Topical Issues In The Nigerian Law:

A Book of Readings



Edited by:

Professor JAM Agbonika

Professor Abdulqadir Zubair

Professor T F Yerima

Professor A.O Mu'zan

Dr Olokooba Saka Muhammed

Dr D.F Atidoga

KOGI STATE UNIVERSITY

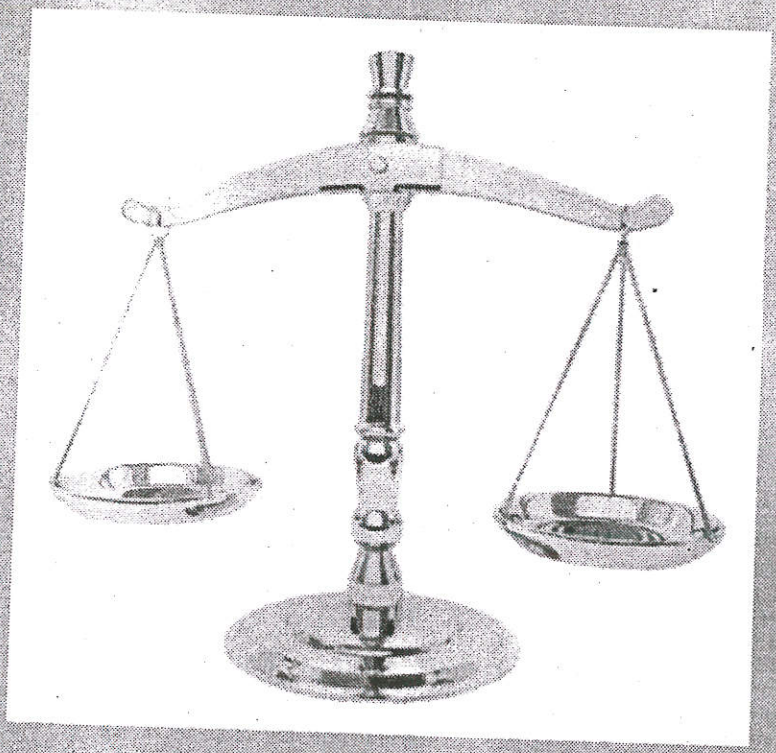
KNOWLEDGE FOR SELF RELIANCE

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(*on Sabbatical*)

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CHAPTER THIRTEEN

THE PROPOSED NEW ISSUES AND THE RELEVANCE OF AFRICAN MEMBERSHIP OF THE WORLD TRADE ORGANISATION (WTO) EXAMINED

Shola Animashaun,

Olokooba S.M. Ph.D.

&

Olatoke J.O Ph.D.

Summary of the Chapter

This Chapter examines the Proposed New Issues in the World Trade Organisation vis-à-vis the relevance of African membership of the organization. The paper places the policy in historical context, examines its underpinning reasons and argues that the policy favours only the Developed Nations and not the African countries. The paper further contends that, the actual reasons for the formation of the WTO was far from ordinary free flow of and/or liberalisation of trade among nations, but one of neo-colonisation tendency of African trade and economy by the Developed Nations. In the final analysis, the chapter made some practical recommendations that will make African member states of WTO more relevant in the global international trade policy making.

Introduction

Prior to the advent of the World Trade Organisation herein after called the WTO, the extent to which the global trading activities should be protected was heavily beclouded with controversies and confusions. These occurrences became the source of tension in the global international economic relations, part of which culminated in the Second World War.

The issue of market control, free trade and sovereignty in the international economy has been on the major bones of contention in the activities of the World Trade Organisation since its inception[1]

After the World War II, the clamor for a forum or an organisation that would serve as a platform for negotiating trade agreement and trade rules increased tremendously. This urge was what gave birth to the General Agreement on Tariffs and Trade (GATT) and it was GATT through Uruguay Round that later metamorphosis to the World Trade Organisation (WTO)[2].

While majority of the Countries opined that the generality of goods including agricultural products be internationally controlled and supervised by a reputable internationalised organization, some opined that a blanket regulation of trade and services was in apt, hence the call for the exclusion of some agricultural products from the GATT regimes[3].

In an attempt to harmonised these stands, a new Internationally agreed trade rules was proposed as way to achieve peaceful trade dispute settlement system amongst the Nations of the world. Thus, the General Agreement on Tariffs and Trade (GATT) was formed and it was GATT through Uruguay Round that later metamorphosis to the World Trade Organisation (WTO). The World Trade Organisation (WTO) was established in 1994 at the end of the General Agreement on Tariffs and Trade (GATT) of Multinational trade negotiations (MTNs),

[1] Olatoke J.O 'The World Trade Organisation's Policy on Agriculture: Paraphernalia of Neo-Colonisation of African Economy?', in *Nigerian Journal of Food, Drug and Health Law*, vol. 5, No. 1, 2012, p.24

[2] Olokooba S.M 'Trade Libralisation or Trade Colonisation? An Extraction of the Politics in Policies of the WTO on African Economy', *Islamic University in Uganda Journal of Comparative Law*, vol.3, 2009, p.199

[3] United state of America fought for the exclusion of milk and other agricultural products from the General Agreement on Trade and Tariff (GATT) in the late 50's

which started in September, 1986 and ended in Marakesh in December, 1994[4].

After the ceremonial freedom of many African countries[5] coupled with sweet propaganda of the usefulness of WTO by the west, many African states joyfully joined the organization with the hope of securing accelerated economic development for African trade and commerce; and with the hope of using the plat form to actualise African dream of having authority in the global trade politics.

About two thirds of the WTO's 150 members are developing countries[6]. They play an increasingly important and active role in the WTO because of their numbers, and because they increasingly look to trade as a vital tool in their development efforts. Developing countries are a highly diverse group often with very different views and concerns. Therefore, today an increasing number of voices are being raised against the activities of the WTO. To many, African and many other developing countries had virtually lost out, and that, the public interest and objectives of trade libralisation have actually been turn to a paraphernalia of neo-colonisation of the developing countries economy. In fact, in the recent times, meetings of the WTO have been greeted with public condemnation and street demonstrations[7] which now leaves one in doubt of actual reasons and functionality of WTO in the global trade policy making.

[4] Paul. I.O "Implementation of the WTO/TRIPS Agreement by Nigeria: Strengthening Protection and Enforcement Mechanisms" in *Nigerian Journal of Food, Drug and Health Law*, vol.6, No. 1, 2013, p.36

[5] Amongst the early African members of the WTO are Nigeria, Uganda, Tanzania, Ghana, Zambia, Kenya, Morocco, Senegal, who all joined WTO on 1st of January, 1995

[6] See, < http://www.wto.org/english/thewto_e/whatis_e/tif_e/dev1_e.htm> accessed on the 9th /10/2013

[7] One of such demonstration and protest occurred in Hong Kong, where the protesters clashed with the Hong Kong police in Wan Chai during the WTO Ministerial Conference of 2005

In this paper therefore, an attempt will be made to reflect on some of the WTO's policies especially, the proposed new issues i.e industrialisation and labour matters, ascertaining the relevance or otherwise of African Countries in the global trade policy making and proffer solutions for the survival of African countries in the global trade policy making. Structured in to sections, section two focuses the analysis of the base of African economy, while section three is on the jurisprudential arguments for and against African membership of WTO. The proposed New Issues and relevance of African membership of WTO is the focus in section four; and the paper ends with conclusion and recommendation in section.

The Base of African Economy Examined

The base of African economy has been in trading and agriculture. The bulk of the funds used for African development are expected to come from agricultural produce from the continent. This agricultural economy accounted for why African countries are popularly referred to as an agrarian society. In essence if not recently that African states are striving to keep pace with the industrialisation process of the west, agriculture, hunting, and fishing has been the base of the indigenous economy of Africa. Even with the introduction of mechanised farming, majority of African farmers still employ the method of shifting cultivation. The implements used were mainly cutlass and hoe done through the use of human labour. The countries of Africa

> *... are called agricultural countries because they rely on agriculture and have little or no industry, but their agriculture is unscientific and their yields are far less than those of the developed countries*[8].

[8] Rodney W, *How Europe Underdeveloped Africa*, (Abuja, Panaf Publishing Inc, 2005), pp:18-19, see also, Olokooba S.M 'Trade Libralisation or Trade Colonisation? An Extraction of the Politics in Policies of the WTO on African Economy', *Islamic University in Uganda Journal of Comparative Law*, vol.3, 2009, p.204

Africa was an all round agrarian community before the coming of the colonialists. Therefore, it is not an exaggeration to say that, agriculture has been the basic occupation of Africa and other developing nations. On this Buah[9], observed,

> *...prior to the arrival of the 'white men', the mandigo cultivated acres of milet, or guinea corn....rice was the staple crop in the Cacheu. Similarly these and other native crops were cultivated in the area of guinealand. Indeed, it is believed that yams, for example, were cultivated in the forest and sub-savannah lands....*

After the freedom of many African countries from the direct authority of the colonialists, the base of African economy-agriculture, received some attention from Europeans. The Europeans introduced and developed a few crops which they needed e.g. Cocoa, groundnut, cotton and palm trees but according to Ogusola[10]

> *...no interest was shown in the development and preservation of indigenous crops such as maize, beans, ams and cassava. The colonial masters did not want to establish any industry in West Africa nor did they want native industries to exists or rival their own industries...*

The effect of the negligence of many of the indigenous African crops led to great decline in the development of such crops even till today. Consequently, African farmers often had poor yields and were themselves extremely poor; and even with that:

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[9] Buah F.K, *History of West Africa since A.D 1000: Book One, The People*(London, Macmillan Education Limited, 1978),p:231

[10] Ogunsola J.B, *West African History AD 1000-present Day*,(Ibadan, Aromolaran Publishing, Company

> *The big nations still establish the price of agricultural Products and subject these prices to frequent reductions. At the same time the price of manufactured goods is also set by them, along with the freight rates necessary for trade in the ships of those nation. The minerals of Africa also fall into the same category as agricultural produce as pricing is concerned*[11]

Unfortunately, the agriculture that African relied on contemporarily is now nose-diving. The expansion in the volume of importer of goods and services has been dramatic, exceeding that of exports. Agriculture's contribution to output fell almost continuously and the negative growth rate experienced by the agricultural sector is all the more disturbing when account is taken of the facts that its decline would be greater if we consider per capital terms, it also has adverse effects on the balance of trade, industrial costs....[12]

Jurisprudential Arguments For and Against African Membership Of The World Trade Organisation

Case for African Membership of WTO

The western propaganda on the usefulness of WTO on trade and commerce was the major reasons that made many African countries to join the organisation.[13] One of such propaganda was that, the WTO was a global effort to actualised the UN's effort in a bid to roll back hindrance to free commerce through the painstaking intervention of the GATT through UNCTAD.[14]

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[11] Rodney *op.cit*,(n 8) p:25

[12] Okongwu C.S.P *The Nigerian Economy: Anatomy of a traumatized Economy with some proposals for stabilization*, (Enugu: Fourth New Dimension Publishing Co. Ltd, 1986), p.20

[13] See the detail number of African countries in WTO at http://en.wikipedia.org/wiki/wto_accession_and_membership#List-of-members-and-accession-dates.Accessed on 16th July, 2009.

[14] J.W David, *United Nations in the Contemporary World*, (London, Routledge,1997), p:75

Another is 'the development that some African countries are now experiencing via collaboration of Agricultural programmes with the aid of WTO's policy...'[15]

Not only that, it was generally believed that the World Trade Organisation was for the conduct of international trade that would raise the standard of living of member states, ensure full employment, sustainable development and environmental protection of the member nations across the globe. In other words, the WTO is an international organisation designed by its founders to supervise and libralised international trade.[16]

The issue now is, has the above stated instances improve African continent due to the membership of African countries in the WTO? Are the already existed policies of WTO favours the African continent? Are WTO policies on trade libralisation and agriculture consistent with African's cultural value and will such policy improve and accelerate the development of African economy? Does the policies of WTO consistent with the developmental efforts of African countries vis-à-vis subsistent farming and protection of African farmers who are mainly, small scale farmers?

Case against African Membership of WTO

Today an increasing number of voices are being raised against the activities of the WTO. The WTO'S public interest and objectives remain out of reach of the African nations.

[15] Olatoke J.O 'The World Trade Organisation's Policy on Agriculture: Paraphernalia of Neo-Colonisation of African Economy?', in *Nigerian Journal of Food, Drug and Health Law*, vol. 5, No. 1, 2012

[16] World Trade Organisation-Wikipedia,the free encyclopedia,http://en.wikipedia.org/wiki/World_Trade_Organisation, accessed on 27/6/2009,p:1of 9

In fact, many[17] has criticised and opined that, the organisation is just a plat form that the rich and developed countries are using to further colonise African trade. To some people, the World Trade Organisation is today one of the most secretive international bodies on earth, established to feed the greed of the rich in the name of trade liberalisation[18] through indirect autocratic system called "consensus[19]" in reaching decision at the WTO. While some opined that the WTO's public interest and objectives has remained out of reach of the Less Developed Nations of the world[20].

Invariably, it is now believed that the WTO'S emphases has slipped from concentrating on these public interest goals to seeing itself primarily as 'an organisation for liberalising trade' and 'that the system's overriding purpose is to help trade flow as freely as possible[21]' even at the detriment of some member nations especially the African countries.

[17] Amongst them are K. Martin, "Why developing countries cannot afford the new issues in the WTO Seattle Conference at http://www.ifg.org/newissues.html accessed on 22nd July. 2009. see also S Charnovitz"Addressins Enviromental and Labour issues in the WTO at http://www.ppionline.org/ppi_ei.efm?knlgAreaID=108&subseeID=128&contentID=649". and ,J.Bhagwati, from Seattle to Hong Kong at http://www.foreignaffairs.org/20051201faessay84701/jagdish-bhagwati/from-seattle-tohong-kong.html, see also Olokooba S.M 'Trade Libralisation or Trade Colonistion? An Extraction of the Politics in Policies of the WTO on African Economy', *Islamic University in Uganda Journal of Comparative Law*, vol.3, 2009.

[18] http://www.ify.org/wto-html, accessed on the 6th July, 2009

[19] This is also referred to as "green room negotiation"

[20] See Tonny O. 'To Accede or not to accede to WTO agreement on Government Procurement: Issues for Least Developed Countries in Africa' *Islamic University in Uganda, Journal of Comparative Law*, vol.3, 2009

[21] See http.www.3dthree.Org./pdf_3D/Guide_075Ch1-pdf, accessed on the 7th July, 2009

The Proposed New Issues and The Relevance Of African Membership of the World Trade Organization

The Proposed New Issues

For reason best known to the developed countries and the world economic dictators, The Uruguay Round of trade negotiations again introduced new issues into the ambit of the multilateral trading system in a bid to expand its functional scope. Sequentially, the developed countries have intensified pressures to incorporate still more issues which are to their advantage into the World Trade Organisation (WTO) system.

There is a long list of "new issues" being put forward by the developed countries to link trade (and the possible use of trade measures and sanctions as enforcement mechanisms) to several economic and noneconomic areas[22]. Amongst these new issues are issues on labour and international investment rules, competition policy, industries and government procurement. Another issue is the environmental issue which is basically not in the former WTO agreement. The first three issues were put on the agenda of the first WTO Ministerial Conference in Singapore in 1996. Most developing countries were against having any negotiations for agreements on these issues, but the pressure from the developed countries was so strong that they compromised and agreed to take part in "working groups" to discuss the issues.[23]

[22] Martin, K. The Proposed New Issues in the WTO and the Interests of Developing Countries, (Third World Network, Malaysia, 2001), p.3

[23] Ibid, 3-4

The new issues also propose to give more power to foreign industries to operate on equal basis at every member nation states. In essence, both local and foreign industries by the new issues must be treated with equality in the member state and all the law already in place for the protection of the local industries must be whittle down. To strengthened this issue, there have been strong attempts by many Northern governments to link trade with labour standards in the WTO. It is possible that a wide range of other issues, such as human rights, tax systems and cultural behaviour, will also be sought to be linked to trade measures in the WTO in future. Therefore, as rightly observed by Martin[24]

> *The device of bringing in new topics by alleging that they are trade related continues to be used in WTO negotiations. In fact, however, the pretence of being directly trade-related is no longer even necessary and may be seen to unduly restrict the scope of the issues being introduced. The prefix "trade-related" has often now been dropped in proposals for these new issues, which are now sought to be brought into the trade arena through simply using the word "and", as in "trade and environment", "trade and labour standards", "trade and investment" and "trade and competition policy."*

Sensing the danger in the introduction of these new issues, most of the developing countries are resisting the attempt. The essence of the resistance by many developing countries according to Martin is "on the grounds that: (i) they are not ready for negotiations on more new issues as they are already unable to grapple with the problems generated by the Uruguay Round; (ii) the proposed issues are not in their interests but instead can seriously harm their economies should they become the subject of new WTO rules; and (iii) the issues are not directly related to trade and do not belong in the WTO".[25]

[25] Ibid, p.6

The method of linking trade with the proposed new issue is of great disadvantage to the African economy. Presently, African trade itself is already subjected and tied to the control of developed Nations of the world due, among others to the globalisation of the economy. This is so because globalisation has really transformed the organization of international economic relationship around; it has affected the economic, social and political sphere of societies and citizens. This is characterized by complex set on interconnectivities and interdependence with an increasing number of actors vying to influence the outcome of these relationships. They lay competing claims to resources markets and legitimacy and are engaged in activities traditionally defined as belong to domain of diplomacy[26]. Therefore,

> *"the device of linking trade with other issues (when the Intention is really to link the dispute settlement system of the WTO, including its provisions for trade retaliation, to new policy areas) is being increasingly used for the purpose of further opening up Third World economies or to reduce their competitiveness in the scramble for world market shares".*[27]

Just like other policies of the WTO[28], the underlining aims of this new proposal was to look for and secure foreign market cheaply that will serve as dumping ground for the European goods and services. The negative effect of this on African economy is obvious; it will render African nations economically unviable and remain in perpetual subjectivity to developed countries control[29].

[26] Okechukwu O 'An Examination of Economic Diplomacy in International Law', *Kogi State University Bi-Annual Journal of Public Law*, vol.2, 2009,p.43

[27] Ibid, p.6

[28] Such as policy on Agriculture, Trade libralisation, Anti-dumping and voting system

[29] For further effect, see Martin K, "Why developing countries cannot afford the new issues in the WTO Seattle conference" at http://www.ifg.org/newissues.html,accessed on 22/7/2009

The equitable treatment provision in the new issues is direct paraphernalia to fight all the local laws already in place to protect the local industries.[30]

Relevance of African Membership of the WTO

From all the aforesaid, can we now say that the membership of African states in the WTO is relevant to African trade and development? To be relevant in the global trade policy making, a country would have to be industrially viable, both in term of production and exportation of their product. The question now is, are African countries as viable as this? The answer is NO. Presently, African countries have little or no industry that can compete favourably with already existed well structured industrialized industries. Even the agriculture in Africa is yet to meet up with the developed countries mechanized agricultural system. The resultant effect of this is that

> *...Africa became increasingly underdeveloped in comparison with the industrialised area of the world. The pattern of trade between Africa and the industrialising world in the nineteenth century is a pattern that still exists today....Europe robbed Africa of her surplus products to feed its own economy, obtaining Africa exports at low prices and using them to boost its own industrialisation, thus steadily widening the gap between itself and Africa....*[31]

[30] For other criticisms of the new proposed issues, see S Charnovitz"Addressins Enviromental and Labour issues in the WTO at http://www.ppionline.org/ppi_ei.efm?knlgAreaID=108&subseeID=128&contentID=649".see also .J.Bhagwati, from Seattle to Hong Kong at http://www.foreignaffairs.org/20051201faessay84701/jagdish-bhagwati/from-seattle-tohong-kong.html.accessed on 24/10/2009

[31] Michael, T. Donald, L,A *History of Africa1840-1914*(London: Edward Arnold Publishers,1980),p:6

The dichotomy between a developed, underdeveloped or developing economy which most African countries belongs is of glaring magnitude. According to Rodney[32]

> *...The developed countries are all industrialised that is to say, the greater part of their working population is engaged in industry rather than agriculture, and most of their wealth comes out of mines, factories, e.t.c. They have high output of labour per man in industry because of their advanced technology and skill.... It is also striking that the developed countries have a much more advanced agriculture that the rest of the world. Their agricultural has already become industry.....*

He further observed that

> *...In Africa, the output of food per person has been falling in recent years. Because the developed countries have a stronger industrial and agricultural economy than the rest of the world, they produce far more goods than the poor-nations....*

From the forgoing discussion it is the humbly submitted that, the actual reasons for the formation of the WTO was far from ordinary free flow of and/or liberalisation of trade among nations, but one of colonisation tendency of African trade and economy by the developed nations. The low industrial status of African countries is greatly affecting and debarring them from getting the optimum benefit from the WTO. Vast part of the WTO programmes are directly beneficial to the developed countries with less than average positive effect or benefit to African members in the world trade policy making.

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[32] W. Rodney, *op, cit* (n.8), pp:18-19

Trapped in a global system fostered by imperialism, poor countries are left with little to sell but the labour of their people and the wellbeing of their environment. While Developed Nations select location of their factory, plantation or mine, communities around the impoverished world vie for suspect opportunities to be the next expansion site for the global system of exploitation of natural resources for trade"[33]. The situation of poor countries has been dubbed 'the global race to the bottom[34],

Even though, the broadening of the scope of WTO law was to strengthen the enforcement mechanism of the membership rights[35], but in actual fact, it's only the developing countries that are subjugated to the realms and caprices of the WTO demands. Consequently, by the subscription of African states to GATT and WTO agreement, they have willingly subjected themselves to another colonial subjugation, authority and neo-colonisation of African trade. Therefore, all steps and activities that may serve as clogs or that may be inconsistence with the promotion of the western economic agenda i.e. restriction on import, tariff and local subsidies on farm produces and other protective measures of local farmers and manufacturers are now being fought to be eliminated by the west.

The devastating effect of this is that, African countries trade policy will naturally disappear into oblivion and what will follow will be an outward flow of investment and absence of direct, local, political and trade control of African economy by the Africans. The simple implication of this is that, in the global trade policy making, African membership of the WTO irrelevant.

[33] Adamu K.U 'The Law and Policy of Trade Libralization and the Rise in Environmental Degradation and Global Terrorism', *Ahmadu Bello University Journal of Commercial Law*, vol.5., No. 1, 2010-2012, p.4

[34] Hossay P. '*Unsustainable: A Primer for Global Environmental and Social Justice*', (Pub. Zed Books, London & New-York, 2006), p.132., see also *ibid*,p.4

[35] As enshrined in XVI 4 of the WTO Agreement

Conclusion

Already, several developing countries are speaking up strongly against the new round with new issues thrown in. They believe that instead of taking up the new issues, the WTO should allow developing countries (which, after all, form the majority of the WTO membership) the time and space to tackle the problems of implementation of the existing agreements. However, despite such opposition by these countries, it is unclear whether a sizeable number of them will be able to withstand the intense pressures for the new issues that will continue to build in future[36]. Based on this, this paper recommends that;

Recommendations

- African member states should unite and lobby other members to vigorously fight against the introduction of any new issues that will be detrimental to African trade and development. All the already existing local laws and rules to protect and ensure the functionality of local industries should be maintained.
- African member state of WTO should unite and fight against the indirect favourable conditional treatment (for the developed countries as against the unfavourable conditional treatment (for the developing countries). It is high time African countries and other developing nations unite and constantly resist the indirect ne-ocolonisation of African Economy[37].

[36] Martin, *op.cit*, p.8
[37] Olokooba S.M., *op.cit*.

- Not only that, since African states are among the majority members of the WTO, to whom much is given, much is desired. African member states has committed so much to the functionality and viability of the WTO, thus, giving the position of the Director General of the organization to African state at this time will not be too much a demand[38].
- Finally, if the West in the WTO are not ready to give Africa her befitting place and status in the global trade policy making, African states should considered the option of creating an alternative international trade organization that will be relevant and ready to cater for African trade and socio-economic development of the continent.

[38] Ibid