NAVIGATING PROTECTIONIST POLICIES IN AFRICA:

EFFECTIVE APPLICATION OF PROTECTIONIST POLICIES

TO ENABLE ECONOMIC DEVELOPMENT

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Navigating Protectionist Policies in Africa: Effective Application of Protectionist Policies to Enable Economic Development. *[1]

Introduction

Distinguished Ladies and Gentlemen, it is a great honour and privilege to be invited to write my thoughts for the 2017 Annual conference of the African Bar Association (AFBA) holding from 6-10 August 2017 in Port Harcourt, Nigeria. As I understand it, the theme of this year's conference is *"Dissecting the Legal & Regulatory framework for Doing Business in Africa*" It is against this back drop that this topic is situated.

It is said about Africa that "Africa is marginalized because it has not globalised" which, if seen from certain perspectives, is correct. Domestic policy distortions and high tariffs in Africa have discouraged investments more than words can describe. Unstable infrastructural, regulatory and institutional environment limits export and supply response. In a tough and unstable economic environment, governments through their regulators and industry are compelled into a defensive mindset. This pattern is consistent and predictable for example in Nigeria's industrial and trade policies.

For decades, the Nigerian Government has continuously resorted to protectionist measures, which include foreign exchange control for imports, import restrictions and exchange control, to handle the challenges of import and oil dependencies. This import restriction policy is typically presaged by an economic crisis, frequently triggered by the collapse of the oil market and a significant drop in Nigeria's oil revenues, which account for 70% of the country's total revenues.

Interestingly, though the successive protectionist measures have never achieved the policy objective of industrialising Nigeria, this has not deterred successive governments from using them. Such measures resonate with the strong protectionist instincts of most Nigerian politicians and policy makers.

Protectionist policies and strategies are simply economic tools and like any economic tool they can be utilised wisely, or badly. For instance, the cement industry in Nigeria is an example of the application of protectionist policies without a clear appreciation of the consequences on the industry. As a result, an import restriction on cement has let to Nigeria having the highest prices of cement in the world. Obviously, the local cement manufacturers

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have profited immeasurably from this ban, however consumers have ended up with higher rent and property prices and poverty has predictably increased.

In this paper we consider the effects of protectionist policies on African states, navigating through methods of effective application of these policies and how these can be altered and utilised to effect growth and economic development, using Nigeria as a case study. This paper will discuss these policies across different regions and various sectors within those regions, including manufacturing and agriculture.

Protectionist Policies?

In economics, the notion of "protectionism" is a policy of restraining trade between countries or states, in comparison to "free trade", utilizing methods similar to restrictive quotas, tariffs imposed on imported goods, and a variety of other Government regulations designed to allow fair competition between imports and goods and services produced domestically. It is frequently a politically motivated defensive measure.

Accordingly, protectionist policies shield the local businesses, industry and workers within a country by regulating trade or restricting with foreign nations.

In recent times, protectionism is based on popular anti-globalisation and anti-immigration movements in certain parts of the world. The policy of protectionism contrasts with the policy of free trade, where Governments reduce as much as possible the barriers to trade within and across nations. In other words, protectionism would be against "free trade" agreements between COMESA-EAC-SADC for example, that 26 African nations are a signatory to.[2]

There is a wide-ranging consensus among economists that the impact of protectionism on economic growth (and on economic welfare in general) is that in the short run, it works depending on the general aims of the policies. However it is mostly negative when considering the long term. It causes the state and its industrial sector to be less competitive in international commerce. Although studies and research has shown that the magnitude of this impact varies significantly across countries and critically depends on the macro-economic and policy climate of each country.

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[2] COMESA-EAC-SADC Tripartite Free Trade Area Launched. The COMESA-EAC-SADC Tripartite Free Trade Area was launched in the Egyptian resort city of Sharm El Sheik by 26 Member States on Wednesday 10th June, 2015. The TFTA will stretch from Cape Town to Cairo, creating an integrated market with a combined population of almost 600 million people and a total Gross Domestic Product (GDP) of about US$1 trillion. The TFTA comprises the three largest regional economic communities (RECs) in Africa: the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), and the Southern African Development Community (SADC). The deal will come into force once ratification is attained by two-thirds of the 26 member states. https://www.sadc.int/news-events/news/comesa-eac-sadc-tripartite-free-trade-area-launched/

This argument began in earnest in Europe in the 15th Century with the formulation of the theory called "mercantilism" which is the forerunner of the theory of "protectionism". Mercantilism was a theory that involved the increasing of a nation's wealth. Those who supported the theory suggested that a nation could only attain wealth when it strived to produce everything within its borders, and reduce to an absolute minimum any reliance on foreign import. The role of government, as they suggested, was to impose huge tariffs on foreign manufacturers so they can't compete with local manufacturers. Total independence in trade[3] was the aim, as that defined the wealth of a nation. This philosophy of Mercantilism reigned supreme in Europe until 9 March 1776 which was the publication date of "*An Inquiry into the Nature and causes of the Wealth of Nations*" by the Scottish Philosopher and economist, Adam Smith. Smith argued that no country could ever hope to produce everything itself. He postulated the theory that nations should outsource the production of goods that do not fall within their area of competence, goods which will ordinarily cost more for a less competent nation to produce than import. So according to Smith, the job of the government was to recognize those sectors in which it had an advantage. Smith's ideas led to debates in the British parliament that led to the repealing of protectionist legislations in 1846.[4]

There was however a down side to Adam Smith's notion of free trade. While the repealing of Protectionist legislations in Europe led to the growth of several economies, the cost was that certain sectors within those economies suffered. There is a "human cost" related to the use of free trade which is seldom addressed. The benefits of an open economy can only be realized if a series of steps are taken to mitigate the downside. Any nation committed to free trade must tax the sectors of the economy that achieve growth and use the money to retrain those in sectors with disadvantages. If not, such a nation will be unstable.

Four Methods

Countries use a variety of methods to protect their local economies and trade.

The most utilized method is to enact tariffs that impose taxes on imports. This immediately raises the cost of the goods imported. These goods become less competitive once compared to local goods. This technique works the best for countries having a lot of imports, such as Nigeria, Ghana, South Africa, Egypt and Kenya amongst others.

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[3] Total independence in trade was a goal known as "economic autarky"

[4] For instance, the Corn Laws.**The Corn Laws** were measures enforced in the United Kingdom between 1815 and 1846, which imposed restrictions and tariffs on imported grain. They were designed to keep grain prices high to favour domestic producers, and are considered examples of British mercantilism.

The most famous example is the Nigerian imported vehicle tariff of 2017, or the cement import tariff from 10% to 50%. Also there has been a general tariff and even restriction on farm products in Nigeria. It was designed to protect farmers from agricultural imports from Europe, which was stepping up farming after the destruction of World War II. But by the time the bill made it through Congress, it had slapped tariffs on many more imports. Other countries retaliated. The resultant competitive war restricted global trade. It was one reason for the extended severity of the Great Depression.

A second way of protecting local industries and trade is by government subsidies on local industries. These subsidies may be in the form of tax credits or alternatively direct payments. That allows producers to lower the price of local goods and services. This makes the products cheaper even when shipped overseas. That means subsidies work even better than tariffs. This method works best for countries that rely mainly on exports.[5]

A third method is to impose quotas on goods imported. This method is more effective than the first two. No matter how low a foreign country sets the price through subsidies, it can’t ship more goods.

Most textbooks exclude the fourth category of trade protectionism because it is subtle. It is a deliberate attempt by a country to lower its currency value. This would make its exports cheaper and more competitive. This method sometimes results in retaliation and may start a currency war. One way countries can lower their currency's value through a fixed exchange rate. This is like China's yuan. Another way is by creating so many national debts that it has the same effect, like the U.S. dollar decline.

Arguments for Protectionism

The argument for protectionism in our case is that local manufacturers have suffered huge losses and minimum growth rate due to cheap imports that have continuously flooded Africa as a whole. If a country is trying to grow strong in a new industry, tariffs will protect it from foreign competitors. That gives the new industry’s companies time to develop their own competitive advantages.

There are several arguments for protectionism in economics in general. However, we believe that the Government has been motivated by the “Infant Industry Argument”, which

[5] But sometimes subsidies can have the opposite effect. A good example of this is, once again, in the U.S. agricultural industry. The Agricultural Adjustment Act of 1933 allowed the government to pay farmers not to grow crops or livestock. That would allow their fields to rest and regain nutrients. It also restricted supply. That increased prices. It helped farmers devastated by the Dust Bowl, but made food even more expensive for consumers.

is postured as the most important argument for protectionism. The proponents of "protectionism" believe that infant industries must be protected in order to allow them to grow to a point where they can fairly compete with the larger mature industries established in foreign countries. They believe that without this protection, infant industries will die before they reach a size and age where economies of scale, industrial infrastructure, and skill in manufacturing have progressed sufficiently to allow the industry to compete in the global market.

However, protectionism should be regarded with caution because it is naturally against the spirit of "comparative advantage", where for example, through free trade Zimbabwe could be concentrating on the production of those goods that it has a comparative advantage, and let or allow its trading partners to meet the gap.[6]

Protectionism encourages the use of import substitutes. By encouraging import substitutes, protection will expand the domestic traded goods sector.

The purpose of protection in an underemployed economy such as Nigeria would be to reduce the propensity to import competitive goods, and not to reduce the volume of such imports. If the policy is successful implemented, the rise in domestic incomes should theoretically encourage more imports of complementary and subsequently competitive goods. The foreign trade multiplier simply indicates that a fall in import propensities can increase domestic demand and stimulate domestic output.

The question is, does our local manufacturing industry have that capacity at the moment to sustain demand supply of good at the required quality? Put crudely, in terms of domestic product competitiveness, do we really have an industry yet to want to protect at the moment?[7] Again, we are not suggesting that there is no manufacturing industry in Africa. We are simply stating that Protectionism works better when there is an industry to protect. The greater issue is the capacity of the industries currently in existence to warrant the use of protectionist policies.

To fill that gap, there would always be an influx of cheap imports until a certain level of import substitution has been reached in the domestic market and economy. It is when that

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[6] On the other hand, since protectionism acts solely on imports it has been argued that protection cannot promote export-led growth.

[7] Take the Nigerian Local Content Act for the oil and gas industry, which is obviously a protectionist measure. There exist a thriving oil and gas sector in Nigeria; however the foreign participants needed to be "forced" to partner with indigenous participants and service providers so as to encourage a transfer of technology, and build on local participation which was the purpose of the Act.

level of import substitution has been reached that protectionism can achieve the intended purpose.

The intended purpose of increased domestic competitiveness as a result of the effect of tariffs that make domestic products more price competitive is relative to the foreign products in the home market.

This gives rise to a process of import substitution in domestic production and consumption. As a result, domestic production would be expected to be at levels that would be able to meet the domestic consumption demand. Protectionism in this way, also creates jobs for domestic workers (even though this may be on a temporary basis). The protection of tariffs, quotas or subsidies allows domestic companies to hire locally.

This benefit ends once other countries retaliate by erecting their own protectionism!

Arguments against Protectionism

In the long term, trade protectionism weakens the industry. Without competition, companies within the industry have no need to innovate. There's no need to. Eventually, the domestic product will decline in quality. It will be of lower quality and more expensive than what foreign competitors produce.

Again, in the long run protectionism is counter balancing to the spirit of free trade, comparative advantage, economic growth and globalisation. Protectionism is frequently criticised as harming the people it is meant to help, in favour of free trade. Free trade thrives on the economic principle of comparative advantage, and shows that the gains from free trade outweigh any losses as free trade creates more jobs than it destroys because it allows countries to specialise in the production of goods and services in which they have a comparative advantage. Protectionism results in deadweight loss; that is, loss to overall welfare and it gives no-one any benefit, unlike in a free market, where there is no such total loss.

Protectionism can be an ineffective and costly means of increasing and sustaining jobs. Tariffs create a deadweight loss of consumer and producer surplus. Welfare is reduced through higher prices and restricted consumer choice. The welfare effects of a quota are similar to those of a tariff – prices rise because an artificial scarcity of a product is created. For goods that are produced globally, high tariffs and other barriers on imports act as a tax on exports, damaging economies, and jobs, rather than protecting them. Higher prices from tariffs hit those on lower incomes hardest, because the tariffs (e.g. on foodstuffs, tobacco, and clothing) fall on products that lower income families spend a higher share of their income. Firms that are protected from competition have little incentive to reduce their production costs. This can lead to inefficiency and higher average costs.

There is also the danger that one country imposing import controls will lead to retaliatory action by another leading to a decrease in the volume of world trade. Retaliatory actions increase the costs of importing new technologies affecting other sectors of the economy.

When it comes to the Free Trade versus Protectionism debate, arguments for protectionism usually outline what is fair and not what is right. However, it is not about what is fair, it's about which policies make the economy better or worse. Competition is better for the economy. If a business or country cannot compete against a foreign competitor in an industry, then maybe it shouldn't be in the business of providing those products.

Present Legal and Economic Reality with Protectionist Policies

We consider here the present state of protectionist policies in African states.

We are witnessing an increased level of activities in the area of resources extraction by African states. The most recent trend is the use of Local Content Policies to increase local participation in the extractive sector. This is a form of protectionist policies that reduce the level of foreign control and increase local participation in the industry. Although this is new in Africa, it started in other parts of the world that discovered their resource status before we did.

After World War II, countries tried to diversify their productive sector through various policies. The reasons behind this trend were diverse. In Latin America, for example, many were concerned that the region had specialized in natural resources. In 1950 Raul Prebisch argued that resource-based Latin American countries should diversify their economies, lest they develop at a slow pace due to the decrease in relative commodity prices over time. In the case of Asian countries, the argument was slightly different: the idea was that they had the comparative advantage to develop labour-intensive sectors that also had a relatively high level of education.

This period witnessed a rise in protectionism and the use of a very complex system of policies—including Local Content Policies (“LCPs”) —aimed at fostering the development of the productive sector. For example, the licensing of technology by foreign firms to local suppliers was critical to the development of Asian countries’ productive sectors. In 1944 República Bolivariana de Venezuela passed a hydrocarbons law that forced oil companies to refine oil in República Bolivariana de Venezuela.

In Brazil in 1953 President Vargas proclaimed that Petrobras, the national oil company, should use only Brazilian capital, workers, and know-how. Developed economies were not immune to LCPs. For example, Nordas, Vatne, and Heum (2003) argue that even if *"Norway did not have specific requirements as to the share of local content … the oil companies never doubted that the Norwegian government and politicians appreciate the choice of local firms to supply the oil and gas activities with goods and services, and were pretty sure that this would be honored in negotiations for future licenses. Thus, during the late 1970s and early 1980s local firms probably were chosen even if they were not the most cost effective."* Heum (2008), explained that Norway had not implemented its strategy any differently from the way other countries have implemented it, however, the success of Norway's local content policy model is as a result of its strategy to build local content through industrial competencies and capabilities that could enable domestic companies compete internationally. This is an important point to note.[8]

He however conceded that the country may have benefitted from being a developed and industrial country before the production of oil and gas started (Ihua, 2009; Heum, 2008). The Norwegians did this by staying dedicated to their basic objective of enhancing local knowledge and gradually transferring technological know-how to competitive levels (Heum, 2008). Instead of rapidly developing its resources by attracting foreign expertise like the UK had done, they chose to develop the sector more slowly to allow their service sector to develop.

Ghana and the Protection of its Resource Sector

Africa has come around to this and has started applying LCPs. In July 2013, Ghana's Minister of Energy, Hon Emmanuel Armah-Kofi Buah, laid the Petroleum (Local Content And Local Participation In Petroleum Activities) Regulations, 2013 (LI 2204) before Parliament for legislation, after being approved by cabinet on 6th June 2013 (Ministry of Energy, 2013).The regulations were passed into law in November 2013, and became effective after a three month period in February 2014. According to the Ministry of Energy, the policy is "the most reliable instrument to advance the stake of the people of the nation in the Oil and Gas industry in a sustainable manner" which set 90% "full local participation" by 10 years in oil and gas value chain. This milestone has obviously not been achieved, and the cumulative production of oil in Ghana has not improved base on any quota that can be attributable to

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[8]Wells, J., & Hawkins, J. (2008).Increasing Local Content in the Procurement of Infrastructure Projects in Low Income Countries.Institution of Civil Engineers.

the local content policies of Ghana. This level of protectionist policy in a green sector of the economy will not lead to the desired result of increased production.

There is however a seeming misalignment and disconnect between the instrument and its intended outcomes. Looking at the current context and situation of the Ghanaian industry, it will be almost impossible and impractical to achieve the levels of local content desired in the timeframes specified. This is a result of the fact that local companies are not strategically positioned to take up the numerous opportunities abound in the oil and gas industry. They lack the financial and technical know-how and skills to undertake complex projects. Striving to stay in line with local content requirements may be costly for IOCs. Findings on the monitoring and evaluation strategies and methodology are not clear or entirely in place, and have not been duly communicated to major stakeholders. Also, there is a lack of proper communication between the Petroleum Commission and various stakeholders and this may affect how successfully the legislation is implemented. The main conclusion reached from findings and literature is that nature and content of the strategy chosen to implement local content may greatly hinder the success of the legislation, and there is a lot more that can be done to facilitate implementation.[9]

Nigerian Local Content Legal Position

In 2010 Nigeria set up its own oil and gas LCP.[10] The question of whether they have contributed positively or negatively to the policy goal of "increasing the international competitiveness of domestic businesses" is still too early to tell, however there are a few pointers which will guide us to an answer.

The local content policy objective and the overall obligation imposed in respect of transactions within the Oil and Gas industry are set out in Section 3 of the Act. Section 3 states as follows:

> 3. (1) Nigerian independent operators shall be given first consideration in the award of oil blocks, oil field licenses, oil lifting licenses and all projects for which contract is to be awarded in the Nigerian oil and gas industry subject to the fulfillment of such conditions as may be specified by the Minister. www.akindelano.com;
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> (2) There shall be exclusive consideration to Nigerian Indigenous service companies which demonstrate ownership of equipment, Nigerian personnel and capacity to

[9]Sachs, J. D., & Warner, A. M. (1997).Natural Resource Abundance and Economic Growth.Harvard University. Cambridge: Center for International Development and Harvard Institute for International Development.
[10] Nigerian Oil And Gas Industry Content Development Act, 2010

execute such work to bid on land and swamp operating areas of the Nigerian oil and gas industry for contracts and services contained in the schedule to this Act.

(3) Compliance with the provisions of this Act and promotion of Nigerian content development shall be a major criterion for award of licenses, permits and any other interest in bidding for oil exploration, production, transportation and development or any other operations in Nigerian oil and gas industry.

There is no doubt that the Nigerian Oil and Gas Industry Content Development Act (the "Act") and its various guidelines offer great opportunities to Nigerian businesses in this sector.[11] However there are consequences that have not been considered. The purpose for Nigeria was to empower the indigenous oil and gas industry and give them an international competitive edge. There are no easy overnight solutions and this is an international industry that has existed for hundreds of years. Even the Nigerian National Petroleum Corporation that was supposed to grant Nigeria a substantial control of the petroleum industry and ensure a certain level of transfer of technical knowledge has so far, been a failure. After all these years the NNPC can't stand on its own without financial assistance and it isn't exactly clear how it has added to the Nigerian economy. Therefore the reliance of the government on this policy will take longer to fulfill the original purpose due to the lack of industrial/technical knowledge in the indigenous sector.

On the other hand, some people are of the mistaken impression that international oil companies are against local content development. To a certain extent this is not true. The ability to get qualified partners and contractors locally thereby reducing the cost of contracting with foreign parties is a very attractive consideration. But when these companies consider the expertise of local contractors, they are discouraged. The knowledge gap is still very significant and these local companies do not exactly have the reputation for being technically advanced.

The local content policy action started in 1971 through the establishment of the Nigerian National Oil Corporation, (NOC). NOC was established as a vehicle for the promotion of Nigeria's indigenization policy in the petroleum sector. It later became Nigerian National Petroleum Corporation (NNPC) in 1977 through NOC's merger with the petroleum ministry. NNPC flagged off the actual local content initiative through acquisition of interests in the

[11] Adefulu, A. (2008). Nigerian/Local Content Policy. Lagos: Odujinrin & Adefulu

operations of the IOCs. These interests grew to about 70%, with the responsibility of controlling all acreages and other activities.[12]

Conscious efforts were made in the past through Regulation 26 of the 1969 Petroleum Act. However, enforcement of local content policy, the springboard for sustainable economic transformation of Nigeria, was mere paper work. For an industry that contributes 80% of Nigerian government revenues and 95% of its foreign exchange this is entirely unacceptable to the Nigerian government hence the clamor for change. The effect of the Act on the industry is more specific and its enforcement is more stringent in comparison with the past efforts to encourage local content.

Although there is reference in Section 3(1) and 3(2) of the Act to Nigerian Independent Contractors and Nigerian Indigenous Service Companies, the overall focus of the Act does not appear to be on the ownership structure (whether foreign or Nigerian) of the companies or operators participating in the Oil and Gas Industry. Having said that, the contents of Section 3(1) and (2) cannot be ignored. The Act does not define 'Nigerian independent operators' and does not define 'Nigerian Indigenous service companies' both of which are used in the Section.

Section 106 of the Act defines Nigerian Company as:

> "A company formed and registered in Nigeria in accordance with the provisions of the Companies and Allied Matters Act with not less than 51% equity shares by Nigerians."

On the reasonable assumption that 'Nigerian independent operators' and 'Nigerian Indigenous service companies' will be interpreted in a manner consistent with the definition of Nigerian Company, then it is clear that there is some premium to be gained from being a Nigerian company for the purposes of the two sections.

Aside from the general policy statement contained in Section 3 of the Act, the main provision which impacts on the ownership structure of local companies is Section 41(2) which states that:

> "International or multinational companies working through their Nigerian subsidiaries shall demonstrate that a minimum of 50% of the equipment deployed for execution of work are owned by Nigerian subsidiaries"

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[12]Kazzazi, A., &Nouri, B. (2012).A Conceptual Model for Local Content Development in the Petroleum Industry. Management Science Letters, 2165-2174.

This section is crucial for the success of the technology transfers initiative of the Act. It is the duty of the Minister (presumably acting through the Board) to set targets on the number and type of such joint ventures and alliances to be achieved by the operator for each project.

A provision of the Act which has received some attention in the industry is section 41(2). The section (though it does not say so) is apparently aimed at International or Multinational "Services" companies (MSC) and requires them to show that 50% of equipment to be applied to a project are in fact owned by their Nigerian subsidiaries who will ostensibly carry out the project.

The aim of this provision seems to be to stop MSCs from setting up paper-Nigerian companies/fronts (with no assets) solely for the purpose of winning local projects, executing the project and repatriating the profits to their home countries with very little benefit to Nigeria. While the objective is laudable, it is unlikely that this provision will meet the mischief which it seeks to address. In the first instance, if the subsidiary companies is 100% owned by the MSC, then transfers of assets back and forth between sister companies is easily done for no consideration. Secondly a large proportion of equipment used by the MSC do not belong to them, because of the high cost, the equipment are on hire or lease etc and as such cannot be transferred.[13]

The basis behind all this is that to perform activities in this sector, there is need to include Nigeria participation. An operator, contractor or sub-contractor who carries out any project contrary to the provisions of this Act, commits an offence and is liable upon conviction to a fine of five per cent of the project sum for each project in which the offence is committed or cancellation of the project.

However, imposing local content requirement on international oil companies creates the assumption that there is technical capability to be hired from the local workforce. However this is not the case. Therefore there need for training programmes. This is being done by the Nigerian Content Development Board. The obvious follow-up question is how much this has bridged the knowledge gap, and the answer will be "not so much"

[13]Jenifer Emefa J, Stephen E Armah, Assessing the Effectiveness of Ghana's Local Content Policy in the Oil and Gas Industry, Journal of Energy and Economic Development, 1(1), 22-61, August 2015 22

The resultant effect is allowing substandard technology and knowhow all in the name of encouraging the local workforce. This has led to increased local content, but has not translated to an increase in the cumulative production of oil and gas.

Studies of local content implementation in Norway indicate that they took a more gradual approach to developing local content. They did not impose local content requirements on companies, when they knew that their capabilities for competitiveness were not developed. Mandating foreign companies to mentor local ones ensured knowledge and technological know-how was transferred to the Norwegian firms. It was only after that did they institute mandatory levels of local content. Nigeria, on the other hand, formalized their local content aspirations a long time after oil production began. By not ensuring that knowledge and knowhow were passed to local companies, when they did eventually set-up requirements, the local firms were still not competitive enough, despite being in the industry for a while. In the beginning, the regulations required very ambitious and vague targets for local content and this did more harm than good. It was only until 2010 when they decided to adopt the Norwegian model did they start to see improvements in their industry. This also suited them because by this time, the Nigerian oil industry had matured and could work with the targets set.

Cabotage Regime in Nigeria

The Coastal and Inland Shipping (Cabotage) Act 2003 has parallel protectionist tendencies as the Oil and Gas content Act of 2010. They both have a shared objectives of increasing Nigerian equity, equipment ownership and participation in the oil and gas sector (the Local Content Act) and in the coastal trade and shipping sector (the Cabotage Act) respectively; and they prescribe an aggressive blueprints for boosting emerging local technical capacity within ambitious timeframes.

The resulting challenges, while different under both regimes, highlight the pressing need to re-evaluate the current approaches to implementing them. Holistic options that focus realistically on closing the continuing in-country capacity gap and developing structures that will address the immediate funding challenges faced by indigenous participants in both sectors should also be prioritised.

Cabotage in Nigeria is regulated mainly by the Cabotage Act and the accompanying guidelines. This act defines 'cabotage' or 'coastal trade' as including the carriage of goods by vessel, or by any other mode of transport (excluding pipelines), from one place in Nigeria or above Nigerian waters to any other place in Nigeria, either directly or via a place outside Nigeria, and includes the carriage of goods in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources of Nigeria, whether in or under Nigerian waters. This cabotage regime is regulated and enforced by various government agencies, which include the Nigerian Maritime Administration and Safety Agency (NIMASA) and the Nigerian Content Development and Monitoring Board (NCDMB), which was established under the Local Content Act for the oil and gas sector.

Only vessels that are wholly owned and crewed by Nigerian citizens, built and registered in Nigeria and flying the Nigerian flag may engage in coastal trade in Nigeria. Only vessels, tugs or barges whose beneficial ownership resides wholly with Nigerian citizens may engage in the carriage of materials or supply of services to and from oil rigs, platforms and installations, or the carriage of petroleum products between oil rigs, platforms and installations.

Foreign-owned vessels are therefore restricted to the extent that they may engage in coastal trade in Nigeria by the Cabotage Act. However, the act advocates a "liberal" cabotage policy through the use of a ministerial waiver system similar to that prescribed by the Local Content Act, although the latter restricts instances of recourse to and the duration of the waiver. The system appears to be thriving, given the dearth of Nigerian-owned, crewed or built vessels. The nationality requirement may be waived where the non-availability criterion is satisfied, meaning that a foreign-owned vessel may engage in cabotage in Nigeria provided that it procures the necessary licences and waivers from the Nigerian minister of transport.

Given the dearth of local capacity, the waiver regime has, unsurprisingly, been over utilised by foreign vessel owners to such an extent that it has raised important issues about abuse, causing critics and indigenous shipowners to allege that lax implementation is hampering the effectiveness of the regime's protectionist objectives. In particular, they contend that there has been an indiscriminate grant of unconditional waivers in certain instances, leading to a need to review the regime's implementation over the last decade.

Authorities are expressly required to carry out checks to confirm whether there is non availability or inadequate in-country capacity before granting either a licence or a waiver to any foreign-owned vessel. However, in practice – and notwithstanding that the Cabotage Act and guidelines expressly confer on the minister the power to grant both licences and waivers subject to regulatory checks – it is not unusual for foreign-owned vessels to engage in cabotage merely after applying for a licence or waiver to NIMASA, paying the prescribed fees and ensuring that receipts of such payments are carried onboard the relevant vessels.

However, it is important to examine whether the current challenges to the cabotage regime arise from laxity – which should be easy to rectify – or whether they are more fundamental. In response to allegations of discrimination against indigenous ship-owners in the award of contracts, international oil companies (IOCs) operating in Nigeria argue that vessels owned or offered by most indigenous shipowners do not meet the technical and structural specifications required for specific projects, with a number being obsolete in design. Several factors contribute to this. One great challenge is the inadequacy of financing options currently available to local shipowners. Offshore disasters such as the Macondo incident in the Gulf of Mexico in 2010 appear to support operators' preference for newer and more technologically advanced vessels, with a view to reducing accident risks, particularly in deep offshore areas. The directive of the International Maritime Organisation prescribing the use of double-hulled oil tanker vessels, which are less susceptible to rupturing and spilling, may also contribute to heightened safety concerns that are having an impact on IOC contract awards.

The current waiver regime highlights the need for well-articulated and coordinated steps to address the existing financing and capacity deficiencies as the Nigerian cabotage regime enters its second decade.

Protectionist Policies in the Cement Industry

Another industry that has been affected by protectionist policies across the African continent is the cement industry. Import bans in Nigeria and Ethiopia have provided a boost for domestic cement firms which are expanding in Africa. The cement industry in Nigeria is an example of the application of protectionist policies without a clear appreciation of the consequences on the industry. As a result, an import restriction on cement has led to Nigeria having the highest prices of cement in the world. Obviously, the local cement manufacturers have profited immeasurably from this ban, however consumers have ended up with higher rent and property prices and poverty has predictably increased.

Impact

The impact of such policies on consumers in general and the poor in particular are self-evident. If the sector cannot support itself, the cost of production would be higher, and these costs would be passed down to the consumers.

Tariffs, and other protectionist policies, not only raise the prices of imported goods, but raise the prices of the substitute domestic goods as well. Consumers of those goods then have to spend a larger share of their income than they would have before the tariff. A tariff on imported rice for instance also raises the price of locally produced rice. Higher prices for domestic rice means everyone, including the poor, have to spend more on the same amount of rice.

To understand how this might increase the level of poverty it is useful to simplify things to a very simple world where everybody eats only rice. Assuming before the tariff on rice, people who earned N10, 000 a month could buy just enough rice to not be classified as poor. An increase in the price of rice implies that the people on the margin would most likely be pushed into poverty because the same N10, 000 would not be able to buy enough rice to not be classified as poor. In essence all the people who were doing just ok before the tariffs would fall into poverty because of the price increases after the tariffs.

Of course higher rice prices mean those who produce rice would be better off but at the same time those who consume rice would be worse. This is true for protectionist policies in general. A tariff or import ban on a particular good means those who locally produce (or are involved in the production of) that good would be better off but everybody else who consumes that good would be worse off - everybody including the poor and those on the fringes of poverty. The net effect on the whole is negative in a lot of cases. More people are made worse off than those made better off.

A 2001 study of maize prices in Kenya[14]for instance showed that to be the case. The Kenyan government's effort to "support" farmers through import tariffs resulted in only about 10% of maize farmers enjoying the benefits. Of the farmers surveyed, 54% were actually net buyers of maize implying higher maize prices actually made them worse off than before. This survey was only among farmers not among non-farmers who also presumably paid higher prices for maize as well. In essence the tariff on maize only ended up benefitting the 10 % of farmers who were net sellers of maize. The maize import tariff acted as a "tax on the rural poor".

Another study from Indonesia[15] shows the same scenario. In 2004 rice imports were banned to "assist poor farmers". The study showed that the rice import ban raised the domestic price of rice to the equivalent of a 125% tariff, led to decline in unskilled wages and

[14]Jayne, Thomas S., Yamano, Takashi, Nyoro, James K., Awuor, Tom (2000). Do Farmers Really Benefit from High Food Prices? Balancing Rural Interests in Kenya's Maize Pricing and Marketing Policy. Food Security Collaborative Policy Briefs with number 54641

[15]Peter Warr (2005). Food policy and poverty in Indonesia: a general equilibrium analysis. The Australian Journal of Agricultural and Resource Economics, 49, 429–45

increased poverty in rural rice farming areas by 1%. As was the case in Kenya, only the richest farmers gained.

Another extreme example, not based on any study, is the cement industry in Nigeria. Where an import ban on cement has resulted in Nigeria having the highest prices of cement in the world. Of course the local cement manufacturers have profited immensely from the ban but everybody else has ended up with higher rent and property prices and poverty has unsurprisingly increased.

Conclusion

In conclusion, it is our hope that whatever protectionist policy that is being proposed or applied around the continent would be a temporary measure to give local manufacturing industry some breathing space and sigh of relief. Otherwise if we really want to see our economy growing, we should be freeing our local market more to potential outside investors as well. The moral of the story; protectionist policies have side effects and in some cases the negative side effects are larger than the alleged positive effect of these policies. Indeed, it should be borne in mind that protectionism can only make commercial sense if a country has reached its production peak and is self-reliant in many respects. The African continent, though endowed with natural resources, does not have the requisite manpower to exploit the underlying resources, and must therefore import manpower. Given the lack of sufficient (local) manpower, any local content legislation or policy can only stand one-legged. Instead, the continent should strive to welcome foreign expertise with the hope of ensuring skills transfer. In the last analysis, this discourse cannot be extricated from the provision of quality education to Africans as that is the only way to achieve self-reliance in the long run. It makes little sense, and indeed, a superficial undertaking, if policies on protectionism are vigorously pursued without a foundational education that can produce and sustain the requisite skills out of local population. Such superficial policies end up to be a harvest of dead leaves.

A discussion on protectionism should expect a reprisal question from the concept of globalization. Nowadays, no country can afford to put a fence around its economy, and one of the lessons from the 2008 financial crisis, is that, the speed with which problems diffuse to countries of non-origin is overwhelming. This is worse, especially if the necessary skills needed to protect the local economy from harm is lacking. Thus, if we are import dependent, it is by that very circumstance questionable, whether we can afford to be protectionists, because, part of the consequence of receiving all manner of things, is the risk of side effects – benefits and burden go hand in hand. Yet, without being protectionist, we will lose in the long run, because, we will end up incapacitating our local production structures. The answer may then lie in sandwich that is, being strategic with our enjoyment of foreign expertise by ensuring that there’s skills-transfer whenever we employ foreign labour. This no doubt means the appropriate positioning of local labour force and engaging them in the scheme of things.