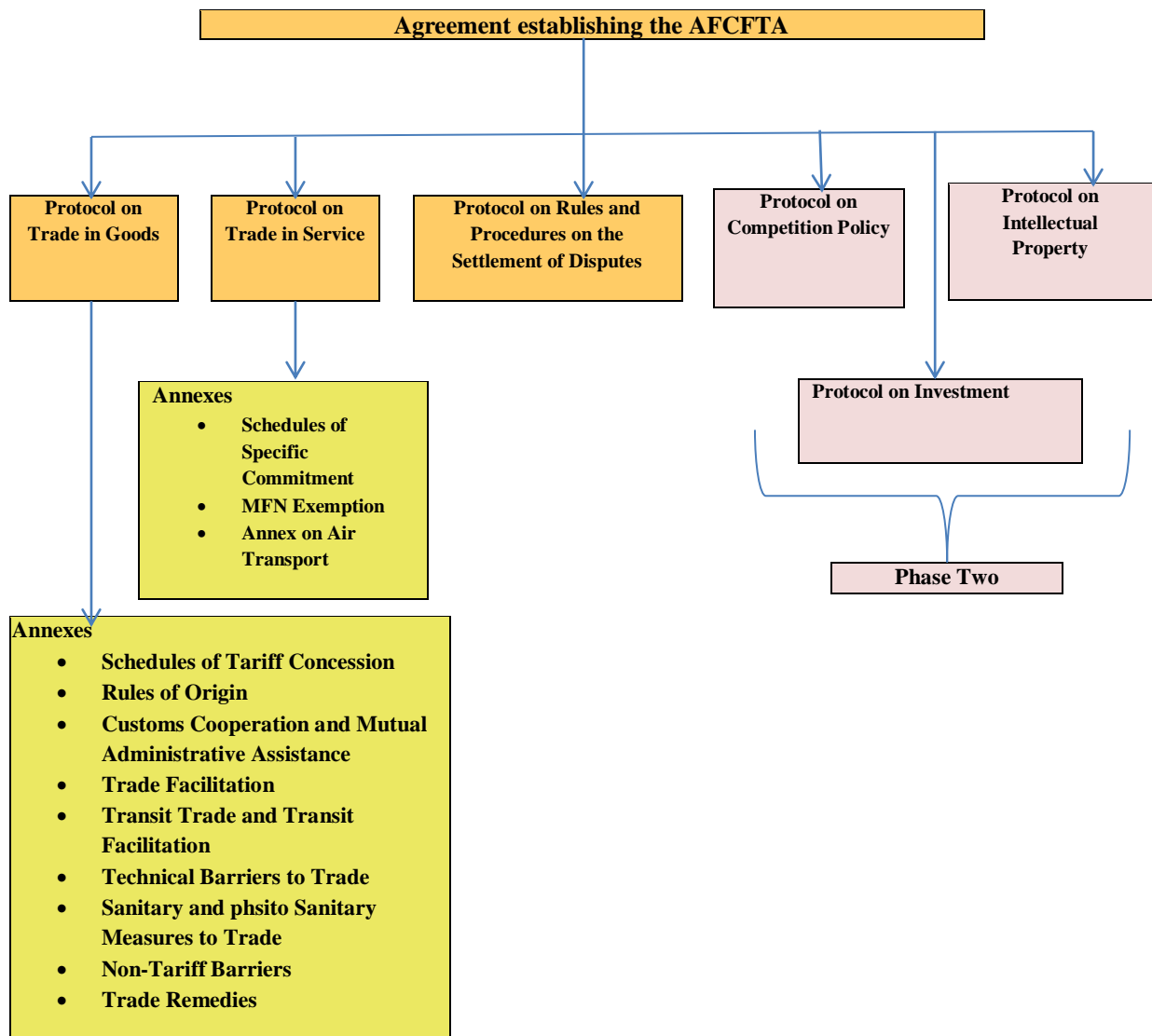
Foreign Trade deficit in Ethiopia



Source: World Bank available at Macro trends (2019)

Appendix II

The AFCFTA Agreement



Source: Tralac (2018)

Appendix III

Level of Liberalization and Timeframes for Implementation under the AFCFTA

Product Group	Level of Ambition for all State Parties	Timeframe for Implementation		
		Non LDCs	LDCs	Special Needs/G-6
Non-Sensitive Products	Not less than 90 percent of tariff lines	5 years	10 years	8 years for 85 percent of tariff lines 15 years for additional five percent of tariff lines (may be phased from year 11 to year 15)
Sensitive Products	Not more than 7 percent of tariff lines	10 years	13 years	13 years
		Liberalization of sensitive products may commence in year 6 or earlier for those state parties willing to do so		
Exclusion List	<ul style="list-style-type: none"> • Not more than 3 percent of tariff lines • Exclusion list shall maximum constitute 10 percent of the value of imports from other African countries based on a 3-year reference period (2014-2016 or 2015-2017) • subject to a review process after five years 			

Source: Third World Network Africa (2019)

Appendix IV

General Categorization of Potential Sources of NTBs under AFCFTA

Parts Sections	and	Description
Part I		Government Participation in Trade and Restrictive Practices Tolerated by Governments <ul style="list-style-type: none"> • Government aids, including subsidies and tax benefits • Restrictive practices tolerated by governments • Other
Part II		Customs and Administrative Entry Procedures <ul style="list-style-type: none"> • Customs valuation • Customs classification • Consular formalities and documentation • Samples • Rules of origin • Customs formalities • Import licensing • Pre-shipment inspection and other formalities related to pre- shipment inspection. • Other
Part III		Technical Barriers to Trade <ul style="list-style-type: none"> • Technical regulations, and standards including packaging, labeling and marking requirements • Conformity assessments • Certificate of Free Sale • Other
Part IV		Sanitary and Phytosanitary Measures <ul style="list-style-type: none"> • SPS measures including chemical residue limits, disease freedom, specified product treatment, etc. • Conformity assessments • Other
Part V		Specific Limitations <ul style="list-style-type: none"> • Embargoes and other restrictions of similar effect • Quantitative imports and export restrictions or prohibitions • Tariff quotas • Other
Part VI		Charges on Imports <ul style="list-style-type: none"> • Prior import deposits • Surcharges, port taxes, statistical taxes, etc. • Credit restrictions • Border tax adjustments • Other
Part VII		Other <ul style="list-style-type: none"> • Transport, Clearing and Forwarding

Source: Annex on Non-Tariff Barriers of Protocol on Trade in Goods (May, 2019)

Appendix IIV

Major Laws and Institutions of Foreign Trade Regulation (including regulation supporting institutions) in Ethiopia

Institutions	Foreign Trade Regime Areas of Regulation	Laws for Regulation		
		Proclamation	Regulation	Directive
Ministry of Trade and Industry (MOTI)	<ul style="list-style-type: none"> Formulate policies with regard to trade and industry Establish foreign trade relations and sign foreign trade agreements Create conducive environment for the expansion and promotion of export trade Control the quality of import and export goods Prohibit the importation and exportation of goods that do not conform with the required standard Minimum price control provide commercial licensing and business registration control the compliance of mandatory Ethiopian standards and take measures for below standard 	<ul style="list-style-type: none"> Proclamation No. 1097/2018 Proclamation No. 980/2016 Proclamation No. 329/2003 Proclamation No. 685/2010 Proclamation No. 293/1987 	<ul style="list-style-type: none"> Regulation No. 13/1997 Regulation 109/1987 	
National Bank of Ethiopia (NBE)	<ul style="list-style-type: none"> Formulate and implement exchange rate policy license and supervise banks, insurers and other financial institutions set limits on the net foreign exchange position and on the terms and the amount of external indebtedness of banks and other financial institutions 	<ul style="list-style-type: none"> Proclamation No. 591/2008 Proclamation No. 1159/2019 Proclamation No.1163/2019 Proclamation No. 1164/2019 Proclamation No. 718/2011 		<ul style="list-style-type: none"> Directive No. ONPS/01/2020 Directive No. ONPS/02/2020 Directives No. SBB/77/2020 Directive No. FIS/03/2020 Directive NO. FXD/46/2017 Directive No. FIS/01/2012
Ethiopian Customs Authority (ECC)	<ul style="list-style-type: none"> Regulation of import duties or tariff or other charges and fee related to import/export of goods customs valuation regulation of rules of origin and preferences and exemptions of tariff customs control, warehousing and goods clearance examine goods and means of transport entering into or departing from Ethiopia through customs ports, frontier posts and other customs stations, and ensure that customs formalities are complied 	<ul style="list-style-type: none"> Proclamation No. 859/2014 Proclamation No. 60/1997 Proclamation No. 110/1998 Proclamation No. 587/2008 Proclamation No. 67/1993 Proclamation No. 4/1994 Proclamation No. 83/1994 	<ul style="list-style-type: none"> Regulation No. 24/1997 Regulation No. 89/2003 Regulation No. 88/2003 Regulation No. 108/2004 Regulation No. 133/2007 Regulation No.209/2003 	<ul style="list-style-type: none"> Directive No. 28/2002 Directive No. 37/2002 Directive No. 38/2002 Directive No. 40/2002 Directive No. 56/2003 Directive number 04/2004 directive No.65/2004 Directive No. 66/2004 directive No. 86/2005 directive No. 45/2008 Directive No. 111/2008 directive No. 118/2008

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				<ul style="list-style-type: none"> • Directive No.119/2008 • Directive No.112/2008
Ministry of Revenue (MOR)	<ul style="list-style-type: none"> • regulation of taxes with regard to foreign trade like excise tax, value added tax, and surtax • initiating and implementing tax policies 	<ul style="list-style-type: none"> • Proclamation No. 979/2016 • Proclamation No. 610/2008 • Proclamation No. 609/2008 • Proclamation No. 308/2002 • Proclamation No. 983/2016 • Proclamation No. 1186/2020 	<ul style="list-style-type: none"> • Regulation No. 79/2002 • Regulation No. 410/2017 • Regulation No. 407/2017 • Regulation No. 78/2002 	
Ministry of Agriculture (MOA)	<ul style="list-style-type: none"> • Ensuring quality with regard to crop, livestock and fish products • Issuance of certificate for engaging in agricultural investment • Phytosanitary regulation in general 	<ul style="list-style-type: none"> • Proclamation 1097/2018 • Proclamation No. 691/210 	<ul style="list-style-type: none"> • Regulation No. 4/1992 	<ul style="list-style-type: none"> • Directive No. 56/1971
Ministry of Foreign Affairs (MOFA)	<ul style="list-style-type: none"> • Formulate Foreign policy • Promote Foreign trade • Negotiate Treaties 	<ul style="list-style-type: none"> • Proclamation No. 1097/2018 • Proclamation No. 691/210 		
Ministry of Mines, Petroleum & Natural Gas (MOPNG)	<ul style="list-style-type: none"> • issue licenses to private investors engaged in mining and exploration of petroleum and natural gas • ensure quality standards of petroleum and natural gas products • set standards for petroleum storage and distribution facilities • negotiate and sign international treaties pertaining to mining, petroleum and natural gas 	<ul style="list-style-type: none"> • Proclamation No. 1097/2018 		
Ministry of Transport (MOT)	<ul style="list-style-type: none"> • regulate transit services related to import and export of goods; and ensure that the national logistic system is efficient and competitive • initiate and submit to the government studies on alternative port services and oversee their implementation when approved 	<ul style="list-style-type: none"> • Proclamation No. 1097/2018 • Proclamation No. 691/210 		
Ministry of Innovation and Technology (MOIT)	<ul style="list-style-type: none"> • provide licenses and regulate telecommunication and postal service operators; ensure the technical quality of telecommunication equipment • set standards to ensure the provision of quality, reliable and secure information technology services, and oversee implementation 	<ul style="list-style-type: none"> • Proclamation No. 1097/2018 		
Ethiopian Conformity Assessment Enterprise (ECAE)	<ul style="list-style-type: none"> • provide certificate of conformity to production enterprises or service providers • issue laboratory and inspection test report 		<ul style="list-style-type: none"> • Regulation No.196/2010 	
Ethiopian Standards Agency (ESA)	<ul style="list-style-type: none"> • to develop Ethiopian standards and establish a system that enable to check whether goods and services are in compliance with the required standards • to develop national standards for local products and services so as to make them competitive in international market 		<ul style="list-style-type: none"> • Regulation No. 193/210 	

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Ethiopian Metrology Institute (EMI)	<ul style="list-style-type: none"> • Develop national metrology system compatible with international metrology system • establish national metrology laboratory and provide calibration services • Quality assurance service 		<ul style="list-style-type: none"> • Regulation No. 194/2010 	
Ethiopian Accreditation Enterprise (EAE)	<ul style="list-style-type: none"> • Provide accreditation service to conformity assessment bodies based on national and international requirements • establish and implement accreditation system which allows locally provided conformity assessment services to be recognized internationally 		<ul style="list-style-type: none"> • Regulation No. 279/2012 	
Food, Medicine and Health Care Administration and Control Authority (FMHACA)	<ul style="list-style-type: none"> • Regulation of Import & export of drugs, medical supplies or instruments, food and cosmetics, issue permit • Safety and quality of food, medicine • quality of health and health related services • inspection and licensing • organize quality control laboratories • regulate the content, manufacture, import, export, distribution, sales, use, packaging and labeling, advertisement and promotion, and disposal of tobacco products 	<ul style="list-style-type: none"> • Proclamation No. 661/2009 • Proclamation NO. 200/2000 		

Source: NBE, ERCA and Ethiopian Legal Brief home page, HPR laws, Ethiopian Customs Guide and Compiled customs and tax directives prepared by Abreham Yohannes.