THINGS FALL APART WITHOUT ROADS! HOW FAIR TAXATION LAWS PAVE ROADS AND BUILD ECONOMIC INFRASTRUCTURE IN DEVELOPING COUNTRIES†

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ABSTRACT

Without self-sustaining commerce, developing countries cannot move towards the recognition of basic human rights and twenty-first century living standards. The purpose of this article is to explore the legal and economic theories of taxation and tariffs applied to the elements of civic infrastructure: a robust physical transportation system and an economic structure. This article advocates for conforming trade union policy towards an efficiency hypothesis method dubbed "tax minimalism theory" that espouses tax theory norms: fairness, efficiency, and simplicity of administration. Applying this theory, this paper will critique newly implemented tariff laws in West Africa by the Economic Community of West African States for its adverse effects on the transportation sector and laissez-faire trade liberalization in Ghana and Nigeria.

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† This title is an homage to the renowned African novel on postcolonialism. CHINUA ACHEBE, THINGS FALL APART (1958).

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INTRODUCTION

> We have brought a peaceful administration to you and your people so that you may be happy. If any man ill-treats you[,] we shall come to your rescue. But we will not allow you to ill-treat others. We have a court of law where we judge cases and administer justice just as it is done in my own country under a great queen.[1]

Human rights mean nothing to a nation without economic structure to promulgate human dignity and prosperity.[2] Without access to basic provisions, such as food,[3] water, and comfortable shelter, people do not engage in economic cooperation and civic discourse.[4]

To move society towards the recognition of basic human rights by closing the gap in income disparity, there are several necessary elements to foster a twenty-first century economy in the developing world.[5] The purpose of this Note is to explore what each of these elements are and how to apply them. Part I states that infrastructure is the foundation to advancing economic development in two-fold design: (1) a robust physical transportation system and (2) an economic structure in trade union policy. Part II advocates for a fair taxation system in cross-border commerce and legal codes promoting diverse business and capital generation to ensure the sustainability of infrastructure to bridge the commercial gap between cities and rural regions. Also, there must be a method to ensure enforcement of an economic infrastructure by managing foreign capital to a high degree of professionalism and honesty. Lastly, Part III applies the

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1 CHINUA ACHEBE, THE AFRICAN TRILOGY: THINGS FALL APART, NO LONGER AT EASE, AND ARROW OF GOD 136 (2010).

2 William Armbruster, *Africa Road Less Travelled*, THE JOURNAL OF COMMERCE, (Mar. 15, 2010), http://www.joc.com/regulation-policy/africa%E2%80%99s-road-less-travelled_
20100315.html (explaining that experts point to the first economic challenge to Africa, which is infrastructure); Glen T. Martin, *Freedom, Economic Prosperity, and the Earth Constitution,* RADFORD UNIV. (Dec. 2010), http://www.radford.edu/gmartin/Freedom. Economics.CFE.Nov.10.htm.

3 Faajir Avanenge, *Effects of Market Infrastructure and Poor Access to Markets on Marketing of Grains in Selected States of Northern Nigeria, West Africa*, 9 J. BUS. & RETAIL MGMT. RES. 110, 116–17 (2015) (concluding that there is a significant relationship existing between poor access to markets and marketing of grains in the states north of Nigeria).

4 Armbruster, *supra* note 2 ("Port congestion and poor roads hamper the development of agriculture," the sector with the greatest potential for Africa's economic development, because the continent has the potential to not just feed itself, but to export.); Wangari Maathai, *Bottlenecks to Development in Africa,* GREEN BELT MOVEMENT (Aug. 30, 1995), http://www.greenbeltmovement.org/wangari-maathai/key-speeches-and-articles/bottleknecks-to-development-in-africa.

5 G.A. Res. 41/128, annex, art. 8, Declaration on the Right to Development (Dec. 4, 1986).

new paradigm of tax minimalism theory as an efficiency hypothesis to foster economic infrastructure that shapes trust in public institutions, national identity, and base development. In short, this Note will critique the Common External Tariff (CET), newly implemented by the Economic Community of West African States (ECOWAS), and its adverse effects on trade liberalization compounded with Value-Added Taxes (VAT), and further excise taxes in Ghana and Nigeria. The compounded levies continue to promulgate restrictive trade policies on food, consumer products, and particularly specific goods for economic development crucial to transportation infrastructure. The solution posited is lowering import tariffs and code reformation to incentivize foreign investment in West African countries through an innovative methodology dubbed "tax minimalism theory." This theory is inspired from aesthetic design principles from a broad range of artistic professions to conform to the policies espoused by tax theorists: fairness, efficiency, and simplicity of administration.

I. GENERATING THE IDEA OF SUSTAINABLE INFRASTRUCTURE

Experts are universally in agreement that the foundation in solving economic challenges in the developing world begins with infrastructure.[6] However, without the means to sustain a robust network of ports, roads, communications, and power generation, a nation will only survive in the modern world for a brief season.[7] With the absence of a proper central government authority, a local population can only expect more social destabilization and a lack of their most basic human rights to development.[8]

Likewise, the same sustainability problems plague developed countries and their transportation infrastructure systems, as in the case of the United States for example.[9] Studies have shown that the United States has serious infrastructure problems[10] because of a lack of transport network maintenance and new infrastructure projects to streamline commerce and transportation. The same infrastructure sustainability problems can be said for much of the developed world, which sorely needs

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6 Armbruster, *supra* note 2.

7 *Id.*

8 U.S. INST. OF PEACE, GOVERNANCE, CORRUPTION, AND CONFLICT, 1, 9, 13, (2016), http://www.usip.org/sites/default/files/ETC-D/NPEC/480021.PDF.

9 Ambe J. Njoh, *Impact of Transportation Infrastructure on Development in East Africa and the Indian Ocean Region*, 138 J. URB. PLAN. DEV. 1, 1–3 (2012).

10 AARON M. RENN, BEYOND REPAIR? AMERICA'S INFRASTRUCTURE CRISIS IS LOCAL, 41 MANHATTAN INST. FOR POLICY RES. ISSUE BRIEF 1–2, 5 (2015) (noting that the major problems are at the local level without federal funding and suggesting that new and regular projects are passed over by cheaper and underfunded methods, which increases the cost of maintenance over time).

external investment to fund critical transportation needs.[11] Before investment opportunities in infrastructure development can commence on the African continent, there is a need for liberalized trade laws to foster the self-replenishing cycle of a transport system.[12] But to create the cycle, raw infrastructure materials and assembled machinery must be imported from the developed world in the most efficient and cost-effective manner.[13]

A. Economic Structure to Promulgate Trade and Development

Countries have experimented, yet have not solved the problem of economic infrastructure through the application of general trickle-down economic principles rather than tailoring laws to the natural needs of its population.[14] For example, trade unions in Africa, amongst other developing world nations, applied the classical integration model associated with Jacob Viner with the goal of mirroring the European model of development as a result of European colonialization.[15] However, the Vinerian model was developed for the industrial context of Europe,[16] which when implemented in Africa fails to take into account the agrarian and raw material economies of the local countries under regional trade unions.[17] This created a lack of complementary trade in a majority of African countries because of their largely similar products available for

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[11] Rabah Arezki, Patrick Bolton, Sanjay Peters, Frederic Samama, and Joseph Stiglitz, *From Global Savings Glut to Financing Infrastructure: The Advent of Investment Platforms,* IMF WORKING PAPER (Feb. 2016), https://www.imf.org/external/pubs/ft/wp/2016/wp1618.pdf.

[12] Kelly Mua Kingsley, *Infrastructure Development in Fragile Economies Will Foster Better African Integration,* AFRICA POL. J. 1, 3 (Apr. 25, 2016), https://apj.fas.harvard.edu/infrastructure-development-in-fragile-economies-will-foster-better-african-integration/.

[13] Armbruster, *supra* note 2.

[14] Era Dabla-Norris, Kalpana Kochhar, Nujin Suphaphiphat, Frantisek Ricka, and Evridiki Tsounta, *Causes and Consequences of Income Inequality: A Global Perspective,* INTERNATIONAL MONETARY FUND (June 2015), https://www.imf.org/external/pubs/ft/sdn/2015/sdn1513.pdf; Alanna Petroff, *The 'Trickle Down Theory' Is Dead Wrong,* CNN (June 15, 2015), http://money.cnn.com/2015/06/15/news/economy/trickle-down-theory-wrong-imf/.

[15] *See* James Thuo Gathii, *African Regional Trade Agreements as Flexible Legal Regimes*, 35 N.C. J. INT'L L. & COM. REG. 572, 589–80 (2010) (stating that African RTAs differ from classic European market-based custom union models, although implying that the Vinerian model was still adopted to some degree).

[16] *Id.*

[17] C.A. Cooper & B.F. Massell, *Toward a General Theory of Customs Unions for Developing Countries*, 73 J. POL. ECON. 461, 461 (1965). *See generally* Robert Loring Allen, *Integration in Less Developed Areas*, 14 KYKLOS 315 (1961) (discussing economic unions in Africa); R.F. MIKESELL, *The Movement Towards Regional Trading Groups in Latin America, in* LATIN AMERICAN ISSUES: ESSAYS AND COMMENTS, THE TWENTIETH CENTURY FUND (A.O. Hirschman ed., 1961); R.F. Mikesell, *The Theory of Common Markets as Applied to Regional Arrangements Among Developing Countries, in* INTERNATIONAL TRADE THEORY IN A DEVELOPING WORLD 205 (Roy Harrod & Douglas Hague eds., 1963) (criticizing the Jacob Viner trade integration model).

market.[18] The importation of a "non-organic" trade law structure did not cater to the needs of local industries and caused stagnation of African economies[19] by fostering a slanted trading scheme solely with developed countries, rather than in a balanced export/import scheme.[20]

Neither are local lawmakers immune from the problems faced by outsourced exports. One such balance oversight is embedded in the newly developed CET[21] by the Economic Community of West African States (ECOWAS), which when applied, closes off African economies to the developed world for goods crucial for infrastructure development through the law's Class 5 tariffs.[22] Since the law only recently took effect, the economic ramifications of certain provisions within the CET have not yet been felt by the international trade community.[23] This Note intends to demonstrate that on one extreme is the outsourced law that ignores local customs and on the other extreme is the locally crafted law, even within a supra-national entity, which results in the exclusion of foreign capital.[24] The solution is the balanced use of external consultation and local input brought together in coordination to craft laws that foster international trade without ignoring the world's most readily available resource in human capital and individual regional development situations through Free Trade Agreements (FTAs).

B. The Transportation System as the Physical Foundation of Civilization

Although economic structure underlies trade and development, roads, airports, and harbors constitute the physical foundation of civilization. However, public infrastructure has the natural propensity to become a public monopoly industry because of resource scarcity and

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[18] *See* Food and Agriculture Organization of the United Nations, *Trade Reforms and Food Security: Conceptualizing the Linkages* 43 (2003).

[19] Gathii, *supra* note 15.

[20] United States International Trade Commission, *Sub-Saharan Africa: Factors Affecting Trade Patterns of Selected Industries,* 3-50, 4-27, 4-29 (Apr. 2008).

[21] QUENTIN DE ROQUEFEUIL ET AL., THE IMPACT OF CLOSER REGIONAL ECONOMIC INTEGRATION ON FOOD SECURITY IN WEST AFRICA, EUROPEAN CENTRE FOR DEVELOPMENT POLICY MANAGEMENT 13 (Jan. 2014).

[22] Keith Hart, *West African Political Economy: A Regional History,* THE MEMORY BANK (July 31, 2013), http://thememorybank.co.uk/2013/07/31/west-african-political-economy-a-regional-history/; ECOWAS, *ECOWAS Common External Tariff (CET)*, http://www.aidfortrade.ecowas.int/programmes/ecowas-common-external-tariff-cet.

[23] ROQUEFEUIL, *supra* note 21.

[24] *Infra* Part II.A.

hardship in acquiring funding.[25] To solve the monopoly problem, the government should incentivize citizens to personally invest in the construction of national infrastructure by offering publically owned "stock" in this infrastructure as a method to incentivize national unity.[26] In contrast, an example of how to rally a nation into unity is with the United States interstate highway system after World War II, although it was federally funded.[27] Because the economy of the United States was already developed, the federal government used the highway system as a means to resuscitate the American economy and provide jobs in an economic crisis.[28]

However, the obvious problem in the developing world is that most people do not have enough money to invest in their own means of transportation to take advantage of a new highway system, nor is the African economy developed.[29] Instead, locals without means must utilize public transportation, such as bus routes and rail to gain personal assets.[30]

In colonial Africa, rail transportation was considered a tool of resource exploitation, military defense, and an instrument of occupation.[31] The practical alternative is through public transportation supported by a highway system, which realizes social mobility and a direction of positive change for the quality of goods in the bidirectional stream of commerce to and from the developing world.[32]

II. CROSS-BORDER TAXATION THROUGH THE COMMON EXTERNAL TARIFF AND INTERNATIONAL TAX COORDINATION

Trade in Africa inside Regional Trade Agreement (RTA) blocs is often compared to the European Union and other regional economic

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[25] Edward M. Gramlich, *Infrastructure Investment: A Review Essay*, 32 J. ECON. LITERATURE 1176, 1177 (1994) (discussing the meaning of infrastructure capital and its relation to large capital intensive natural monopolies which include highways and other transportation facilities). *See generally* Njoh, *supra* note 9 (stating that due to the public infrastructure being large capital intensive projects, they are natural public monopolies).

[26] Njoh, *supra* note 9, at 1.

[27] *Id.* at 2 (noting that major investment into the United States interstate highway system exemplifies the trend that the developed world used major infrastructure projects in order to resuscitate the economy in times of economic crisis).

[28] *Id.*

[29] *See id.* at 3 (noting a cautionary caveat that developing countries risk overinvestment into infrastructure improvements rather than diversifying and specializing their own economies). The developing countries themselves simply don't have the capital to internally invest in their own infrastructure, hence the cycle of non-development. What these developing countries must do instead is seek capital from developed countries (i.e. China).

[30] *See id.* at 154–55.

[31] *Id.* at 150.

[32] *Id.* at 158–59; Armbruster, *supra* note 2.

supranational organizations, such as the North American Free Trade Agreement (NAFTA) because of similar goals towards policy harmonization and legal coordination.[33] Two of the major hurdles of African RTAs are implicit in their design as flexible regimes[34] and multiple overlapping bilateral trade agreements between member nations and external countries that supersede trade union regulations.[35] Thus, the enforceability and rationality of new laws could be called into question,[36] such as the criticism surrounding the recently implemented CET regime in fifteen West African countries.[37]

A. The Context of the ECOWAS Union and Its Effect on International Tariffs

The concept of the ECOWAS trade union originated with Liberian President William Tubman in 1964, but only was realized in 1973 when Nigeria and Togo solicited the trade union to their neighboring countries.[38] The trade union treaty was signed in 1975 by fifteen member states with the mission of collective self-sufficiency through an economic

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[33] Gathii, *supra* note 15, at 572 (asserting that tariffs and non-tariff barriers are progressively eliminated inside the trade union of member countries because of fiscal and monetary policy harmonization; however, African RTAs fail to achieve this harmonization because of a lack of coordination and enforceability).

[34] *Id.* at 573.

[35] *See* JAGDISH BHAGWATI, *U.S. Trade Policy: The Infatuation with Free Trade Agreements, in* THE DANGEROUS DRIFT TO PREFERENTIAL TRADE AGREEMENTS 2–3 (Jagdish Bhagwati & Anne O. Krueger eds., 1995) (discussing the "spaghetti bowl" metaphor to describe a system in which crisscrossing strands of bilateral trade agreements create a tangled mess of restrictions and regulations that ultimately disrupt free trade).

[36] Tiyanjana Maluwa, *The Move From Institutions? Examining the Phenomenon in Africa*, 100 AM. SOC'Y INT'L L. 294, 295 (2006) (using the New Economic Partnership for African Development (NEPAD), as an example of the move away from formal institution building governed by a treaty or rule system). NEPAD was merely used as a framework of development cooperation and interaction outside the African Union, rather than internally. *Id.* at 295. NEPAD is an example of a shift "toward action and results rather than legislation and rule making." *Id.* at 297.

[37] Mukhisa Kituyi & Lilianne Ploumen, *Trade and Development,* GREAT INSIGHTS, Nov. 2013, at 42.

[38] International Democracy Watch, Economic Community of West African States, http://www.internationaldemocracywatch.org/index.php/economic-community-of-west-african-states- (last visited Oct. 8, 2016). ECOWAS was set up by the Treaty of the Economic Community of West African States (ECOWAS Treaty) which was attested to by sixteen West African Countries: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo. Treaty of the Economic Community of West African States art. 2, May 28, 1975, 1010 U.N.T.S. 17. Article 2 of the Treaty provides in relevant portions that the trade union is for the "sole economic community in the region for the purpose of economic integration." Bappah Habibu Yaya, *Inter-regionalism as a Mechanism for the Harmonization of Africa's Regional Integration Projects*, *in* REGIONAL ECONOMIC COMMUNITIES 7, 18 (Akinpelu O. Olutayo & Adebusuyi I. Adeniran eds., 2015).

and monetary union.[39] However, the treaty did little for the progress of the member states under the regional bloc due to slow economic and monetary integration, and the Treaty of Lagos was later revised in 1993 as a looser collaboration.[40] Today, ECOWAS is attempting to integrate economically through the normalization of the CET, but at the expense of prior trade agreements.[41]

One of the benchmarks to an effective customs union is adopting a CET with the goal of economic and commercial normalization,[42] but the existence of a CET can run afoul[43] with the stringent multilateral (GATT/WTO) liberalization commitments that individual member states have assumed.[44] The promotion of trade liberalization through a customs union without phasing positive policies in incremental steps over a period

39 International Democracy Watch, *supra* note 38.

40 Revised Treaty of the Economic Community of West African States, July 24, 1993, Preamble.

41 *ECOWAS Vision 2020*: *Towards a Democratic and Prosperous Community,* ECOWAS CEDEAO (June 2010), http://www.ecowas.int/wp-content/uploads/2015/01/ECOWAS-VISION-2020.pdf.

42 GATT Article 1 obliges members of the WTO to extend on an unconditional and immediate basis "any advantage, favo[u]r, privilege or immunity . . . to any product originating in or destined for any other country . . . to the like product originating in or destined for the territories of all other contracting parties." General Agreement on Tariffs & Trade (Oct. 30, 1947), 61 Stat. A-11, 55 U.N.T.S. 194. Article 35 of the Treaty Establishing the Economic Community of Central African States (ECCAS) establishes the Most Favored Nation norm in exactly the same terms as Article 43 of the ECOWAS Treaty. However, the ECCAS Treaty has a fourth sub-paragraph not present in the ECOWAS Treaty. Article 35(4) of the ECCAS Treaty provides: "No Member State may conclude with any third country an agreement whereby the latter would grant such Member State tariff concessions not granted to the other Member States." Treaty Establishing the Economic Community of Central African States art. 35(4), Oct. 18, 1983.

43 See Article 43 of the Revised ECOWAS Treaty as it provides for Most Favored Nation (MFN) Treatment in the following terms:

> 1. Member States shall accord to one another in relation to trade between them the most favoured nation treatment. In no case shall tariff concessions granted to a third country by a Member State be more favourable than those applicable under this Treaty.
> 2. Any agreement between a Member State and a third country under which tariff concessions are granted, shall not derogate from the obligations of that Member State under this Treaty.
> 3. Copies of such agreements referred to in paragraph 2 of this Article shall be transmitted by the Member States which are parties to them, to the Executive of the Secretariat of the Community.

This provision establishes the classic MFN within ECOWAS, but it simultaneously prohibits member countries from giving third-party countries MFN status outside current third-parties available to ECOWAS member countries. Also, it requires Member States to report any tariff concession agreements with third-party countries to the Executive of the Community Secretariat. The narrow provision of Article 43(1) of the ECOWAS Treaty cannot work concurrently with the type of unconditional MFN obligation in Article 1 of GATT 1947.

44 Gathii, *supra* note 15, at 609–10.

of time can only lead to economic stagnation[45] and can lead to possible harmful effects on individual country economies because of a lack of planning prior to integration.[46]

Free Trade Agreements (FTAs) allow each member-state to implement its own tariff structure to prevent transshipment when applying preferential Rules of Origin (RoOs).[47] However, the major obstacle to FTAs is the inevitability of transshipment within a trade union because products would find their way into high-tariff countries through neighboring low-tariff member states and their FTAs with third-party countries.[48] The result would force high-tariff member nations to lower their external tariffs as part of a FTA in order to be competitive, which functions similarly to the policy of trade liberalization that underlies the implementation of a CET.[49] Although countries would be able to enjoy preferential tariffs from FTAs, they would not be able to reciprocate the preferential favor to the FTA since they are bound to uphold the CET of the customs union.[50]

The international trade results produced by a FTA conform better to the principles of tax theory[51] and laissez-faire economics[52] because of the individualized nature of FTAs, rather than the forced normalization of a CET.[53] However, FTAs do not necessarily help a country trade with its

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[45] *See* PETER ROBSON, INTEGRATION, DEVELOPMENT, AND EQUITY: ECONOMIC INTEGRATION IN WEST AFRICA 33, 123 (Unwin Hyman 1968) (ebook) (arguing that integration that focuses on reallocating resources is not necessarily beneficial for developing countries). *See generally* GUNNAR MYRDAL, ECONOMIC THEORY AND UNDERDEVELOPED REGIONS (Harper & Row 1957) (cautioning that adopting market based integration ideals among members with huge differences in the levels of economic development among countries would result in benefitting more developed member countries at the expense of poorer ones). Myrdal states that, "[t]he freeing and widening of markets will often confer such competitive advantages on the industries in the already established centers of expansion, which usually work under conditions of increasing returns, that even the handicrafts and industries existing earlier in the other regions are thwarted." *Id.* at 28.

[46] *See* Arthur Hazlewood, *Problems of Integration Among African States: Case Studies in Economic and Political Union*, *in* AFRICAN INTEGRATION AND DISINTEGRATION 3, 6 (1967); Gathii, *supra* note 15, at 662.

[47] Gathii, *supra* note 15, at 662.

[48] *Id.* at 663.

[49] *Id.*

[50] *Id.*

[51] *See* Anthony C. Infanti, *Tax ~~Equity,~~* 55 BUFF. L. REV. 1191, 1192 (2008).

[52] Michael J. Trebilcock, *The Case for Free Trade*, 14 CAN. BUS. L. J. 387, 388–89 (2003) (cautioning that the low point of free trade was from the protectionist Smoot-Hawley tariff, which was adopted by the United States in 1930, raising average duties on imports to about 60%). The Smoot-Hawley act is widely accepted by economists as contributing to, if not causing, the ramifications of the Great Depression. Trebilcock goes as far to state that inducing similar tariff measures in other countries would cause international trade to grind to a standstill. *Id.*

[53] Gathii, *supra* note 15, at 663.

regional neighbors, and neither do RTAs in practice.[54] When the ECOWAS CET was implemented as of January 2015,[55] its application demonstrated in practice the underlying problems of structural soundness beyond mere theory.[56]

B. The Violation of Basic Tax Principals Through Class 5 Tariffs

As Oliver Wendell Holmes said, "[t]axes are what we pay for civilized society."[57] Although some taxes may strengthen civil society, it "does not, however, mean that any and all taxation will do so."[58] Heavy or inappropriate taxes will erode rather than support the flourishing of an economy, which follows that "[s]ome taxation is surely necessary simply to secure an economic order grounded" in the human right to private property.[59] Generally, the idea of the ECOWAS CET has valid altruistic goals and protectionist concerns; however, it does little for trade liberalization because it hampers the transportation industry in West Africa.[60]

The policy behind a protective tariff is to protect a local economy from imports, as opposed to that of a revenue tariff.[61] For example, although the United States economy boomed through the transition from agrarian to industrial society because of protectionist tariffs in place during the

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[54] U.N. CONFERENCE ON TRADE AND DEV., ECONOMIC DEVELOPMENT IN AFRICA REPORT 2009, at 25–26, U.N. Sales No. E.09.II.D.7 (2009) (stating that between 2004 and 2006 African inter-regional and international trade stagnated based on studies of Swaziland, Togo, and Zimbabwe). The study also shows that African countries contributed only ten percent or less of total exports within Africa outside their RTAs, and even less to those within their regional trade communities. *Id.*

[55] *ECOWAS-CET will be implemented as of January 2015*, INT'L CTR. FOR TRADE & SUSTAINABLE DEV. (Oct. 15, 2013), http://www.ictsd.org/bridges-news/bridges-africa/news /ecowas-cet-will-be-implemented-as-of-january-2015.

[56] *Id.*

[57] *Tax Quotes,* IRS, https://www.irs.gov/uac/tax-quotes/ (last updated Sep. 23, 2016).

[58] *See* Richard Wagner, *Property, Taxation, and the Budgetary Commons, in* POLITICS, TAXATION, AND THE RULE OF LAW: THE POWER TO TAX IN CONSTITUTIONAL PERSPECTIVE 33, 42–43 (2002).

[59] *Id.*

[60] *ECOWAS Common External Tariff (CET),* ECOWAS AID FOR TRADE, http://www.aidfortrade.ecowas.int/programmes/ecowas-common-external-tariff-cet; *High Transport Cost Hampers ECOWAS Trade,* MODERN GHANA (May 21, 2010), https://www.modernghana.com/news/276637/high-transport-cost-hampers-ecowas trade.ht ml.

[61] Omotunde E.G. Johnson, *Economic Integration in Africa: Enhancing Prospects for Success*, 29 J. MOD. AFR. STUD. 1, 10 (1991) (stating that national politicians are likely to ignore any integration agreements they may have signed after failed negotiations then campaign an "internal (intra-union) tariff structure which would protect national production from direct competition within the union," contrary to a trade union's purpose).

nineteenth and early twentieth centuries,[62] protectionist practices ultimately lead to the Great Depression and a stagnant economy.[63] The problem with protectionist practices is that it cuts against the principles of Austrian economics and free trade[64] because it overregulates the natural market system of voluntary exchange and social cooperation.[65] Likewise, the same economic stagnation can arise when a government imposes new coercive taxes on society, either "in pursuit of revenue" or "to discourage certain forms of behavior."[66]

When a previous tariff scheme is in place, governments fear a major loss of revenue if economic structures are revised, as in the case of a common external tariff introduction.[67] There is also a preconceived notion amongst many developing countries that integration is a paradigm for inward industrial growth.[68] Without the necessary expertise to create regional industrialization, the protectionist tariff structure closes doors to

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62 *See* Michael Lind, *Free Trade Fallacy*, PROSPECT (Jan. 20, 2003), http://www.prospectmagazine.co.uk/features/freetradefallacy ("Like Britain, the US protected and subsidized its industries while it was a developing country."). The country only switched to free trade in 1945 after achieving monopolies in several industries due to World War II. *Id.*

63 Barry Eichengreen & Douglas Irwin, *The Protectionist Temptation: Lessons from the Great Depression for Today*, VOX (Mar. 17, 2009), http://www.voxeu.org/article/protectionist-temptation-lessons-great-depression-today (stating that the main effect of protectionism is to destroy trade).

64 Gary North, *Tariffs as Welfare-State Economics*, MISES INSTITUTE (July 30, 2012), https://mises.org/library/tariffs-welfare-state-economics ("[W]ritten from the perspective of an unfettered free market and Austrian economics.").

65 Gary Wolfram, *Taxpayers Rights and the Fiscal Constitution*, *in* POLITICS, TAXATION, AND THE RULE OF LAW: THE POWER TO TAX IN CONSTITUTIONAL PERSPECTIVE 43 (Donald P. Racheter & Richard E. Wagner eds., 2002) (assuming that uncoerced market action is fundamental to a system of voluntary exchange).

66 Gary M. Anderson, *Referendum, Redistribution, and Tax Emption: A Rent-Seeking Theory of Direct-Democracy, in* POLITICS, TAXATION, AND THE RULE OF LAW: THE POWER TO TAX IN CONSTITUTIONAL PERSPECTIVE 81, 83 (Donald P. Racheter & Richard E. Wagner eds., 2002). The results of coercive societal tax is that the burden must be shifted to the consumer, producer, or both which reduces the individual spending. *Id.*

67 Naceur Bourenane, *Regional Integration in Africa: Situation and Prospects*, *in* OECD, REGIONAL INTEGRATION IN AFRICA 20 (2002) ("Three years before coming into effect, major problems are still pending with no ready answer in sight. These concern the levels and sources of financing of compensation for loss of tax revenue, the modus operandi of the common external tariff (CET) and the categories of goods concerned."); s*ee also* Maurice Oduor, *Resolving Trade Disputes in Africa: Choosing Between Multilaterialism and Regionalism: The Case of COMESA and the WTO*, 13 TUL. J. INT'L & COMP. L. 177, 190–92 (2005) (stating that trade liberalization is central to both the GATT process and a customs union framework). However, tariff schemes for trading to third-party countries from Africa RTAs are unusually high, which contradicts this policy. *See* FRANCESCO DUINA, THE SOCIAL CONSTRUCTION OF FREE TRADE 14 (2006).

68 *See* Colin L. McCarthy, *Regional Integration of Developing Countries at Different Levels of Economic Development–Problems and Prospects*, 4 TRANSNAT'L L. & CONTEMP. PROBS. 1, 6 (1994).

foreign investment, importation of expert knowledge, and refined goods for infrastructure development.[69]

For example, the CET adopted by ECOWAS as of January 1, 2015, provides five tariff bands that external countries have to pay on items that are entering the trade union.[70] There is argument that CET implementation promotes fair/equal trade and increases regional investment, productivity, and employment;[71] however, higher levies would serve as motivation for counterfeit products[72] or a general lack of supply in the case of vehicular transport.[73] Vehicles under the new CET fall under the fifth and highest tariff regime of 35% categorized "specific goods for economic development,"[74] which in this Note's opinion is to be interpreted as *goods crucial to economic development*. Two ECOWAS member states, Ghana and Nigeria, serve as a case study to test the three foundational principles of tax policy as applied to the transportation and auto industry as analyzed by the Office of the United States Trade Representative.[75]

Ghana "maintains 190 exceptions to the [ECOWAS] CET, and the highest applied tariff is 20 percent."[76] However, "Ghana levies a 15 percent value-added tax (VAT) plus a 2.5 percent National Health Insurance levy on the duty-inclusive value of all imports . . . [as well as] on locally produced goods, with a few selected exemptions."[77] In addition to the VAT, "Ghana imposes a 0.5[%] ECOWAS surcharge on all goods originating in" countries outside the trade union, "charges 0.4[%] of the free on board value of goods . . . [(after VAT calculation)] for the use of . . . [the] automated clearing system," the Ghana Community Network, and adds an inspection fee of one percent of "the [C]ost, [I]nsurance and

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69 *See id.* at 7 (explaining that developing economies with "limited skill, technological, and management bases" will have trouble contending in a competitive international market).

70 *ECOWAS Common External Tariff (CET)*, *supra* note 60.

71 QUENTIN DE ROQUEFEUIL ET AL., *supra* note 21.

72 *See* Coste & Uexkull, *Benefits of the ECOWAS CET and EPA will Outweigh Costs in Nigeria, but Competitiveness is the Real Issue*, 43 WORLD BANK AFRICA TRADE POLICY NOTES 5–6 (2015), http://documents.worldbank.org/curated/en/104711468085439832/pdf/936420RE PLACEM00EPA0Policy0Note0V2.pdf (explaining the benefit of the CET by removing levies will help reduce the incentives to smuggle and encourage successful trade channels).

73 *See id.* at 5.

74 *ECOWAS Common External Tariff (CET)*, *supra* note 70.

75 See MICHAEL B.G. FROMAN, USTR, 2015 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS 1, 151–54, 285–90 (2015) for a report discussing foreign tax policies in Ghana and Nigeria.

76 *Id.* at 152.

77 *See* FROMAN, *supra* note 75, at 152. The VAT increased from 12.5% in January 2014. Cecelia Becker, *Ghana: New Ghana Vat Act Promulgated*, MONDAQ (Feb. 16, 2014), http://www.mondaq.com/x/293322/sales+taxes+VAT+GST/New+Ghana+Vat+Act+Promulg ated.

[F]reight (CIF) value of the goods."[78] Further, imported vehicles are subject to a 1% examination fee and an additional tax on used vehicles "ranging from 2.5 percent to 50 percent of the CIF value."[79] These extra taxes impact the cost and marketability of vehicles to consumers by up to 27.9% to 90.4% from the original value of the motor vehicle.[80]

Similarly, Nigeria conforms to the ECOWAS CET with the highest applied tariff of 35%.[81] "ECOWAS member governments are permitted to assess duties on imports higher than the maximum allowed in the tariff bands (but not to exceed a total effective duty of 70 percent)."[82] In addition, Nigeria has an Automotive Industry Development Plan (NAIDP), that went into effect in October 2013, which "imposes a 35 percent levy on automobile imports, over and above the 35 percent tariff already levied, for an effective total ad valorem duty of 70 percent."[83] Further, companies who manufacture or assemble cars in Nigeria are allowed to import at the 35% tariff rate two vehicles for every one produced in Nigeria,[84] which acts as an incentive for car companies to open local production plants.[85] However, there are no United States automakers who currently produce cars locally in Nigeria,[86] and Africa has yet to develop its own equivalent of Toyota or General Motors.[87] "Investors must also contend with complex tax procedures," which has led "[i]nternational monitoring groups . . . [to] rank Nigeria among [one of] the most corrupt countries in the world" because of extortion and bribery opportunities.[88]

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[78] *See* FROMAN, *supra* note 75, at 152.

[79] *Id.* at 152–53 (noting that the Customs Division of the Ghana Revenue Authority maintains a price valuation list on the imported used vehicle tax that is not publically available, raising transparency issues).

[80] *See infra* Table A.

[81] FROMAN, *supra* note 75, at 285.

[82] *Id.*

[83] *Id.* at 286.

[84] *Id.*

[85] Liezel Hill & Emele Onu, *Africa is Last Frontier for Carmakers on the Hunt for Growth*, BLOOMBERG (Dec. 14, 2015), http://www.bloomberg.com/news/articles/2015-12-14/africa-is-last-frontier-for-automakers-on-the-hunt-for-growth.

[86] FROMAN, *supra* note 75 at 286.

[87] Liezel Hill & Emele Onu, *Ford, Nissan Seek Africa Car Industry Fixes with State Talks*, BLOOMBERG (Oct. 23, 2016), http://www.bloomberg.com/news/articles/2016-10-23/carmakers-seek-africa-industry-fixes-with-nigeria-kenya-talks.

[88] FROMAN, *supra* note 75, at 288; Patrick A. Imam & Davina F. Jacobs, *Effect of Corruption on Tax Revenues in the Middle East*, International Monetary Fund Working Paper WP/07/270, 7 (2007), https://www.imf.org/external/pubs/ft/wp/2007/wp07270.pdf, (noting that a complex tax system can facilitate and equate to corruption because tax auditors are given the opportunity to extort bribes by taking advantage of complex rules and that taxpayers can evade taxes by bribing auditors because the system is deficient).

Table A –Tariff and Tax Comparison between ECOWAS Countries versus other Countries[89]				
Type of Fee	Ghana (2015)	Nigeria (2015)	Panama (2011)	Norway (2011)
Tariff for Assembled Motor Vehicles	5–20% Cars and Trucks	35% Cars and Trucks	18–25% Cars; 10% Trucks	3% Cars; 12–28% Trucks
Value-Added Tax	15%	5%	7%	25%
Import Restrictions	2.5–50% Excise Tax based on vehicles over 10 year old	35% NAIDP Levy	None	*Engangsavgift* fee for CO2 emission control
Local/Regional Fees	2.5% National Health Insurance Levy; 0.5% ECOWAS Fee; 0.4% FoB Post-VAT Fee; 1% CIF Fee; 1% Vehicle Examination Fee	None	None	Variable Vehicle Taxes
TOTAL	27.9% to 90.4%	75%	17% to 32%	28% to 53% without fees

Tariffs are taxes,[90] and thus must be subject to tax policy norms in

89 FROMAN, *supra* note 75 (Ghana: VAT/, Local/Regional Fees, Import Restrictions (discrepancy noted 2.5 to 50 CIF); Nigeria: TAMF, Import Restrictions, Local/Regional Fees); *see* U.S. DEP'T OF COMMERCE , INT'L TRADE ADMIN., OFFICE OF TRANSP. AND MACH., COMPILATION OF FOREIGN MOTOR VEHICLE REQUIREMENTS (2011) (emphasis added) (provides all support for Panama and Norway data); GHANA REVENUE AUTH., CUSTOMS GUIDE (2011) (Ghana TAMF support); Anil Kuruvilla, *VAT Increase in Nigeria?*, THOMAS REUTERS TAX & ACCOUNTING (Feb. 12, 2016), http://tax.thomsonreuters.com/blog/onesource/vat-gst-management/vat-increase-nigeria/ (Nigeria VAT support).

90 *See Tariff*, WEST'S TAX LAW DICTIONARY (2014) ("The term includes the list or schedule of goods, and rates of tax imposed on goods imported . . . .").

administration and compliance.[91] These basic norms are (1) fairness, (2) efficiency, and (3) simplicity of administration.[92] Fairness looks at the tax burden of individuals, which is not a discussion within the scope of this paper.[93] Efficiency is the most economical of the three tax policy concerns, with the goal of reducing the tax system's interference with economic decision-making to the bare minimum.[94] In tandem, simplicity of administration, better known as *administrability*, minimizes the taxpayer burden by voluntary compliance and the reduction of costs in government enforcement.[95] Further, a well administered tax or tariff is likely to be a more profitable tax and revenue generation vehicle for the government because it reduces burdens on taxpayers and the government cost of administration.[96]

Based on the analysis from Table A, Ghana is optimally applying tariffs because it applies principles of individualized trade liberalization through FTA agreements at the border. However, local taxes in Ghana are not administratively simple.[97] Although Ghana does not follow the max 35% CET tariff for vehicles,[98] it can be argued that the 2.5 to 50% charged for cars and trucks imported follows the line of the trade liberalization from an FTA. However, Ghana could raise tariffs to any rate at any time without violating its WTO commitments, which creates uncertainty for the automotive industry.[99] As far as administrability goes, the exceptions to the CET minimize the taxpayer's burden and the reduction of costs in government enforcement at the international border. However, the taxpayer is burdened at the local level through the administrative nightmare of fees, taxes, and an excise tax that fluctuates from 2.5% to up to 50% of the CIF value.[100]

This excise tax on imported used vehicles violates both principles of efficiency and administrability because there is a lack of transparency on

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91 *See* Samuel A. Donaldson, *The Easy Case Against Tax Simplification*, 22 VA. TAX REV. 645, 659 (2003) (explaining if tax laws did not change often compliance and enforcement would be easier).

92 Infanti, *supra* note 51, at 1192 ("[W]e should strive for a tax system that (1) minimizes interference with economic decision-making, (2) is fair, and (3) is easy to administer and comply with . . . .").

93 *Id.* at 1221–22.

94 Donaldson, *supra* note 91, at 741–42 ("Equity is good. No one argues that an equitable state is morally or functionally flawed.").

95 *Id.* at 742–43.

96 Infanti, *supra* note 51, at 1202.

97 *See Govt Must Review Ghana's Complex and Expensive Tax Regime – Ishmael Yamson*, MODERN GHANA (June 17, 2013), http://www.modernghana.com/news/469097/govt-must-review-ghanas-complex-and-expensive-tax-regime-.html.

98 *See* FROMAN, *supra* note 75, at 152.

99 *Id.*

100 *Id.*

"the price list used for valuation,[which] is not publicly available."[101] The takeaway from an examination of Ghana is that "[t]he CET is a priori incompatible with the individual commitments of WTO member" states[102] since the CET is higher than bound tariffs in Ghana and the uncertainty of raising tariffs have adverse impacts on other WTO members.[103]

Nigeria, in contrast, has serious problems in its application of the ECOWAS CET, besides the fact that the CET is incompatible as demonstrated by the case of Ghana.[104] Since Nigeria has been one of the foremost proponents of the CET and the trade union,[105] it has adopted the full 35% tariff for class 5 goods (including, but not limited to, motor vehicles, trucks, and other "specific goods for economic development").[106] Although it is understandable that the 35% must be in place to protect agriculture products, it does not make sense in the context of the automotive industry, since Africa has yet to produce a large car producer to compete with Toyota or General Motors.[107] What raises further concern with the Nigerian tariff scheme is the NAIDP plan which imposes two further requirements: (1) additional regulation and (2) a 35% levy added to the 35% tariff, bringing the grand total additional cost of a transportation vehicle to 70%.[108] Thus the Nigerian tariff scheme raises serious inconsistencies with principles of efficiency and administrability of a tax, since the current tax complexity situation encourages corruption and smuggling of vehicles through the NAIDP and CET working in tandem.[109]

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[101] *Id.* at 153.

[102] El Hadji Abdourahmane Diouf, *West Africa's New Common External Tariff and the Individual WTO Commitments of ECOWAS Member States: No Insurmountable Incompatibilities*, 1 BRIDGES AFR. 7 (2012). Ghana has been a WTO member since January 1, 1995 and a member of GATT since October 17, 1957. *Member Information: Ghana and the WTO*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/countries_e/ghana_e.htm (last visited Sept. 6, 2016).

[103] El Hadji Abdourahmane Diouf, *supra* note 102.

[104] *Id.*

[105] *See* J. R. Bassey, *Assessment of Nigeria's Role in the Development of Economic Laws in ECOWAS*, 35 INT'L AFF. GLOBAL STRATEGY 22, 23–24 (2015) (stating that Nigeria has been deeply involved in the economic development of West Africa by sponsoring or co-sponsoring the formation of new regional organizations).

[106] *See* FROMAN, *supra* note 75, at 285.

[107] Jean-Philippe Rémy, *Where Are the African Carmakers?* GUARDIAN (Aug. 9, 2011), http://www.theguardian.com/society/2011/aug/09/africa-development-industrial-sector-kenya.

[108] *See* FROMAN, *supra* note 75, at 286.

[109] *Consumers and Trade Policy in Nigeria: Protection through Participation*, CUTS INT'L 24, 24–25 (May 19, 2015), http://www.cuts-international.org/ARC/Accra/IVORI/pdf/Consumers_and_Trade_Policy_in_Nigeria-Protection_through_Participation.pdf [hereinafter *Consumers and Trade Policy in Nigeria*]; *cf.* Imam, *supra* note 88, at 7 (stating that complex tax systems can lead to corruption).

C. *Effects of Economic Stagnation Through the Eyes of the West African Trucking Industry*

Besides the problem of getting quality and functional automobiles into the ECOWAS region, there are issues of poorly maintained roads and a lack of integration.[110] In more developed areas, states must balance policies of expanding roads when balancing congestion and the cost of maintenance.[111] The political act of allocating infrastructure funds in West Africa is just surface evidence of the inefficiency of the transportation system in general.[112] Further, inefficiency of allocation is directly caused by unintegrated administration such as with the customs bureaucracy at the borders.[113] The result is poorly maintained roads and extremely high costs of locally produced African goods and their inability to compete internationally.[114]

While the developed world is primarily concerned in their transportation policies as they relate to climate change and carbon dioxide (CO2) accountability,[115] the developing world is struggling with the implementation of roads and dealing with urban congestion.[116] When roads are not equipped[117] to deal with eighteen-wheeler long-haul lorries, conditions can become hazardous both for the truckers at the wheel and the stream of commerce.[118] The tax revenues collected from vehicle tariffs should be spent on public works for the industries it specifically targets,

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[110] Armbruster, *supra* note 2.

[111] *Cf.* Thomas Norton, *West African Truckers (Documentary)*, VICE (Apr. 4, 2013), https://www.youtube.com/watch?v=KYFEoWwDvxY (demonstrating the well tarred roads in Lagos, Nigeria verses the roads in West Africa which are poorly maintained and congestion problems result in lengthy delays at the border).

[112] *See* Njoh, *supra* note 9, at 156, 158.

[113] *Id.* at 158.

[114] *Id.*

[115] Nilmini Silva-Send, *Climate Change Disputes at the World Trade Organization: National Energy Policies and International Trade Liability*, 4 SAN DIEGO J. CLIMATE & ENERGY L. 195 (2013). "The Annex I parties are all the EU countries, Australia, Belarus, Canada, Croatia, the European Economic Community, Japan, New Zealand, Russian Federation, Switzerland, Turkey, and the United States." *Id.* at 211 n.96. *Policy Responses to Climate Change*, WORLD NUCLEAR ASSOCIATION, http://www.world-nuclear.org/information-library/energy-and-the-environment/policy-responses-to-climate-change.aspx (last updated Oct. 2016).

[116] Vipin et al., *Road Traffic Congestion in the Developing World*, NYU (2012), http://www.cs.nyu.edu/~lakshmi/traffic.pdf.

[117] *See* FROMAN, *supra* note 75, at 289 (stating port access roads are in poor condition, and the cost of operating at Nigerian ports is one of "the most expensive in the world").

[118] *See* Robert Cervero, *Linking Urban Transport and Land Use in Developing Countries*, 6 J. TRANSP. & LAND USE 7, 14 (2013) ("Heavy trucks contribute to and suffer from poor-quality roads because wear and tear exponentially rises with the dead-axle weight of a vehicle . . . .").

which is the transportation sector.[119] When investments in transportation infrastructure are made, they reduce transportation costs, increase accessibility, and quality of roads,[120] especially for the backbone of West Africa, which is the long-haul trucking industry.[121] The focus is on the question of the availability of a transportation infrastructure as a basis of sustainable mobility systems because emphasis should be on road development to connect rural areas to urban markets.[122] However, the rural poor must have vehicles to access and use the new roads built.[123]

Car ownership is very low in West Africa because revenues are not increasing and there are hardly any positive policies to help with the cost of car purchase, unlike in sharp contrast to northern Africa.[124] Therefore, there is more emphasis in West Africa for pedestrian and public transportation.[125] For example, in Lagos, the Lagos Metropolitan Transport Authority (LAMATA) was created in 2002 to regulate public transportation, road improvements, and maintenance.[126] There is focus in Lagos to implement a bus service specifically for urban mobility,[127] but the issue remains on how to reach outside the city limits of metropolitan Lagos to rural regions.[128]

"The vicious circle of poverty is linked to [the problem] of mobility," and can be broken "by offering travel facilities to the urban poor in order to give opportunities of employment" and to bring goods to the market.[129]

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[119] *See generally* Letter from Don Vary et al., to Tom Maziarz, CTDOT (May 14, 2015) (discussing how some countries pay for their transportation sector through fuel and vehicle taxes and tolling systems).

[120] Njoh, *supra* note 9, at 148, 157.

[121] *See* Norton, *supra* note 111 (stating that long haul truckers are the backbone of the African economy).

[122] Ctr. for Reg'l Dev., Background Paper for Plenary Sess. 6 of the Provisional Programme, Intergovernmental Ninth Reg'l Environmentally Sustainable Transp. (EST) Forum in Asia, *Accelerated Action on Rural Transport in Asia-Pacific Region*, 6 (Nov. 2015), http://www.uncrd.or.jp/content/documents/3393Background%20paper%20for%20EST%20Plenary%20Session%206-rev.pdf.

[123] *See Enabling poor rural people to overcome poverty in Uganda,* INT'L FUND FOR AGRIC. DEV. 1, 1 (Apr. 2012), https://www.ifad.org/documents/10180/246adc40-0f82-433c-b331-dca1611b39ad.

[124] *See* Xavier Godard, *Comparisons of Urban Transport Sustainability: Lessons from West and North Africa*, 40 RES. TRANSP. ECON. 96, 101 (2013) 96, 96 (contrasting households in West and North Africa, noting the "popular car" program in Morocco and Tunisia at the end of the 90s and the more recent Algerian program).

[125] *Id.*

[126] *Id.* at 99 (citing Dayo Mobereola, *Lagos Bus Rapid Transit*, URBAN TRANSP. SERIES 5–6, (Sept. 2012), http://siteresources.worldbank.org/EXTAFRSUBSAHTRA/Resources/DP09-Lagos-BRT.pdf.).

[127] *See id.* at 101.

[128] Avanenge, *supra* note 3, at 110–11.

[129] Godard *supra* note 124, at 101.

One of the main problems why road structure has not been readily developed to rural areas is a serious lack of transport research, despite the Solidarite Internationale sur les Transports et la Recherche en Afrique Sub Saharienne (SITRASS) initiative.[130] The result is a lack of planning and the rural poor continuing to live within the cycle of poverty and the urban populace is unable to benefit from local products.[131]

For example, farmers in Northern Nigeria face poor infrastructure and inadequate access to markets.[132] This causes erratic prices of goods, even within the same markets.[133] The history of infrastructure in West Africa centers around the exploitation of minerals through railroads from the interior to coastal seaports to transport exports to the colonial master countries.[134] However, today the focus of market growth in West Africa is through a robust road system, as roads are sometimes "the only link between the hinterland regions and urban centers" because the cost of transportation is so high by rail or sea.[135] Further, "[p]oor roads are also implicated as a leading cause of the near-absence of formal trade between African countries."[136] The solution is to tailor the CET in such a way to move the levy downwards and away from the 10–35% tariffs on goods that would create infrastructure, such as long-haul lorries, cement mixing trucks, and the parts that come with them, such as brakes.[137] Lowering international trade barriers is one way for the "invisible hand"[138] of the market to bring in foreign capital to invest in rural-urban connecting roads. This in turn would generate greater government revenue beyond the confines of ludicrously high tariffs.[139]

D. Foreign and Local Investment in the Developing World

Creating wealth is a precondition to redistributing it.[140] "Public infrastructure, such as highways, has been defined as large capital intensive natural monopolies" and must be funded through foreign and

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[130] *See id.* at 103.

[131] *See id.* at 101.

[132] Avanenge, *supra* note 3, at 110.

[133] *Id.* at 110, 117.

[134] *See* Jean Debrie, *From Colonization to National Territories in Continental West Africa: The Historical Geography of a Transport Infrastructure Network*, 18 J. TRANSPORT GEOGRAPHY 292, 294 (2010).

[135] *See* Njoh, *supra* note 9, at 158.

[136] *Id.* at 159.

[137] *See* Nigeria Customs Service CET Tariff, Section XVII, Chapter 87, https://www.customs.gov.ng/Tariff/chapters/Chapter_87.pdf.

[138] *Cf.* ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 349 (2007).

[139] *See id.* at 349–50.

[140] Trebilcock, *supra* note 52, at 392.

local investment.[141] In order to curb the corruption tendencies that come with a transportation system,[142] viewing public infrastructure as common stock can incentivize a local population to invest in their community by giving individuals a stake in their own well-being.[143] Beyond local investment, there are many unascertainable external considerations that must be taken into account for private international investment to flow into a developing country that are not within the scope of this Note.[144] The limitations of private funds only go so far to cover the costs of a capital intensive project.[145]

Another source of funding is taken from the developed world, where the transportation sector has been used to resuscitate economies in hard times through federal highway project investments.[146] This has a ripple effect on other areas of the economy, essentially through trickle-down economics.[147] By utilizing public-private partnerships in infrastructure projects, closing the infrastructure gap can become a reality in the developing world.[148]

III. ARRANGING TRADE LAWS TO BRING ABOUT RESPECT FOR HUMAN RIGHTS

Human rights are about the people at the individual level,[149] and is

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141 *See* Njoh, *supra* note 9, at 1.

142 *Consumers and Trade Policy in Nigeria*, *supra* note 109, at 25. "A complex tax system can facilitate corruption" stemming from unclear laws. Imam, *supra* note 88, at 7.

143 *See* Njoh, *supra* note 9, at 1.

144 *See* Tito Yepes, *Job Creation Through Infrastructure Investment in the Middle East and North Africa*, 45 WORLD DEV. 209, 210 (2013).

145 *Id.* at 210–11 (explaining that public funding in the North East and West Africa is limited while private investments have been reduced).

146 Njoh, *supra* note 9, at 2.

147 *Id.* (discussing that highway projects create jobs which feeds back into the economy creating a cycle of replenishing wealth).

148 *See* Yepes, *supra* note 144, at 210.

149 *See* G.A. Res. 217, arts. 1–29, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948) (consistently focusing on individual rights); DAVID J. BEDERMAN, INTERNATIONAL LAW FRAMEWORKS 93 (2001) (describing human rights as "[t]he study of individuals' rights as against their own States of nationality"); Eugene Kamenka, *Human Rights, Peoples' Rights*, *in* THE RIGHTS OF PEOPLES 127 (James Crawford ed., 1988) ("All rights ... are claims made, conceded or granted by people.... They are asserted by people on their own behalf or as perceived and endorsed implications of specific historical traditions, institutions and arrangements or of a historically conditioned theory of human needs ...."); SIGRUN SKOGLY, HUMAN RIGHTS OBLIGATIONS OF THE WORLD BANK AND THE INTERNATIONAL MONETARY FUND 50 (2001) ("The primary rights-subjects in international human rights law are individuals.").

reflected in the human right to development.[150] As such, people should be able to conduct commerce and trade amongst their neighbors without invisible borders and administrative red tape to hamper the natural course of the free market to promulgate human development.[151] The customs nightmare, even within the internal borders of ECOWAS member states, has led to informal economies where trucks carrying goods are stopped.[152] Long-haul truckers may be the lifeblood of West Africa, but they carry the poison of the continent as the primary vector of AIDS transmission.[153] However, the root of the problem is not with the illicit actions of truckers, but with customs policies left unenforced by officials that operate on colonial hours.[154] At the customs checkpoints where officials extort money by wasting time, local economies that pop up include brothels and other illicit activities.[155] The solution is to streamline these commercial checkpoints by applying a subset of laissez-faire policies through a form of minimalism to make more efficient and administratively simple laws. The results would be reducing AIDS transmission, the removal of illicit checkpoint activities, and lower cost of

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[150] James C.N. Paul, *The United Nations and the Creation of an International Law of Development*, 36 HARV. INT'L L.J. 307, 312 (1995) (stating that international development law advocates "that development should be people-centered, sustainable, and primarily concerned with the welfare of the poor and powerless, and that the processes of development should be 'democratized' and sensitized to 'human rights'"); *see* G.A. Res. 41/128, U.N. Doc. A/41/128, annex, Declaration on the Right to Development (Dec. 4, 1986) ("[T]he human person is the central subject of the development process and that development policy should therefore make the human being the main participant and beneficiary of development"); *id.* art. 2(1) ("The human person is the central subject of development and should be the active participant and beneficiary of the right to development.").

[151] *See* Paul, *supra* note 150, at 312.

[152] *See* Norton, *supra* note 111151.

[153] Christopher P. Hudson, *AIDS in Rural Africa: A paradigm for HIV-1 Infection*, 7 INT'L J. STD & AIDS 236, 237 (1996) (discussing the spread of HIV in certain areas of Africa); *see also* Aline Gatignon & Luk N. Van Wassenhove, *Paving the Road to Healthy Highways: A Partnership to Scale Up HIV & AIDS Clinics in Africa* (2008), http://centres.insead.edu/humanitarianresearchgroup/documents/HRG_paving_the_highway_to_healthy_highways_HIVAIDS.pdf/ (stating that "[r]oad freight is the number one means of moving goods" in Africa and that "truck drivers and their assistants . . . are indispensable to the region's economic growth"). There are astoundingly high rates of HIV in the trucker communities, which are at least twice as high as the generation population and can exceed 50%. *Id.*; Gita Ramjee & Eleanor Gouws, *Targeting HIV-Prevention Efforts on Truck Drivers and Sex Workers: Implications for a Decline in the Spread of HIV in Southern Africa*, ELDIS (2001), https://scholar.google.com/scholar_lookup?title=Targeting%20HIVprevention%20efforts%20on%20truck%20drivers%20and%20sex%20workers:%20implications%20for%20a%20decline%20in%20the%20spread%20of%20HIV%20in%20southern%20Africa.&author=G.%20Ramjee&author=E.%20Gouws&publication_year=2001. This has led to truckers being identified as the main vector of transmission in sub-Saharan Africa since 1996. Gatignon & Wassenhove, *supra*; Hudson, *supra*.

[154] *See* Norton, *supra* note 111.

[155] *Id.*

goods for consumers.

A. Tax Minimalism Theory as an Innovation and Commercial Consumption Structure for Long-Term Economic Growth

The problem with poverty is that it denies people access to the basic tenant of minimalism, which is the ability to stop taking away to focus on what matters most to an individual.[156] The joy of minimalist principles lies in what an individual chooses to pursue with his or her life and experiences, rather than through material possessions.[157] Pursuing material possessions as a life goal only leads to overconsumption and economic waste in quality of goods.[158]

There are numerous factors that contribute to overconsumption and economic waste in society today.[159] Developed nation economies, to a large degree, are based on the notion of overconsumption and the need for people of every social class to spend more than they have.[160] The mantra of reviving a slowing economy is spending more by going into debt[161] because recessions and sluggish market figures are always portrayed as the worst possible scenarios for developed society.[162] However, the model of upward and downward market volatility is unsustainable for both the developed world and developing countries with populations well below the poverty line.

B. Short-Term Economic Hurdles in Application of Tax Minimalism Theory to Create Public Institutional Trust

Applying the principles of tax minimalism to economies would have serious ramifications were it to be applied as the norm.[163] In the short-term, there would be an absolute problem as production grinded to a halt.[164] But an economy based on free-market, capitalist principles has been proven able to re-invent itself.[165] The entrepreneurial mind will always use creativity to find new ways to generate revenue, even in a post-

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[156] JOSHUA FIELDS MILLBURN & RYAN NICODEMUS, ESSENTIAL: ESSAYS BY THE MINIMALISTS 4–5 (Asymmetrical Press, 2d ed. 2015).

[157] *Id*. at 4, 97.

[158] *Id*. at 22.

[159] ROBERT H. FRANK, LUXURY FEVER: WHY MONEY FAILS TO SATISFY IN AN ERA OF EXCESS 45 (Free Press, 1999).

[160] *Id.*

[161] *See id.*

[162] *See* Robert Wringham, *6 Criticisms of Minimalists and 6 Responses*, http://theskooloflife.com/wordpress/6-criticisms-of-minimalism-and-6-responses/ (last visited Sept. 18, 2016).

[163] *See* MILLBURN & NICODEMUS, *supra* note 156, at 96–97.

[164] *Id.* at 96.

[165] *Id.* at 97–98.

minimalist economic environment.[166]

Minimalist principles do not require people to stop spending money altogether, but merely redirect money towards non-material pursuits such as experiences, tourism, art, services, or in goods of high quality.[167] Further, the minimalist principle provides the greatest benefit towards the public good because it directs individual spending towards creating a sustainable economy.[168] The issue remains though on how to incentivize the local people to act altruistically towards their communities and at the national level.[169] The principle of minimalism reallocates resources away from individual *wants* to *needs*, which should be reflected in the tax code.[170] Thus, the principles of laissez-faire economics through a minimalistic tax code is part of the solution to removing red tape around borders internally in ECOWAS and to third-party countries.

C. Addressing Free Market Infrastructure Stability and the Case for a Professional Responsibility Infrastructure to Promote Enforceability

"Human morality, rationality, and 'dignity' call for rule-oriented rather than power-oriented behavior."[171] Article 28 of the Universal Declaration of Human Rights requires a bottom-up approach that focuses on the rights of citizens.[172] The culture of bribery in West Africa acts as a non-tariff barrier to trade in goods and services, and corruption is the "'single greatest non-tariff barrier to trade today' [because its] requirements have similar effects on investment."[173] This culture of bribery begins at West African border crossings, undermining the primary purpose of a border crossing.

The principal job of customs personnel at internal border crossings, whether within a trade union or within a country, is to process value-

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[166] *See id.*

[167] *Id.*

[168] *Id.*

[169] *See id.* at 97–98.

[170] *Id.* at 19.

[171] Ernst-Ulrich Petersmann, *Constitutionalism and WTO law: From a State-Centered Approach Towards a Human Rights Approach in International Economic Law*, *in* THE POLITICAL ECONOMY OF INTERNATIONAL TRADE LAW 36 (Daniel L. M. Kennedy & James D. Southwick eds., Cambridge University Press 2002) (arguing that Plato emphasized in later writings that person-oriented "political ethics" need to be supplemented by general legal rules and institutional safeguards to protect citizens from arbitrary abuses of power).

[172] *See* G.A. Res. 217, *supra* note 149, at art. 28.

[173] Kenneth W. Abbott and Duncan Snidal, *International Action on Bribery and Corruption: Why the Dog Didn't Bark in the WTO*, *in* THE POLITICAL ECONOMY OF INTERNATIONAL TRADE LAW 177, 181, 182 (Daniel L. M. Kennedy & James D. Southwick eds., Cambridge University Press 2002) (noting that corruption stunts growth, especially in developing countries which undermine the WTO efforts towards global welfare).

added tax (VAT) payments and rebates on goods traded inside the trade union.[174] Considering the two VAT principles of origin taxation and destination taxation, the ECOWAS customs applies the origination principle, which is nothing short of ludicrous because it contributes to the long queues at custom checkpoints and complex tax systems that incentivize corruption.[175] The solution here is to apply a destination principle scheme to divorce border tax adjustments from border controls, in order to effectively disincentivize customs officials from taking bribes.[176]

CONCLUSION

Infrastructure is the cornerstone of human society, and human rights are a part of that infrastructure. It is recognized that there is a human right to development,[177] which implies that poverty is a violation of that right. Through organizations such as the WTO promoting FTAs or even through RTAs such as ECOWAS, the goal is generally the same: the creation of twenty-first century economies in the developing world. With both a robust transportation system and a fair tariff scheme working in tandem, sustainability of infrastructure is possible in order to bridge the commercial gap between cities and rural regions.[178] The solution posed here is to reduce the 35% Class 5 tariff to manageable levels to foster local development, as well as relying on the specialization of importing trade

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[174] Sijbren Cnossen & Carl S. Shoup, *Coordination of Value-Added Taxes*, *in* TAX COORDINATION IN THE EUROPEAN COMMUNITY 59 (Sijbren Cnossen ed., 1987) (arguing that there should be elimination of border controls for VATs which has been implemented in different forms within the European Union).

[175] *Id.* at 68–69 (although the original principle for intra-community trade has been widely recommended in economic literature and a standard tenant in public finance textbooks as the key to getting rid of border controls).

[176] *Id.* at 68, 74 (arguing that border controls are customs and excise notions associated with physical inspection of goods, but they are unnecessary for effecting border tax adjustments for VAT purposes, which can be made just as well, if not easier through books of account and that origin principle VAT collection dwindles because of unequal VAT rates and the principle is a tax on production).

[177] *See* G.A. Res. 217, *supra* note 149.

[178] Uduak Akpan, *Impact of Regional Road Infrastructure Improvement on Intra-Regional Trade in ECOWAS*, 26 AFR. DEV. REV. 64, 70 (2014) ("[I]nfrastructure provides access to key economic inputs such as knowledge, resources and technology; reduces the barriers to free movement of goods and persons, and increases the market for goods and services").

partners.[179] The new paradigm of tax minimalism theory is an effective efficiency and administrative model to foster economic infrastructure, promote trade liberalization, and trickle-down growth from transportation infrastructure.

[179] David Béazéraf, *The Construction by Chinese Players of Roads and Housing in Nairobi: The Transfer of Town Planning Practices between China and Kenya*, 1 CHINA PERSPECTIVES 51, 51–52 (2014) (noting that the Chinese investors, both private and public, are helping Chinese-African relations by importing Chinese urban planning and design practices to Africa and exporting raw materials to China. However, the Chinese are not merely buyers of raw materials, but they are increasingly occupying the position of investors. An example of this is that China was the number one bilateral donor to Kenya in 2011).