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STUDY TO INFORM THE RATIFICATION OF THE AFRICAN CONTINENTAL FREE TRADE AGREEMENT

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ABOUT THE REPORT

This report documents the results and findings of a study carried out to inform the ratification of the African Continental Free Trade Agreement (AfCFTA). This study was commissioned by the PDF Bridge Programme with a specific term of reference for use by the Beneficiary, the Federal Ministry of Industry, Trade and Investment (FMITI). It is expected that this report will provide current and actionable recommendations that will support FMITI on the AfCFTA ratification process and enhance its preparedness for implementation. We do not accept or assume any liability or duty of care for any other purpose or to any other person to whom this document is shown or into whose hands it may come save where expressly agreed by our prior consent in writing.

The report was compiled by a team of trade and policy experts and managed by Oxford Policy Management (OPM). We would like to acknowledge the following individuals who provided inputs in the writing of this report; Professor Jonathan Aremu, Leonard Ugbajah, Ibukunoluwa Akinrinde, Opeyemi Alaran, Nkem Joseph Palmer, Adetunde Ademefun, Victoria Akai, Olaronke Famuyiwa and Kenneth Ene. OPM would like to thank all contributors who provided case stories, reflections, and insights.

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All errors are ours, as the views in this paper belong to the authors and do not represent the views of the UK Foreign, Commonwealth and Development Office (FCDO) or the PDF Bridge Programme.

Six broad areas covered in the report

1

AFCFTA and Trade Agreements
Nigeria is signatory to:

Alignment and experiences

2

Nigeria's Trade Policy
Objectives and the
consistency with AfCFTA

3

Gender and Inclusion Analysis of Nigeria's regional trade activities

Analysing Safeguards and Remedial Provisions for circumventing or mitigating anticipated negative outcomes of AfCFTA implementation.

4

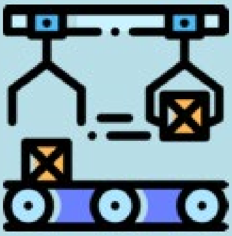
5

Analysing opportunities and potentials for increased export in goods and services

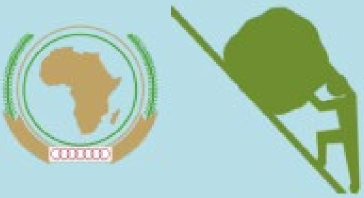
6

Domestic preparedness for implementation of AfCFTA

Key messages



The AfCFTA, though not mentioned in either the Economic Recovery and Growth Plan (ERGP) or the Economic sustainability plan (ESP), finds alignment in these Plans on the basis of Nigeria's aspiration to improve domestic productive capacity and diversify the economy away from oil

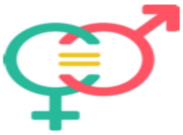


Current challenges to implementing existing trade agreements in Nigeria would also affect the implementation of the AfCFTA.

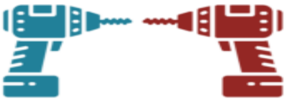
There needs to be more awareness on the proper use of terms such as 'dumping' and 'safeguards' within the context of international trade and agreements.

The scope of coverage of the AfCFTA is wider than any other trade agreement that Nigeria has signed up to in the past. WTO Agreements, the ECOWAS Treaty and accompanying instruments on trade ,the Global System of Trade Preferences (GSTP), the G-8 Group of Developing Countries, the Generalised System of Preferences (GSP) (offered by countries/regions such as the EU, Japan, Australia and the newly introduced General Framework of the UK Generalised Scheme of Preferences to take effect from 1st January 2021), and the African Growth and Opportunities Act (AGOA)

There is strong complementarity between the ECOWAS Common External Tariff (CET) and the AfCFTA because the market access offer (goods schedule) being used by Nigeria in the AfCFTA negotiations is derived from the CET



The AFCFTA agreement highlights the need for gender balance in the implementation of Trade Policies and trading activities within the region



Retooling trade agreements to support social inclusion policies.

Nigeria needs an export strategy that is anchored on Nigeria's comparative and competitive advantage in natural resources, entrepreneurial skills, and capital. in designing this strategy, it is important to understand the competition Nigeria is up against

Women constitute 70 per cent of Africa's informal cross-border traders and Nigeria needs to continue to implement initiatives to open opportunities for formal trade to ensure the benefits of the AfCFTA are experienced by women.

Domestic policies and legislation in regulation of economic activities should not detract from international obligations

Nigeria needs a proper legal and institutional framework to apply trade remedies.

Strategic competitiveness projects should be pursued at this juncture to advance the private sector's competitiveness

Nigeria has ratified the AfCFTA and will move to the implementation phase in January 2021. The reality is that the objectives of the AfCFTA can only be achieved if the government of Nigeria develops and implements complementary policy measures to facilitate trade and investment under the AfCFTA. For instance, one complementary policy that should be pursued urgently by the Government is to implement strategic competitiveness projects to advance the private sectors competitiveness relative to other African private sector players from the various AfCFTA member states. This effort will help expedite the nations adequacy in the six underlisted Boosting Intra-African Trade (BIAT) clusters – trade facilitation, trade policy, productive capacities, trade related infrastructure, trade finance, trade information and factor market integration. This will help to position Nigeria effectively to gain from the continental value the AfCFTA offers Africa

Policy Recommendations

Quick Wins

National quality policy

The FMITI and NAC should prioritize in the short term the adoption and operationalization of the National Quality Policy to pave way for reforms such as the wide deployment of Global Good Agricultural Practice (Global GAP) compliance to upscale agricultural output quality and productivity.

Tariff Schedule

To commence trading under the AfCFTA on January 1, 2021, the President needs to issue an Order to give effect to the tariff schedule Nigeria (as part of ECOWAS) has submitted for trading under the AfCFTA.

Institutional Structure

Government should ensure that AfCFTA desks in each ministry that interfaces on trade issues are established. The NAC committees should also be strengthened/expanded to deal with all the relevant annexes/issues for the AfCFTA.

Quick Wins

Rules of Origin

Government should involve Nigerian Missions across the continent to confirm where possible that the operations of companies exporting into the Nigerian market meet the requirements of the rules of origin, government subsidies, and other rules of the AfCFTA.

MSME Policy

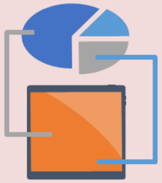
Government needs to prioritize the completion and approval for implementation of the National MSME policy as this will be key to enabling smaller businesses compete under the AfCFTA.

2050

MTNDP 2021-2025 and Nigerian Agenda 2050

Mainstream the AFCFTA into Nigeria's trade policy, the Medium-Term National Development Plan and the Nigerian Agenda 2050

Medium Term broad recommendations



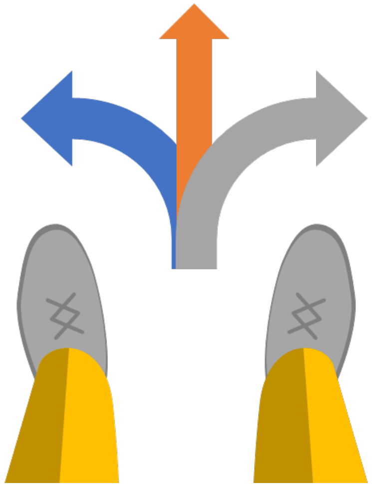
Support the development of digital skills.

Full Implementation Of Existing Protocols

The Government needs to implement fully the CET, WTO TFA and ECOWAS protocols.

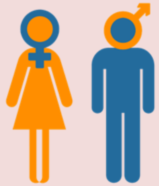
Effective Implementation of AfCFTA

Strengthen ease of doing business reforms; Support existing economic clusters for trade growth; address the issues around access to Apapa ports; ensure the full implementation of the Nigeria Single Window; establishment of a warehouse receipt system, provision of relevant equipment to facilitate border security for instance more scanners at the ports.



Investment in Trade Facilitation

The Government needs to provide trade support infrastructure and make efforts to eliminate hidden costs which result due to corruption and bureaucracy.



Mainstream gender and inclusion in trade policy.

Policy recommendations Matrix

Thematic Area	The Need	Action Required	Responsibility	Considerations	Timeline
AFCFTA and Nigeria's trade policy, the Medium-Term National Development Plan (MTNDP) and the Nigerian Agenda 2050	A new trade policy for Nigeria.	• The Federal Ministry of Industry Trade and Investment (FMITI) should fast-track the process of drafting and adoption of the new Trade Policy for Nigeria.	FMITI, Federal Executive Council (FEC)	To provide an overarching policy framework for managing Nigeria's trade	Q1, 2021
	Efficient structure for trade policy management.	• The FMITI should conduct a review/study to determine the most appropriate trade policy management framework that is suitable for Nigeria. This would consider issues relating to negotiations, implementation, trade remedies investigations, complaints and enforcements, etc; and the roles of the Department of Trade, Nigerian Office for Trade Negotiations (NOTN), NAC Secretariat, the Tariff Technical Committee (under the Ministry of Finance Budget and National Planning), the ECOWAS Trade Liberalization Scheme (ETLS) Desk at the Ministry of Foreign Affairs, etc	Presidency/ FMITI	In adding to existing frameworks, a comparative analysis of other countries models should be conducted. These could include the UK (operations of Department for International Trade); South Africa (the operations of both the Department of Trade and Industries and the International Trade Administration Commission); the U.S (the operations of the Department of Commerce and the United States Trade Representative). The Economic Diplomacy Initiative (NEDI) and Nigeria Diaspora Commission are initiatives that can support enhanced market access and entry of Nigeria's products into global markets.	Q1, 2021 to commence study
	Mainstream the AFCFTA into Nigeria's trade policy, the Medium-Term National Development Plan (MTNDP) and the Nigerian Agenda 2050.	• FMITI should engage Federal Ministry of Finance Budget and National Planning (FMFBNP), which is the Ministry anchoring the MTNDP 2021-2025 and Nigerian Agenda 2050 on integrating AfCFTA considerations into these two policy documents being developed. The FMFBNP should be provided with relevant reports and materials that have	FMITI, FMFBNP, National Committee on the MTNDP and Nigerian Agenda 20150	The work on the MTNDP and Nigerian Agenda 2020 is ongoing, and this will require the timely integration of information and commitments related to AfCFTA into those documents.	Q1, 2021

Thematic Area	The Need	Action Required	Responsibility	Considerations	Timeline
		been compiled by the FMITI and the National Action Committee (NAC) in preparation for the ratification and the implementation of the AfCFTA.			
	Strong political commitment and funding for the implementation of the AfCFTA.	• The government needs to prioritise allocation of resources (financial, human, technical, materials) to the implementation of the initiatives required to enhance Nigeria's participation in AfCFTA. • The government should urgently resolve the following constraints to ensure the effective implementation of AfCFTA; the issues around access to Apapa ports; the full implementation of the Nigeria Single Window[1]; in addition to provision of relevant equipment to facilitate border security for instance more scanners at the ports. • Government should ensure that AfCFTA desks in each ministry that interfaces on trade issues are established. The NAC committees should also be strengthened/expanded to deal with all the relevant annexes/issues for the AfCFTA.	Presidency/ FMITI/FMFBNP	These recommendations demand a fundamental shift on how trade policy and projects have been managed in Nigeria over the years, and only strong political commitment and leadership can deliver the change.	Immediate and Ongoing
	Domesticate the AFCTA.	• Commence work on drafting an executive bill to engage the National Assembly for domestication of the AfCFTA. All MDAs related to trade/AfCFTA should align inputs and the bill should be harmonized for submission.	FMITI, Federal Ministry of Justice, FEC, National Assembly	Early engagement of the National Assembly is critical to ensure they understand the content of the Agreement properly before the Bill comes to them.	Q1, 2020 for initial engagement and sensitisation of the National Assembly, as well as the presentation of the Bill to the

[1] a cross-government website that opens a new era for trade facilitation by offering a single portal for trade actors, both Nigerian and international, to access a full range of resources and standardized services from different Nigerian government agencies.

Thematic Area	The Need	Action Required	Responsibility	Considerations	Timeline
					National Assembly. The domestication process should ideally be completed by June 2021.
Safeguards and remedial actions to protect domestic producers	Create the necessary frameworks, institutional structure and capacity to implement safeguards and remedial measures.	• With the reopening of the borders, Government should ensure that border management agencies comply strictly with extant rules and procedures to prevent illegal movement of persons and goods.' • Government should sign the Executive Order on Trade Remedies to grant interim legal backing to the operationalisation of trade remedies actions in Nigeria, pending the passage of a law to that effect. • The FMITI should set up an ad-hoc Committee on Trade Remedies to undertake the following functions: (a) the collection and review of baseline data on the pattern of imports from other AfCFTA countries to inform future trade remedies action; (b) to maintain a Secretariat made up of relevant experts and trainees in preparation for transformation into the trade remedies authority; (c) other necessary actions, including advising the Minister on the effective take-off of the authority • Government should in relation to trade with other State Parties to the AfCFTA, discard the list of 'import prohibition for trade' and use only the	Presidency/FMITI/ FMFBNP/ Central Bank of Nigeria (CBN)/FMARD	The implementation of the AfCFTA provides the opportunity to bring Nigeria's trade policy measures into alignment with both the AfCFTA and the ECOWAS instruments, and signal Nigeria's readiness to play by the rules.	Q1, 2021 to: - Open the land borders - sign the Executive Order on Trade Remedies - set up the ad-hoc committee on Trade Remedies - commence review of all existing restrictive trade policies. Continue the implementation of existing safeguards and remedial measures

Thematic Area	The Need	Action Required	Responsibility	Considerations	Timeline
		sensitive/exclusion list provided for under the AfCFTA. • Government should start to use alternative/compliant tools (such as trade remedies, general and security exceptions, balance of payment, infant industry, etc) to defend/support the domestic economy. • The NAC should undertake a review of all existing trade policies aimed at protecting/supporting domestic production in certain industries or conserving foreign exchange. This includes the policy on rice, textiles, automobiles, wheat, tomatoes, maize, cement, etc. The focus of this review would be to bring these policies into alignment with the requirements of the AfCFTA. • Going forward, the NAC should track as appropriate within their mandate and provide advisory as required on the design and implementation of intervention programmes and policies by any agency of the government and flag any policies that do not take into cognisance the obligations the country has undertaken under the AfCFTA (and indeed ECOWAS and WTO) to improve the chances of these interventions surviving legal scrutiny.			
	Involve Nigerian Missions across the continent in market surveillance.	• Government should involve Nigerian Missions across the continent to confirm where possible that the operations of companies exporting into the Nigerian market meet the requirements of the rules of origin,	FMITI/NAC/MFA	Nigerian Missions are well placed to gather and transmit trade intelligence from their various host countries.	Q1, 2021 for the first virtual sensitisation of the Missions across Africa.

Thematic Area	The Need	Action Required	Responsibility	Considerations	Timeline
		government subsidies, and other rules of the AfCFTA. This will be coordinated by the FMITI, NAC and the Ministry of Foreign Affairs (MFA). • FMITI/NAC/MFA should organise (in Q1, 2021) a virtual sensitisation of Nigerian Missions across Africa on the AfCFTA and their potential roles in its implementation			Ongoing support from the FMITI/NAC/MFA to these missions to be provided periodically
Enabling business environment reforms for export competitiveness	Strengthen Ease of Doing Business Reforms strategy.	• The government should enforce stronger adherence by MDAs to reform targets set by The Presidential Enabling Business Environment Council (PEBEC). This will support the widespread penetration of initiatives and reforms in improving the business environment. • PEBEC and NEC should strengthen the engagement of the States on ease of doing business reforms to ensure that competitiveness enhancing policies are also mainstreamed at the subnational levels. • The NAC should work to facilitate more engagements with PEBEC on issues of domestic ease of doing business reform that are relevant to Nigeria's participation in the AfCFTA.	Federal Executive Council (FEC) /PEBEC/FMITI/NAC	To ensure Nigeria benefits from the AfCFTA proper alignment and compliance to meeting reform targets set by PEBEC is necessary. Providing more deliberate linkages between PEBEC and the NAC would minimize duplicity of efforts and better outputs.	Q1, 2021
	Enact and Repeal Laws to enhance economic competitiveness	• The FMITI/NAC should commence engagement with the National Assembly and other stakeholders like the National Assembly Business Environment Roundtable (NASSBER) coordinated by the NESG, local think tanks like CTBA and development partners who are already championing legislative reforms in some aspects of the business environment in Nigeria. • Some of the outstanding issues for legislative attention include: Bills on	FMITI/NAC/PEBEC/ NASS/	FMITI/NAC should rely on extensive work done by local organisations and development partners (some mentioned in the report) that have identified and analysed or even drafted bills on various issues relating to trade and competitiveness.	Start in Q1, 2021

Thematic Area	The Need	Action Required	Responsibility	Considerations	Timeline
		reforming the Commodity Exchange Ecosystem in Nigeria, including provision for warehouse receipts system; reforming the legal regime for export processing zones; introducing a legal framework for factoring, franchise, crowdfunding; repeal of the Export Prohibition Act; repeal and re-enactment of the Customs and Excise Management Act; etc			
	Establish a globally compliant quality infrastructure system	• The FMITI and NAC should prioritise in the short term the adoption and operationalisation of the National Quality Policy to pave way for reforms such as the wide deployment of Global Good Agricultural Practice (Global GAP) compliance to upscale agricultural output quality and productivity. • The UNIDO supported development of the National Quality Policy requires the passage of the National Quality Bill, to enable the speedy implementation of robust quality infrastructure in Nigeria, one that will ensure a mandate and operational alignment among standards regulators and that will promote the enrolment and accreditation of more laboratories in Nigeria.	FMITI/NAC	This action is important for the purpose of meeting the AfCFTA rules on non-tariff trade barriers, especially Sanitary and Phyto-sanitary standards. The FMITI should review lessons learnt from other countries like South Africa in the implementation of the Global GAP and support the private sector to implement initiatives to ensure high quality standards are maintained. The TESCO Nurture program is an example of the private sector supporting the utilization of good standards in agriculture. [2]	Q1 & Q2, 2021
	Support existing economic clusters for trade growth	• The government should design a programme of support for some of the important economic clusters in Nigeria such as Igun Street in Benin (the historic cluster of bronze art work), Dawano Market (the largest grains market in Africa), Yaba ICT Cluster (a cluster of Africa's leading tech firms), Ikeja Computer Village (West Africa's largest	FMITI/SMEDAN/NEPC	Economic clusters provide good 'laboratories' for implementing competitiveness enhancing reforms in terms of targeted infrastructure, capacity building for export readiness,	Q1, 2021 for commencement of engagement with stakeholders

[2] Nurture was launched in 1992, to ensure that Tesco provides quality fruit and vegetables to its customers. This is an exclusive quality standard which assures the customer that Tesco's fruit and vegetables are grown in an environmentally friendly and responsible way.

Thematic Area	The Need	Action Required	Responsibility	Considerations	Timeline
		computer and computer accessories market), Aba Shoe Making Cluster, Kano Leather Making Cluster, etc. to drive intentional dynamic comparative advantages of these clusters.			
	Coordinated approach towards the promotion of industrial clusters and export aggregation centres	• The FMITI and NAC should coordinate the various ongoing efforts by the Federal Ministry of Agriculture, SMEDAN, Nigerian Export Promotion Council (NEPC), Nigeria Export Processing Zones Authority (NEPZA) and other MDAs in this space to maximize efficiency and also to ensure AfCFTA specific considerations are mainstreamed. • These centres should be used as centres of excellence for applying AfCFTA compliant customs and border management and quality conformity regulations as a short-term measure to increase efficiency and reduce the cost of export logistics.	FMITI/SMEDAN/NEPC /NEPZA	In the medium to long term, the capacity and efficiencies attained within these centres of excellence would spread across the business environment	
	Improve on trade logistics and export corridors	• The NAC should leverage on information from past and present projects on the LAKAJI and Lagos-Abidjan corridors by GIZ, USAID and the Trade Facilitation West Africa programme (delivered by World Bank/GIZ) which is supporting a regional approach to these issues. Engaging with these projects would aid NAC to develop initiatives to optimize export corridors and trade logistics. • NAC should work closely with the National Committee on Trade Facilitation to ensure that Nigeria keeps up with its commitments under the Trade Facilitation Agreement, especially with respect to automation (single window),	NAC	For example, GIZ developed a trade information monitoring system (TRIMS) that allowed traders and transporters to make real time reports of their encounters with security and other government officials who demanded for bribes or illegally obstructed their movements. The tool can be reactivated and improved upon with the coordination of the NAC.	Q4, 2020

Thematic Area	The Need	Action Required	Responsibility	Considerations	Timeline
		simplification and transparency of rules and procedures.			
	Develop an AfCFTA (and ECOWAS) trade information portal	• The NAC should collaborate with the NEPC to develop an AfCFTA (and ECOWAS) market information portal where businesses can access export (and import opportunities) within the continent, the applicable rules and cost estimates for logistics.	NAC/NEPC	This portal can be built on data from sources such as ITC Trade Map and primary data collected by MDAs such as the Customs, CBN, etc. There is also the need to assess similar initiatives anchored by the Department of Trade, FMITI with the support of GIZ and UNCTAD few years ago, with the view to avoiding the duplication of efforts.	Q1, 2021 for launch of portal
	Institute an 'export ready MSMEs' incentive scheme	• There is need for NAC and NEPC to develop an incentive scheme to be applied to MSMES (below a certain turnover threshold) who attain the set criteria for 'export ready MSMEs'. This would also support the social inclusion component of the AfCFTA as if this scheme is implemented effectively it will affect various groups including women, youth and people living with disabilities, among others. • Attaining export readiness would be tied to the acquisition of the necessary skills, quality certifications and operational capacity to operate in export trade.	• NAC/NEPC and SMEDAN	To encourage MSMEs to take advantage of the AfCFTA and to export in general. This incentive is not the same as the Export Expansion Grant; and does not have to be in form of cash grants. It may be in form of low interest loans from government owned development finance institutions, collateral waivers, etc. These initiatives could be anchored on ongoing interventions such as: the UK-Nigeria Export Development Program, She Trade programme facilitated by the ITC, the various capacity building programmes of Network of Practising Non-oil Exporters of Nigeria (NPNEN) etc	Q3, 2021 for launch of scheme
	Revamp the tourism industry	• The NAC/FMITI should collaborate with the Nigerian Tourism Development Corporation (NTDC) on	NAC/NTDC	Tourism is one of the priority services sectors under the AfCFTA. While it may be	Q2, 2021 for commencement of engagement

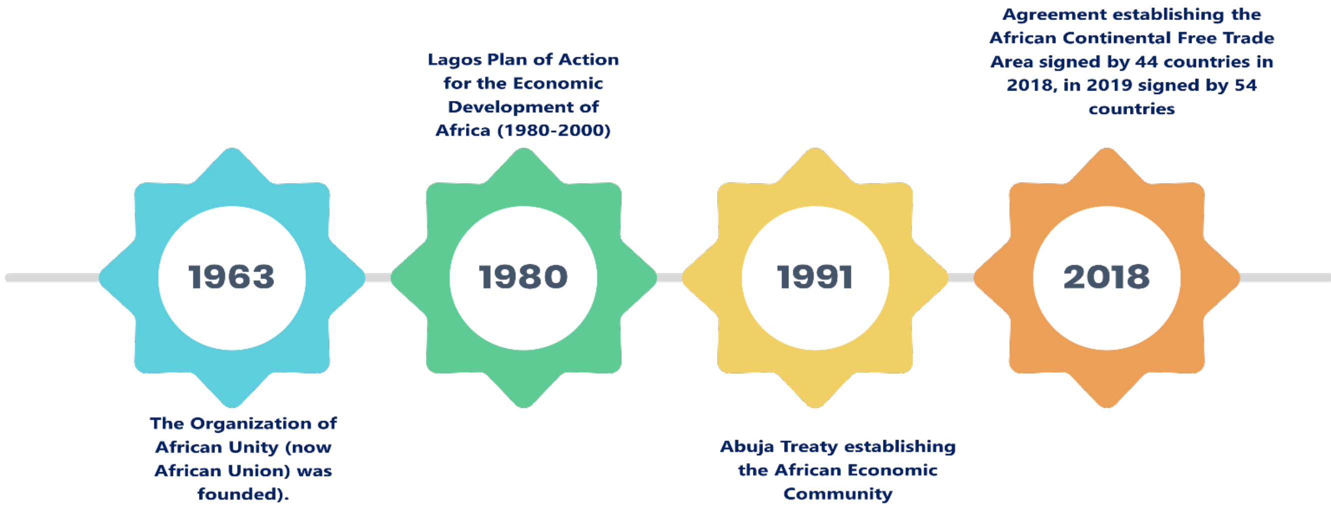
Thematic Area	The Need	Action Required	Responsibility	Considerations	Timeline
		the implementation of the Nigerian Tourism Development Masterplan. This will start to drive an improved environment for tourism in Nigeria.		difficult to bring the security challenges to an end in the short term, the NAC/FMITI in collaboration with relevant stakeholders can embark on strategic actions to harness Nigeria's tourism potentials.	on services sector activities
	Promote indigenous participation in maritime trade	• The NAC needs to collaborate with the Nigerian Maritime Administration and Safety Agency (NIMASA) and other relevant stakeholders to identify and address the challenges with the operations of the Cabotage Act, which was designed to improve indigenous participation in maritime trade	NAC/NIMASA/Nigeria Shippers Council	Transport is one of the priority services sectors under the AfCFTA. It is reported that currently Nigeria has no sea going vessels hence does not share in the gains of trade in maritime services	Q2, 2021 for commencement of engagement with stakeholders
	Coordinate the various initiatives on digital skills development for export	• While the challenge of appropriate infrastructure (power, broadband connectivity) would require a long terms intervention, the focus of NAC, on the short term should be on taking stock (mapping) of available skills and skills development interventions in the field and harnessing them towards export. • In the long term, the government should invest in the appropriate infrastructure to drive a digital revolution for enhanced productivity and export of skills.	NAC/NITDA	Communication services is one of the priority services sectors under the AfCFTA. On e-commerce enabled services exports, the challenge is also that of coordination. For example, NITDA has embarked on digital skills development trainings across the country over the years. Many states and various private technology incubator hubs also have such initiatives on their own.	Q1, 2021 for commencement of mapping of digital skills and digital skills development programmes.
	Effective long-term strategy for improving skills for professional services export	• The FMITI and NAC should engage, on the medium to long term, with the relevant MDAs to ensure the review of the curriculum of the various courses in Nigerian higher institutions of learning to make them skills oriented and industry ready considering the AfCFTA implementation. • The government should also pursue mutual recognition of professional	NAC/FMITI/NUC/NEB TEB, etc	The relevant stakeholders to engage in this process include the Nigerian Universities Commission (NUC), the National Business and Technical Examinations Board (NABTEB), and the bodies for the regulation of various professions such as ICAN, Council of Legal Education, etc.	Q2, 2021 for commencement of work on strategy

Thematic Area	The Need	Action Required	Responsibility	Considerations	Timeline
		qualifications on a demand and offer basis with select countries based on data on export opportunities in those countries.			
	Awareness of the AfCFTA across various MDAs	• The FMITI and NAC should sensitise and build the capacity of all relevant MDAs on the AfCFTA and their various roles in its implementation • In the short term, starting from Q1 of 2021, NAC needs to design an AfCFTA training programme that is based on the mandate of each MDA and their role on AfCFTA.	NAC/FMITI/HoS/SGF/	Some MDAs play a direct role in the implementation of the AfCFTA (e.g. Customs, Standards Organization of Nigeria (SON), etc) while others will be required to understand how to mainstream the AfCFTA into their policies and activities (e.g. Min of Education, Bank of Industry (BOI) etc).	Q1 of 2021: start design of training manual. Implement training programmes periodically. Training in batches from Q2
	Promote innovative financing for trade infrastructure	• The government should prioritise the deployment of well-designed PPPs for the provision and continued improvement of most of the trade infrastructure needs whether at the ports, intra-city and cross-border road and rail transport, sea links, etc. • The FMITI and NAC should engage with relevant stakeholders to articulate the critical trade logistics and trade facilitation infrastructure needs and commence project development for PPP.	FMFBNP/FMITI/Bureau of Public Enterprises (BPE)/Infrastructure Concession Regulatory Commission (ICRC)/ Nigerian Ports Authority (NPA) and Ministry of Transport.	Trade logistics and trade facilitation infrastructure needs can to a large extent be addressed through utilizing a PPP model.	Q2, 2021
	Sensitise and train the private sector on the AfCFTA rules	• The NAC, FMITI, NEPC and other relevant MDAs should embark on sustained training and information dissemination aimed at helping the private sector understand the provisions of the AfCFTA for the purpose of their import and export activities, and for the purpose of reporting possible abuses by other importers or exporters within and outside Nigeria.	NAC/FMITI/ Nigerian Association of Chambers of Commerce, Industry, Mines and Agriculture (NACCIMA), Manufacturers Association of Nigeria (MAN), Nigerian Employers Consultative Association (NECA).	This should be an ongoing activity driven down to the various states of the federation	(Ongoing) Starting from Q1, 2021

Thematic Area	The Need	Action Required	Responsibility	Considerations	Timeline
	Establish a framework for trade law advisory and litigation	• Government should explore these options for setting up a framework for trade law advisory and litigation. One, an inter-agency approach in the form of a committee that involves officials from the FMITI, Ministry of Justice, NOTN, etc. Two, a dedicated team embedded in the proposed trade remedies authority. Three, a dedicated team embedded in the Office of the Minister, FMITI.	FMITI/FMoJ	Trade law advisory and litigation skills are critical to Nigeria's successful participation in the AfCFTA and other current or future trade agreements. The team to be set up will collate complaints and, in appropriate cases, trigger consultation with the relevant AfCFTA institutions and State Parties sequel to instituting full blown dispute proceeding under the AfCFTA.	Q2 & Q3, 2021
	Involve Nigerian Missions across the continent in market surveillance	• Government should involve Nigerian Missions across the continent to confirm where possible that the operations of companies exporting into the Nigerian market meet the requirements of the rules of origin, government subsidies, and other rules of the AfCFTA. This will be coordinated by the FMITI, NAC and the Ministry of Foreign Affairs (MFA). • FMITI/NAC/MFA should organise (in Q1, 2021) a virtual sensitisation of Nigerian Missions across Africa on the AfCFTA and their potential roles in its implementation	FMITI/NAC/MFA	Nigerian Missions are well placed to gather and transmit trade intelligence from their various host countries.	Q1, 2021 for the first virtual sensitisation of the Missions across Africa. Ongoing support from the FMITI/NAC/MFA to these missions to be provided periodically.

Thematic Area	The Need	Action Required	Responsibility	Considerations	Timeline
Gender and Inclusion	Support to women business associations and MSMEs	• Government should strengthen the work of woman business associations such as Organisation of Women in International Trade (OWIT), Association of Women Services Exporters, etc • FMITI should include representatives of these women groups in the Enlarged National Focal Point (ENFP), the National Action Committee on the AfCFTA, and other committees on trade policy. • Designate a focal person and workstream for each of the following themes: Gender, Youth, and Informal Sector at the NAC Secretariat; or one focal person and workstream to cover the three issues as one thematic area. • Government should focus on awareness creation to enhance women's ability to understand the AfCFTA market access provisions and to leverage the opportunities these afford. Women in informal and cross border trade face challenges related to skills, access to finance and infrastructure related challenges. This should remain a major focus of the government with entrepreneurship skills and access to finance opportunities created for informal traders.	FMITI/NAC, SMEDAN, FMFBNP	There are several initiatives (such as She Trades) that could provide lessons to guide the government on their interventions in this area. • The government should also commit resources to infrastructure development that will support Nigerian businesses (and by extension informal traders). The government should review opportunities to leverage existing initiatives such as the Programme for Infrastructure Development in Africa to access resources for infrastructure development. • Routine border assessments and Women in Cross Border Trade (WICBT) surveys would also be useful in monitoring AfCFTA progress and trends.	Q1, 2021 for: - the incorporation of women business associations in the ENFP and NAC. - setting up the Gender, Youth and Informal Sector Workstream
	Mainstream gender and inclusion in trade policy	• The new trade policy should incorporate a gender impact assessment and social inclusion component as part of its design to understand potential barriers and impacts to women, youth and other groups and design appropriate measures to mitigate them. This will include actions to support the growth of MSME's and access to markets and finance.	FMITI/SMEDAN	The Government should leverage on existing studies and initiatives on gender and inclusion from different countries as well as efforts in other sectors in Nigeria to support trade policy refinement in relation to gender and inclusion.	Q1 & Q2, 2021

Setting the tone…



The AfCFTA is in furtherance of the Abuja Treaty (1991), which aims to:

- ***strengthen Africa's regional economic communities.***
- ***establish a free trade area, common external tariff, and common market; and***
- ***gradually remove obstacles to free movement of persons, goods, services, and capital.***

Understanding the AfCFTA

The African Continental Free Trade Area agreement (AfCFTA) goes beyond simple trade liberalisation: it aims to boost and strengthen Africa's capacities and to encourage economic and social development through cooperation. On 11 November 2020, the Federal Executive Council approved the ratification of the AfCFTA. On 5 December, **Nigeria** deposited its instrument of **ratification** of the agreement with the African Union, becoming the 34th Member State to formally ratify the treaty. Trade under the AfCFTA was initially supposed to commence on 1 July 2019 but was shifted to 1 January 2021 due to the COVID-19 pandemic.

Countries have already started submitting their market offers for trade in goods, while discussions on commitments on trade in services have also commenced. As of December 2020, rules of origin negotiations have been concluded for 88% of tradable goods, with notable exceptions being automotive and fisheries, among others. Out of the 12 sectors of the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO), the AfCFTA is concentrating on five of them in **Phase I.** These services are Travel & Tourism, Transportation, communications, financial services and business services.

Figure 1 below, graphically depicts the AfCFTA framework which is divided into two phases and Nigeria is currently in Phase 1.

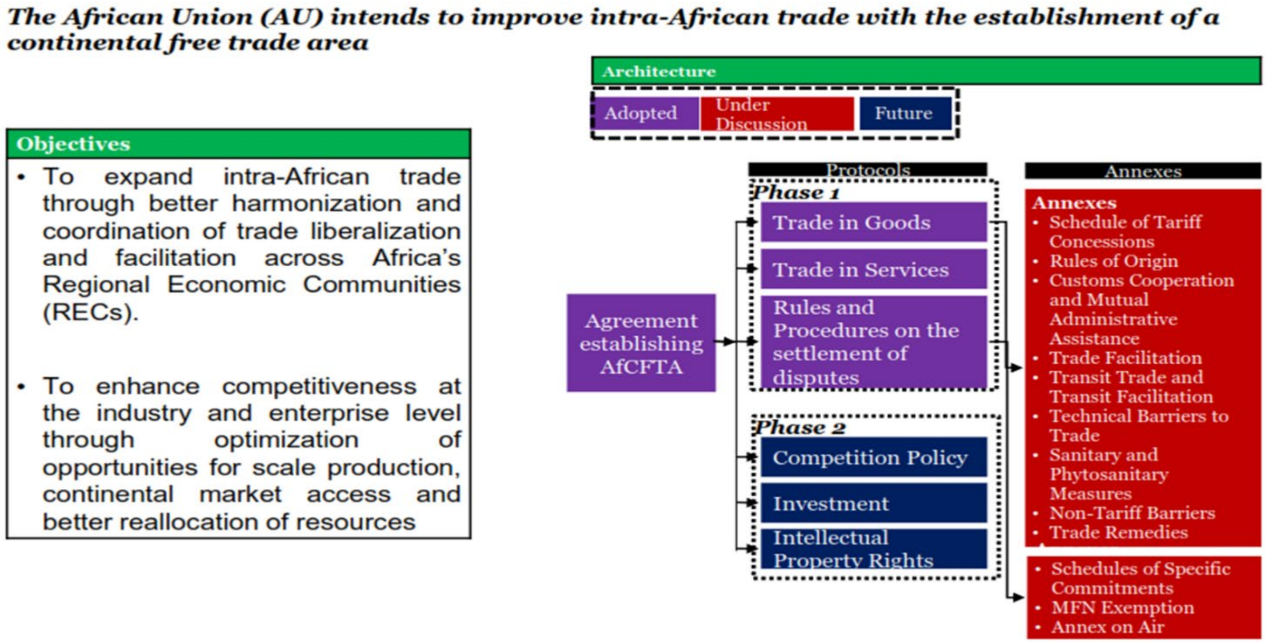


Figure 1: AfCFTA framework

Scope of the study and methodology

This report provides a review of key technical issues to inform the ratification and subsequent implementation of the AfCFTA. It makes recommendations, after providing an extensive review of four broad areas:

The study involved a mixed methodology, including desk research, simulation, and analysis of macroeconomic data obtained from domestic sources, including national accounts and representative surveys, as well as international development organisations (including the World Bank, the International Monetary Fund (IMF), World Trade Organization (WTO), and United Nations Conference on Trade and Development (UNCTAD). In addition, key informant interviews (KIIs) were conducted with trade sector stakeholders from the Government, professional associations, and the organised private sector.

This report, commissioned by the PDF Bridge Programme, highlights that Nigeria is moving in the right direction to implement the AfCFTA. However, the report also demonstrates that despite all the efforts leading up to the ratification, and the plans already being developed, there is a need for decisive action and collective effort by Nigerian citizens to ensure that the benefits are accrued and the potential risks and challenges are mitigated.

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Abbreviations

AfCFTA	African Continental Free Trade Agreement
AGOA	African Growth and Opportunities Act
AU	African Union
BIAT	Boosting Intra-African Trade
CBN	Central Bank of Nigeria
CET	Common external tariff
CTBA	Centre for Trade and Business Environment Advocacy
ECOWAS	Economic Community of West African States
ENFP	Enlarged National Focal Point
ERGP	Economic Recovery and Growth Plan
ESP	Economic Sustainability Plan
ETI	Enabling Trade Index
ETLS	ECOWAS Trade Liberalisation Scheme
EU	European Union
FEC	Federal Executive Council
FCDO	UK Foreign, Commonwealth and Development Office
FMITI	Federal Ministry of Industry, Trade and Investment
FPIS	Federal Produce Inspectorate Service
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariff and Trade
GBV	Gender-based violence
GCI	Global Competitiveness Index
GDP	Gross domestic product
GSP	Generalised System of Preferences
GSTP	Global System of Trade Preferences
ICBT	Informal cross-border trade
IMF	International Monetary Fund
ITC	International Trade Center
LDC	Least developed country
LPI	Logistics Performance Index
MDAs	Ministries, departments, and agencies

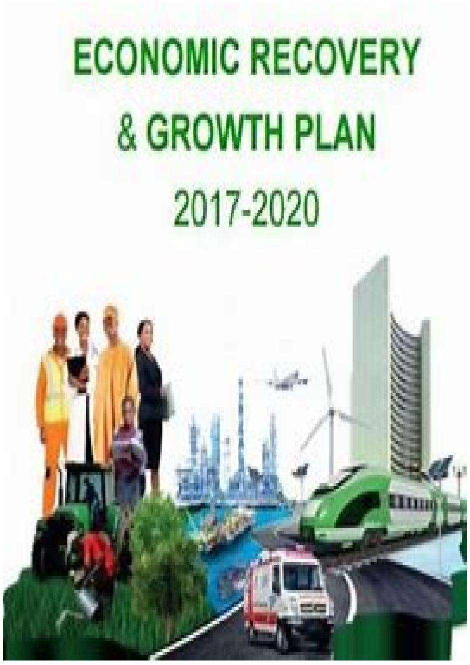
MFA	Ministry of Foreign Affairs
MFN	Most favoured nation
MICE	Meetings, incentives, conferences, and exhibitions
MSMEs	Micro, small and medium-sized enterprises
MTNDP	Medium-Term National Development Plan
NAQS	Nigerian Agricultural Quarantine Services
NBS	Nigerian Bureau of Statistics
NCS	Nigerian Customs Service
NiNAS	Nigeria National Accreditation System
NIPC	Nigerian Investment Promotion Commission
NITDA	National Information Technology Development Agency
NOTN	Nigerian Office for Trade Negotiations
NPA	National Port Authority
NQIP	National Quality Infrastructure Project
NTB	Non-tariff barrier
NTDC	National Tourism Development Corporation
OLoP	One Local Government One Product
OPM	Oxford Policy Management
OWIT	Organisation of Women in International Trade
PEBEC	Presidential Enabling Business Environment Council
SME	Small and medium-sized enterprise
SMEDAN	Small and Medium Enterprises Development Agency of Nigeria
SON	Standards Organization of Nigeria
SPS	Sanitary and phyto-sanitary
TBT	Technical barriers to trade
TRIMS	Trade information monitoring system
USAID	United States Agency for International Development
WIE	Women in Investment and Enterprise
WTO	World Trade Organization

Nigeria's Trade Policy Objectives and the consistency with AfCFTA

1 Introduction

1.1 AfCFTA and Nigeria's national economic development strategy: the ERGP, the ESP, and the Nigerian Agenda 2050

Nigeria's national economic development strategy is anchored in the Economic Recovery and Growth Plan, (ERGP) 2017–2020, which was Nigeria's response to the economic recession of 2015/16. The ERGP has the vision of 'sustained inclusive growth', emphasising the 'urgent need as a nation to drive a structural economic transformation with an emphasis on improving both public and private sector efficiency' towards 'increasing national productivity and achieving sustainable diversification of production, to significantly grow the economy and achieve maximum welfare for the citizens, beginning with food and energy security'. The principles behind the ERGP include focusing on tackling constraints to growth; leveraging the power of the private sector; promoting national cohesion and social inclusion; allowing markets to function; and upholding core values. The 'broad objectives' of the ERGP include 'restoring growth', 'investing in our people', and 'building a globally competitive economy'.



The ERGP does not make any reference to the AfCFTA (**which was being negotiated when the ERGP was being developed**), nor to regional trade under the Economic Community of West African States (ECOWAS). The ERGP seeks to 'promote non-oil exports through the zero-oil plan and use trade policy tools to tackle dumping and balance of payments crisis to raise non-oil exports as a ratio of total exports from 7.5% to 15% by 2020'.

Nevertheless, the vision, principles, and broad objectives of the ERGP, as highlighted above, are complementary with the objectives of the AfCFTA, especially as regards **promoting sustainable**

growth, **increasing productivity**, **ensuring economic diversification**, **leveraging the power of the private sector**, and **allowing markets to function**. These are issues that are critical to domestic competitiveness, which is the foundation of export competitiveness.

The ERGP expires in **2020** and the Government is now developing a successor plan to the ERGP. This process started on 8 June 2020, with the aim of developing the Medium-Term National Development Plan (MTNDP) 2021–2025 and the Nigeria Agenda 2050. The successor plan will have the following thematic focuses (among 17 other thematic focuses), which are strong components for a cross-sectoral AfCFTA strategy: agriculture and rural development; business environment, trade, and competitiveness; product mapping; manufacturing and industrialisation; infrastructure; and employment, gender, and people with special needs. However, the AfCFTA has not been strategically mainstreamed into the ongoing planning process for the MTNDP 2021–2025 and Nigerian Agenda 2050, possibly because of the delayed ratification (about six months into the commencement of the national development planning process). With Nigeria's ratification of the AfCFTA, there is a need to revisit the planning process for the new plan, with a view to mainstreaming the AfCFTA into it.

In the interim, while the MTNDP is being developed, the Economic Sustainability Plan (ESP) was adopted as Nigeria's response to the COVID-19 pandemic and the accompanying economic crisis, which has led to the worst recession the nation has suffered in many decades.

The 'general objectives' of the ESP are summarised in Figure 2 below:

Figure 2: Objectives of the ESP

Some of the proposed 'key projects' under the ESP are: a mass agricultural programme; extensive public works and a road construction programme; installation of solar home systems; support for micro, small and medium-sized enterprises (MSMEs); digital technology; and local production of Nigerian goods. These objectives and key projects speak to issues that are **critical to improving the competitiveness** of the Nigerian economy, which will position the country for strong export performance in the context of the AfCFTA.

1.2 Nigeria's trade policy objectives and trade pattern, and the consistency with the AfCFTA

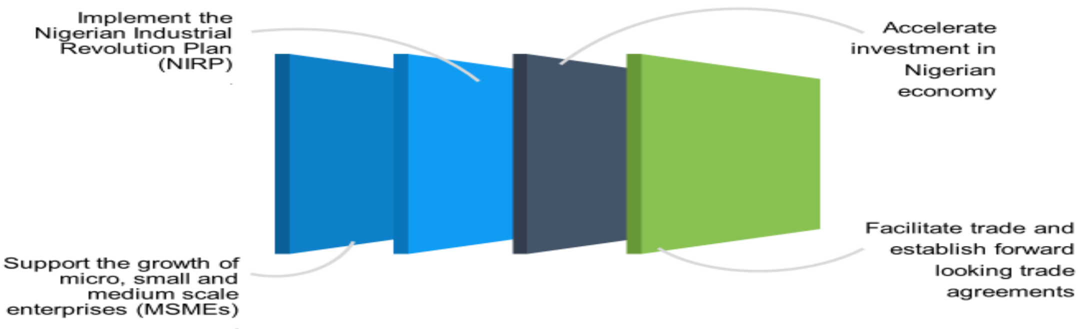
Nigeria's trade policy has not been successfully updated since 2002. The last attempt to update the policy occurred in 2011–2015 and resulted in the drafting of trade policy and trade strategy documents that were never fully adopted by the government of the era. Currently, the Federal Ministry of Industry Trade and Investment (FMITI) is in the process of drafting an updated trade policy document for Nigeria. In the absence of an updated trade policy document, Nigeria's trade policy is compiled from various sources, such as: the 2002 trade policy documents; the Zero Oil Plan; the various government interventions to promote domestic production in selected sectors, industries, and products; and the relevant statements found in the ERGP and the National ESP. Unfortunately, this fragmented trade policy management means that key initiatives sometimes emanate from different parts of the Government, without proper coordination or coherence with the existing policy structures and goals.

1.2.1 Nigeria's trade policy objectives

The primary goal of trade policy is to enhance the positive impact of trade on economic growth and development. Nigeria's trade policy objectives derive from this primary goal. The overall objective of engaging in external trade is to enhance its positive impact on economic growth and development, in terms of:

a) promoting rapid, equitable, and sustainable growth of the country.
b) diversifying and developing the economy, to achieve a better **Economic Complexity Index**; [3]and
c) encouraging the efficient production and distribution of goods and services for both domestic and international markets.

The four pillars of trade in Nigeria (source engagement with FMITI) are as set out in the Figure 3 below:



[3] The **Economic Complexity Index** (**ECI**) is a holistic measure of the productive capabilities of large economic systems, usually cities, regions, or countries. In particular, the ECI looks to explain the knowledge accumulated in a population and that is expressed in the economic activities present in a city, country, or region.

Figure 3: The four pillars of trade in Nigeria

1.3 Pattern of Nigeria's trade

1.3.1 Trade in goods

Nigeria's pattern of merchandise trade (in terms of structure and direction) is similar to that of most African countries: primary products, such as mineral fuels, cocoa, oil seeds, and raw hides and skins (among others) dominate its exports (see Table 1). The imports into the country include machinery (including computers), mineral fuels (including oil), vehicles, electrical machinery, optical and technical medical apparatus, glass, and pharmaceuticals (among others).

Table 1: Structure of Nigeria's exports

Structure %	2017	2018	2019
Share of oil in total exports	95.37	93.57	86.88
Share of non-oil in total exports	4.63	6.43	13.12
Share of agriculture in non-oil exports	27.06	25.36	10.71
Share of manufacturing in non-oil exports	36.84	54.17	82.37
Other non-oil exports	36.10	20.47	6.92
Composition of exports	100.00	100.00	100.00
Crude oil	81.1	81.8	76.5
Agriculture	1.3	1.6	1.4
Mining	0.8	0.7	0.6
Manufacturing	1.7	3.5	10.8

Source: Nigerian Bureau of Statistics (NBS), Foreign Trade Statistics – (Q2, 2020)

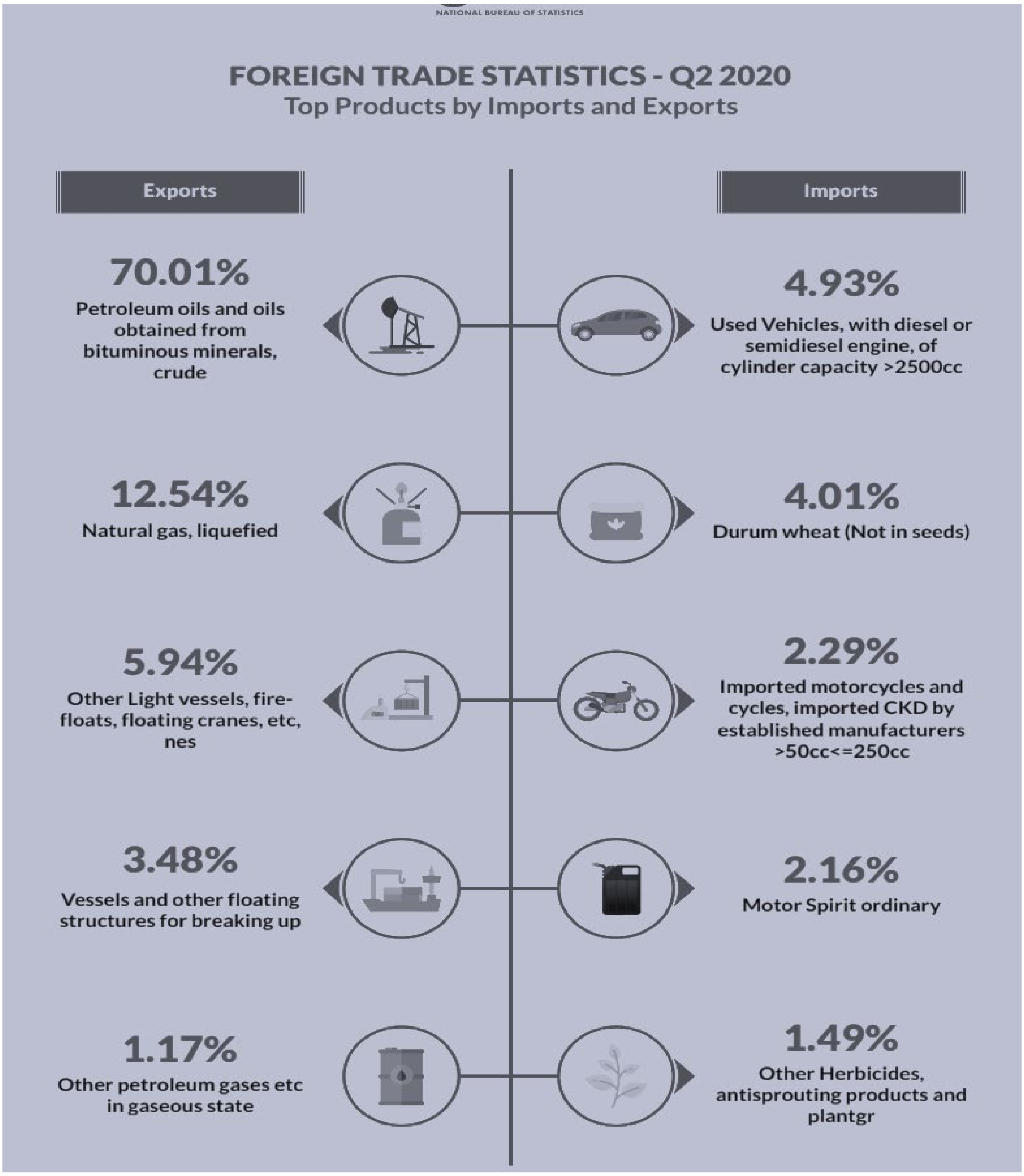


Figure 4: Nigeria imports and exports Q2 2020

Source: NBS Foreign Trade Statistics - (Q2 2020)

The figure above highlights export and import data by product for 2020. The figure below represents import and export statistics from Q2 2020.

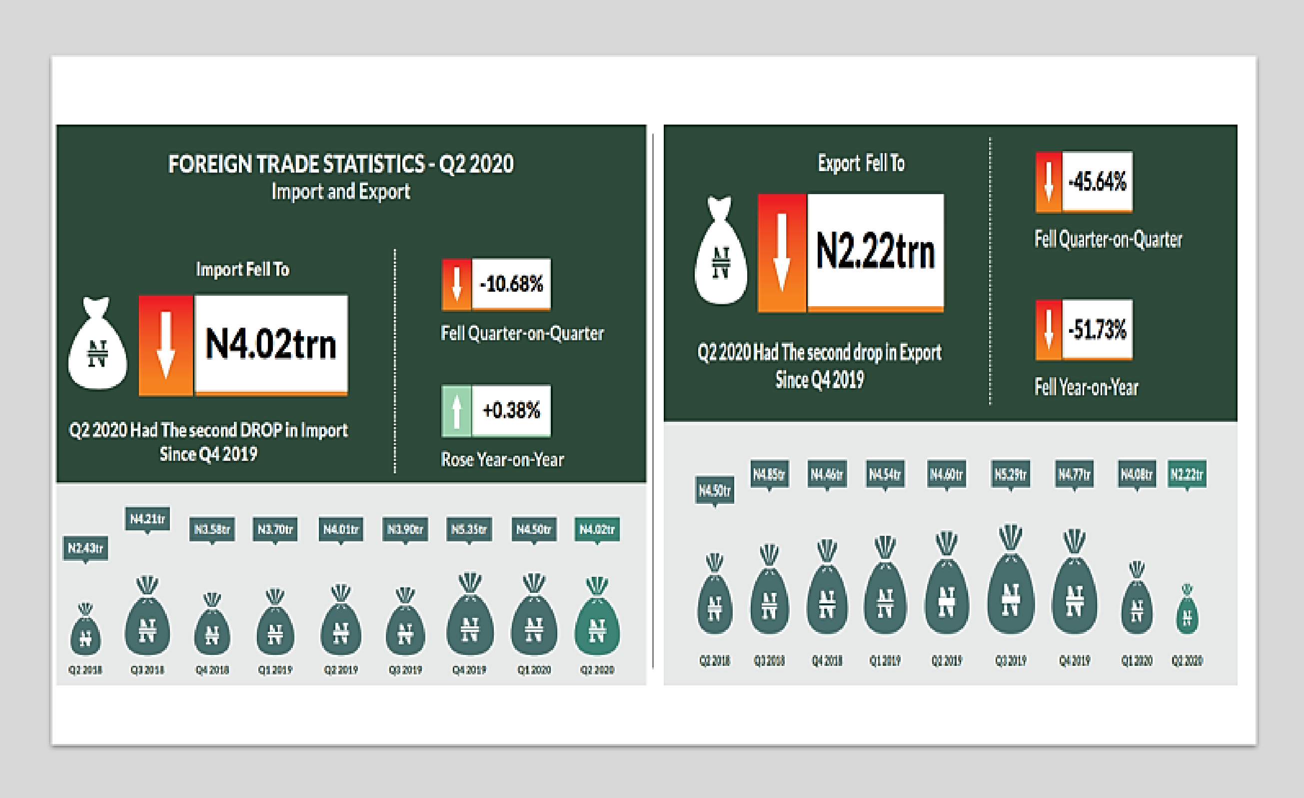


Figure 5: Import and Export statistics Q2 2020 (Adapted from NBS Foreign Trade Statistics report (2020)

According to Tralac, 2019) in 2018, Nigeria exported and imported goods to and from the rest of Africa with a value of US$ 7 billion and US $1.3 billion, respectively. In terms of Nigeria's total intra-Africa trade (exports + imports) Nigeria mainly trades with South Africa (46% of total intra-Africa trade), Ivory Coast (15%), Togo (12%), and Senegal (7%). South Africa is Nigeria's main African trading partner (both as destination and source market). Apart from South Africa, other African destination markets for Nigeria's exports include Cameroon, Egypt, Namibia, and Mozambique. Main African source markets (excluding South Africa) are Morocco, Egypt, eSwatini, and Tunisia.

Nigeria subscribes to the ECOWAS Trade Liberalization Scheme (ETLS), which enables all qualifying goods sourced from approved producers in the other ECOWAS Member States to be imported into Nigeria duty free. Goods imported from Community of Sahel-Saharan States (CEN-SAD) countries, which are not ECOWAS Member States (including Egypt, Morocco, Somalia, and Tunisia), and from the rest of Africa, are subject to the most favoured nation (MFN) applied duty. Nigeria's MFN applied duty is the ECOWAS Common External Tariff (CET), which has five tariff bands: 0%, 5%, 10%, 20%, and 35%. It is on record that Nigeria has the largest number of registered companies (525) and registered products (>1,000), Nigeria's Intra-ECOWAS exports account for 45% of Nigeria's intra-Africa exports, and for only 16% of intra-Africa imports (Tralac, 2019). All of Nigeria's imports form non-ECOWAS countries is conducted under the CET.

1.3.2 Trade in services – general and intra-Africa

The Nigerian services sector has shown impressive gains amid tough economic circumstances. This has been spearheaded by several services industries: retail and wholesale trade; telecommunications; banking; and motion pictures (Nollywood). The growth in these industries has helped to diversify Nigeria's economy, which is the largest in sub-Saharan Africa.[1] The graphic below highlights some key indicators across three sectors, retail and wholesale trade, telecoms and banking.

Retail and Wholesale Trade

- 16.01% GDP (2019)
- Annual rate (-0.37%)

Telecoms

- 10.3% GDP (2019)
- 199.3 **mill** active subscribers[4]

Banking

- 0.26% GDP
- Annual rate (2.4%)
- West Africa's Largest market

Source: National Bureau of Statistics 2019 Report

1.4 Consistency with the AfCFTA

The objectives of Nigeria's trade policy highlighted above are in harmony with those of AfCFTA. The AfCFTA provides a veritable window of opportunity for Nigeria to diversify away from crude oil; and encourage the efficient production and distribution of goods and services for both domestic and international markets among other gains. These gains will only materialise if Nigeria takes the additional step of improving the competitiveness of the domestic economy, eliminating trade policy measures that are inconsistent with the AfCFTA and addressing the bottlenecks to trade facilitation. As shown in Chapters five and six, some of the current initiatives relating to ease of doing business reforms, quality infrastructure and trade facilitation are some of the important reforms that are not just aligned with the objectives of the AfCFTA but are critical for Nigeria to reap the benefits of the AfCFTA.

On trade in goods, the AfCFTA seeks to:

- Progressively eliminate tariffs and non-tariff barriers,
- Improving customs procedures, and cooperating on a range of areas, including trade facilitation and transit, Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Standards (SPS),
- Promotion of regional value chains and diversification in Africa.
- Harmonize African trade arrangements and institutions.

On trade in services, the AfCFTA seeks to:

- Enhance the competitiveness of services in Africa, including through liberalization of trade in services;
- Foster foreign investment;
- Promote industrial development through regional value chains;
- Create a single liberalized market for trade in services through two channels: a framework for the progressive liberalization of service sectors; and a framework of common disciplines.

For Trade in goods: It has been agreed that 90% of tariff lines shall be liberalized within 5 years (10 years for LDCs) of the entry into force of the Agreement. Of the remaining 10% of tariff lines, 7% shall be designated as 'sensitive products' subject to longer phase-down periods, and 3% as 'excluded products' on which no tariff concession is offered. In the spirit of trade liberalization, it is further agreed that the exclusion list will be limited to a maximum of 10% of the total import value of other State Parties.

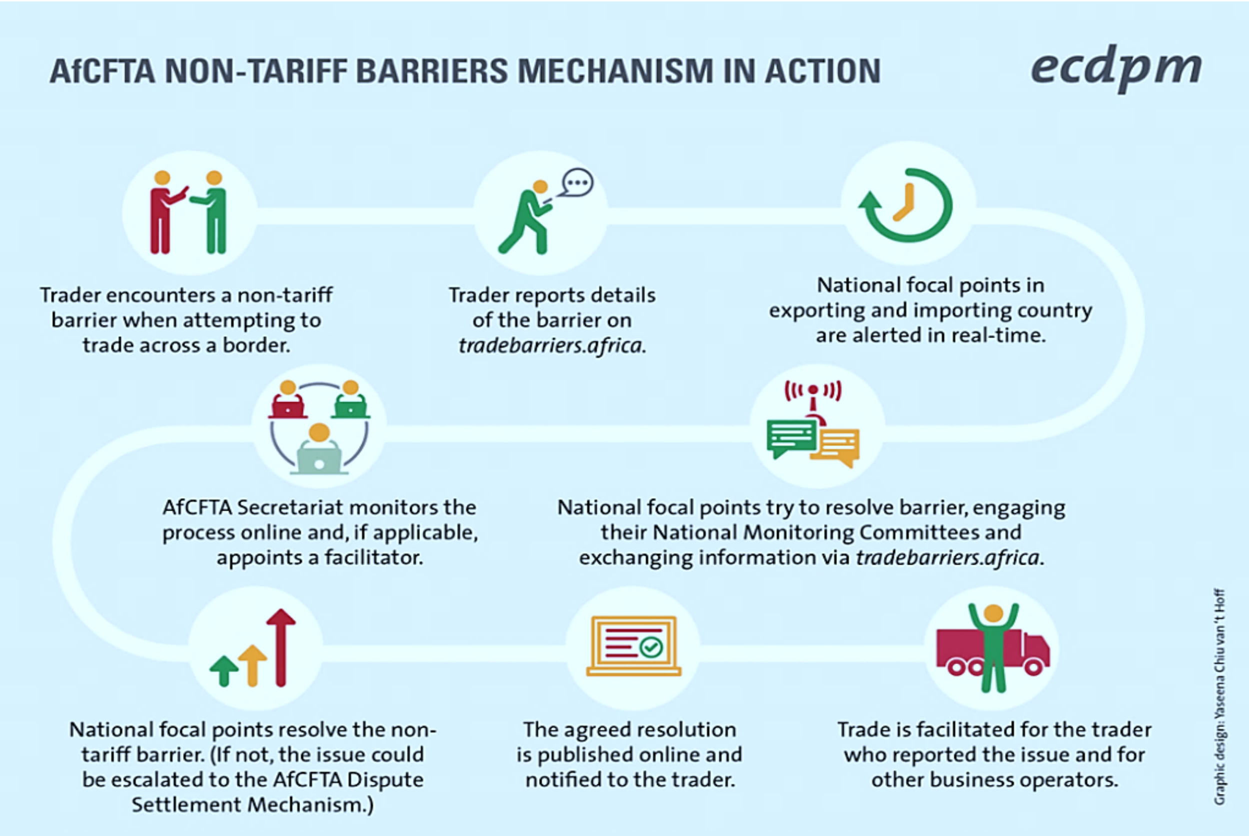
For Trade in services: the Protocol on Trade in Services provides for detailed commitments by State Parties in each service sector and for each mode of service delivery. Consequently, five priority service sectors to be negotiated under the AfCFTA are business services (including professional services), communication, financial, tourism and transport services.

The AfCFTA can serve as a catalyst for investment in Africa's cross-border hard and soft infrastructure, which is necessary for the emergence of continental transnational corporations. This will provide opportunities for Nigerian companies to cross borders and become regional players in trade as opposed to operating only in the domestic market. The prospects for the larger markets and supporting infrastructure will spur industrial development, as well as more investments in and from Nigeria, through forward and backward vertical integration of economic activities across the continent's borders. The signal **of larger markets would stimulate trade in the services sector**.

[4] Nigerian Communications Commission Report August 2020

A primary beneficiary of this is likely to be **Nigeria's financial services sector**, which will be able to pool and lend funds to larger industrial activities for economies of scale.

According to IMF (2019) and UNCTAD, the elimination of tariffs on intra-regional trade under the AfCFTA would result to more significant gains if it is accompanied by the removal of non-tariff barriers (NTBs) such as cumbersome customs procedures and delays in movement of goods. The AfCFTA Annex on NTBs mandates the establishment of a mechanism for the identification, categorisation and elimination of NTBs as shown below, the online mechanism has been launched and ready for use as trading commences under the AfCFTA in January 2021. The anticipated approval of the National Quality Policy would be useful in addressing the NTBs relating to SPS and technical regulations (product testing and certification). Without an efficient quality infrastructure, Nigerian products would face the same challenges of rejection that they have faced in other markets outside Africa.



Source: https://ecdpm.org/great-insights/african-continental-free-trade-area-agreement-impact/breaking-down-non-tariff-barriers/

The benefits and challenges of the AfCFTA are summarised in Table 2 below.

Table 2: Benefits and challenges of the AfCFTA

Short-term benefits	Medium-term benefits	Long-term benefits	Challenges
Reduction of tariffs on existing exports from Nigeria to the rest of Africa, thereby ensuring that Nigerian exports compete with exports from the rest of the world in African markets.	The AfCFTA has the potential to also eliminate non-tariff barriers, harmonise regulations, promote customs cooperation, etc through the implementation of the various provisions and the continental initiatives being	The AfCFTA is expected to contribute significantly to foreign direct investment in, and structural transformation of, the Nigerian economy, with the aim being an economy in which the manufacturing and services sectors are developed and are major contributors to	- Import competition, which may pose a threat to certain sectors or industries. - The required political will to align Nigeria's present trade policy practices with the requirements of the AfCFTA, as well as to address the various import

Short-term benefits	Medium-term benefits	Long-term benefits	Challenges
	championed by the AU and other regional bodies.	employment, government revenue, and overall national prosperity.	and export bottlenecks through the full implementation of Nigeria's commitments under the WTO Trade Facilitation Agreement. Some trade policy practices deserving attention include import and export prohibitions, foreign exchange restrictions for certain imports, the quality and standards system (technical regulations) etc.

Whether the benefits from the AfCFTA are maximised will hinge on its being fully implemented in Nigeria through domestication (i.e. becoming part of Nigeria law). This is necessary, to provide the legal backing for the implementation of the various obligations relating to tariffs, services sector liberalisation, etc. Domestication would also provide the foundation for domestic reforms to improve trade facilitation. For Nigeria to commence trading under the AfCFTA in January 2021, there must be a legal backing approving the new tariff regime applicable to imports from the AfCFTA State Parties. The extant law for setting customs tariff is the Customs, Excise Tariff, Etc. (Consolidation) Act Cap C59, LFN 2004, which grants the President the power to "to impose, vary or remove any import duty" on the recommendation of the Tariff Review Board (Section 13). The issuance of a new tariff regime would be by an Order made by the President in accordance with the referenced law. For other aspects of the AfCFTA other than tariff, the proper means of domestication is through a law enacted by the National Assembly.

1.5 Conclusions and Recommendations

Nigeria has historically been at the forefront of continental economic integration (cf. the **Lagos Plan of Action** and the **Abuja Treaty**). With GDP of about US$ 376.3 billion (the **biggest in Africa**), Nigeria is a major exporter and investor on the African continent, particularly in financial services, manufactured goods, agricultural products, and the like. Thus, many of the continental transnational corporations that it is hoped will emerge from the AfCFTA are likely to come from Nigeria.

From the foregoing analysis, it becomes clear that Nigeria's participation in the AfCFTA must be underpinned by several domestic reforms which are discussed in more details in the subsequent chapters of this report. It should be noted at this point, however, that **Nigeria needs to expedite work on the new trade policy** to update the national vision on trade and trade administration. This process should include the **definition of an efficient structure for trade policy management**. For economy wide coherence between the AfCFTA and domestic economy planning, Nigeria needs to take steps to **mainstream the AFCFTA into Nigeria's trade policy being updated as well as into the Medium-Term National Development Plan and the Nigerian Agenda 2050** – all of which are being developed now. Implementing the AfCFTA and reaping the benefits from it requires **strong political commitment** and funding, as well as **domestication of the AfCFTA Agreement**.

It is therefore recommended as follows:

- Speedy completion of the new trade policy for Nigeria: The Federal Ministry of Industry Trade and Investment (FMITI) should fast-track the process of drafting and adoption of the new Trade Policy for Nigeria.
- Create an efficient structure for trade policy management: The FMITI should conduct a review/study to determine the most appropriate trade policy management framework that is suitable for Nigeria. This would consider issues relating to negotiations, implementation, trade remedies investigations, complaints and enforcements, etc; and the roles of the Department of Trade, Nigerian Office for Trade Negotiations (NOTN), NAC Secretariat, the Tariff Technical Committee (under the Ministry of Finance Budget and National Planning),

the ECOWAS Trade Liberalization Scheme (ETLS) Desk at the Ministry of Foreign Affairs, etc

- ***Mainstream the AFCFTA into Nigeria's trade policy, the Medium Term National Development Plan and the Nigerian Agenda 2050***: FMITI should engage Federal Ministry of Finance Budget and National Planning (FMFBNP), which is the Ministry anchoring the MTNDP 2021-2025 and Nigerian Agenda 2050 on integrating AfCFTA considerations into these two policy documents being developed. The FMFBNP should be provided with relevant reports and materials that have been compiled by the FMITI and the National Action Committee (NAC) in preparation for the ratification and the implementation of the AfCFTA.
- ***Strong political commitment and funding for the implementation of the AfCFTA:***
    - The government needs to prioritise allocation of resources (financial, human, technical, materials) to the implementation of the initiatives required to enhance Nigeria's participation in AfCFTA.
    - The government should urgently resolve the following constraints to ensure the effective implementation of AfCFTA; the issues around access to Apapa ports; the full implementation of the Nigeria Single Window ; in addition to provision of relevant equipment to facilitate border security for instance more scanners at the ports.
- ***Domesticate the AFCTA:***
    - Commence work on drafting an executive bill to engage the National Assembly for domestication of the AfCFTA. All MDAs related to trade/AfCFTA should align inputs and the bill should be harmonized for submission.
    - To commence trading under the AfCFTA on January 1, 2021, the President needs to issue a new Tariff Order to give effect to the tariff schedule Nigeria (as part of ECOWAS) has submitted for trading under the AfCFTA.

AFCFTA and Trade Agreements Nigeria is signatory to:

Alignment and experiences

2 AFCFTA and trade agreements Nigeria is a signatory to alignment and experiences

2.1 Introduction

Nigeria is a signatory to several trade agreements. The essence of these agreements is to eliminate tariff and non-tariff barriers to the flow of goods, services, and sometimes capital, between or among the member countries to an agreement. Trade agreements constitute an important part of Nigeria's trade policy architecture – interacting with and moderating domestic policies and programmes in the economic sphere. A given country's participation in trade agreements needs to align in **two critical aspects**: first, **with domestic trade and related polices;** and second, with **the country's objectives and obligations** across the various trade agreements.

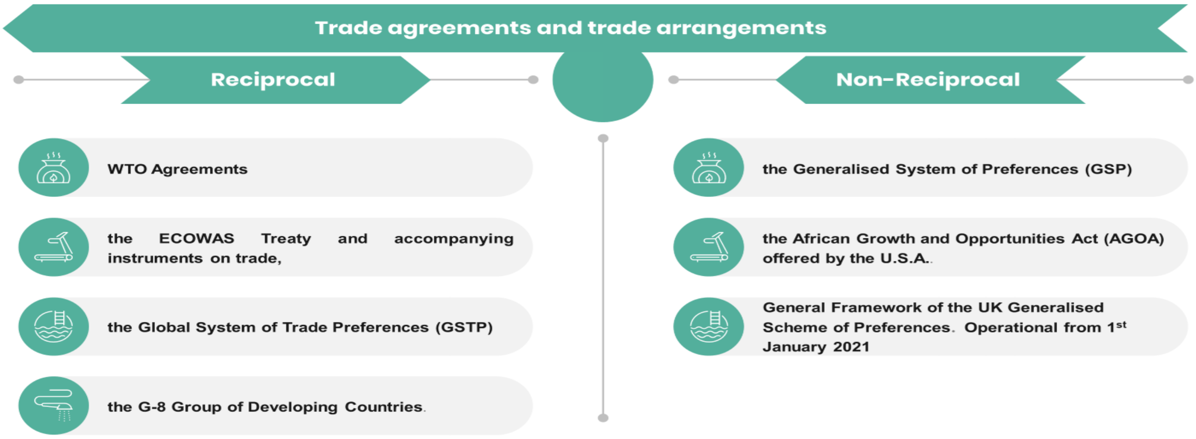


Figure 6: Trade agreements and trade arrangements in which Nigeria participates

The agreements set out in the figure above vary in their coverage of trade issues, such as trade in goods, services, intellectual property, investment, competition policy, e-commerce, etc. They also vary in their depth of liberalisation commitments, measured in terms of the percentage of tariff reduction, products covered, etc. Finally, these agreements vary in the safeguard and remedial measures[2] afforded to members. The ECOWAS arrangement has gone beyond a free trade area to become a customs union, with a CET.

Table 3: Coverage, depth, and safeguard/remedial provisions in Nigeria's trade agreements

Clause	ECOWAS	AfCFTA	WTO	D-8	GSP	GSTP	AGOA
Scope (7) – Possible areas that may be covered by the agreement: i.e. trade in goods, trade in services, intellectual property, investment measures, trade facilitation, competition	4/7 – Trade in goods and trade in services, competition, and investment	7/7 – Trade in goods, trade in services, trade facilitation, intellectual property, investment, competition policy, and e-commerce	5/7 – Trade in goods, trade in services, investment measures, intellectual property, trade facilitation	1/7 – Trade in goods	1 – Trade in goods	1 – Trade in goods	1 – Trade in goods

policy, e-commerce)							
Tariff reduction modality	100%, with varying rates of reduction across Member States	The modalities for AfCFTA tariff negotiations provide for the product coverage of 90% for both least developed countries (LDCs) and non-LDCs, with an implementation period of five years for the former and 10 years for the latter, Of remaining 10%, 7% are deemed sensitive and 3% excluded from liberalisation entirely.	There is no legally binding agreement that sets out the targets for tariff reductions. Instead, individual members of the WTO have listed their commitments to cut and bind tariffs on goods schedules that are part of the Uruguay Round Agreements	Above 25% shall be reduced to 25%; above 15% and up to 25% shall be reduced to 15%; above 10% and up to 15% shall be reduced to 10%	The agreement provides duty free treatment to to goods of designated beneficiary countries. The goods covered depends on the preferential treatment granted by the donor country	A linear cut of 20% or more in a universe of 70% tariff lines	Provides duty free treatment to goods of designated beneficiary countries. The goods covered by the agreement include agricultural products, apparel and footwear, motor vehicle components, chemicals, wine, and steel
Anti-dumping and countervailing measures	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Safeguard measures	Yes	Yes	Yes	Yes	Yes	Yes	Yes

2.2 Alignment between the AfCFTA and other trade agreements to which Nigeria is a signatory

This subsection focuses on the coverage and depth of the agreements discussed in the preceding subsection, with an emphasis on the two major agreements: the WTO and ECOWAS. **Chapter 4** addresses the alignment on the third set of issues: safeguards and remedial provisions.

As shown in Table 3, like the AfCFTA, all the agreements listed cover trade in goods. Trade in services is covered only under the WTO, ECOWAS, and the AfCFTA. Intellectual property is covered only under the WTO and AfCFTA.[3] Investment measures are covered only partly under the WTO, while they are fully covered under the AfCFTA and ECOWAS. Competition policy is covered under the AfCFTA and ECOWAS, while e-commerce is covered only under the AfCFTA. There is currently an ongoing attempt to introduce an agreement on e-commerce under the WTO. The move is championed by a group of countries referred to as Friends of E-commerce, to which Nigeria belongs. However, the agreement being negotiated would take the form of a plurilateral agreement, binding only on the parties that negotiated and ratified it while remaining open to other WTO members to join.

The AfCFTA is clearly the most comprehensive of these free trade agreements. However, in terms of the depth of the liberalisation, the ECOWAS leads, with two features: the ETLS, which covers duty free quota- free market access for 100% of goods originating within the region; and the CET, which means that Nigeria has harmonised its import tariff with the other ECOWAS Member States. Below, we further analyse the alignment of these agreements on two major components: trade in goods and trade in services.

2.2.1 Trade in goods

Trade in goods includes trade in agricultural and non-agricultural products. While the non-reciprocal arrangements do not require any commitment on tariff liberalisation by Nigeria, all the reciprocal agreements contain obligations of a similar nature: they require Nigeria to eliminate tariffs and non-tariff barriers with respect to goods traded under the agreements. In each of these agreements (except ECOWAS, where all goods are covered), the tariff reduction follows a liberalisation plan contained in the goods schedule submitted by Nigeria. The tariff reduction follows the general principles or modalities agreed by the parties concerning the percentage of tariff lines to be liberalised or excluded from liberalisation, the speed of liberalisation, and the applicable tariffs for each of the tariff lines. Table 4 below describes these tariff lines.

Table 4: AfCFTA goods liberalisation modality

	Least Developed Countries (LDCs)	Non-Least developed countries (non-LDCs)
Full liberalisation	90% of tariff lines	90% of tariff lines
	10-year phase down	5-year phase down
Sensitive Products	7% of tariff lines	7% of Tariff lines
	13-year phase down (current tariffs can be maintained during first 5 years-phase down starting in year 6)	10-year phase down (current tariffs can be maintained during first 5 years -phase down starting in year 6)
Excluded products	3% of tariff lines	3% of tariff lines

The AfCFTA compared to the WTO: In the WTO, however, there is no pre-determined percentage of liberalisation, so Nigeria has made commitments binding only on 19.2% of all tariff lines. The average bound tariff rate was 117.3% in 2017: 150% for agricultural products and 49.3% for non-agricultural goods (WTO, 2017). By implication, Nigeria is liberalising more under the AfCFTA than it has done under the WTO. Indeed, this is the only course of action practicable, because the General Agreement on Tariff and Trade (GATT) only permits contracting parties to enter into free trade agreements like the AfCFTA where the free trade agreement would lead to more liberalisation of trade (among the parties to the free trade agreement) than exists under the WTO. From a pragmatic national and regional interest perspective, deeper liberalisation of trade within the AfCFTA opens Nigeria up to less competition than would be the case if such level of liberalisation were undertaken under the WTO, which has a wider membership. Nigeria stands a better chance of competing and benefiting under the AfCFTA than within the WTO, which includes other members that are far more advanced and competitive than Nigeria. Another important area of alignment between the AfCFTA and the WTO is Trade Facilitation. The AfCFTA Annex on Trade Facilitation follows the basic principles of the WTO Trade Facilitation Agreement.

The AfCFTA compared to ECOWAS: As mentioned above, the major difference between the AfCFTA and the ECOWAS ETLS is that the latter covers 100% duty free quota-free tariff treatment for goods originating within any of the Member States. Beyond the historical factors that have shaped the integration process in ECOWAS, the depth of coverage of the ETLS is also justified by the logic that countries in a closer trade agreement – where there are fewer participants sharing more features in common – would grant to one another better preferences than would be granted to a wider group. Another feature of the ECOWAS system is the operation of a customs union with a CET.

The process through which companies access the ETLS differs from what is contained in the AfCFTA. Companies that intend to trade under the ETLS undergo a double-layered process of approval, first for their company and secondly for all the products they intend to trade under the ETLS. This approval is granted by the National Approval Committee for each country. This approval process is in addition to obtaining the certificate of origin for each consignment of the products. This cumbersome process will pose a challenge to many MSMEs in Nigeria that may ordinarily venture into the West African market. In contrast, under the AfCFTA, the only requirement for a company to trade is a certificate of origin showing that the products have satisfied the rules of origin prescribed under the Agreement. From this perspective, the AfCFTA seems to offer a better deal for businesses (especially MSMEs) than the ETLS.

While one of the objectives of the AfCFTA (in line with the vision of the African Economic Community) is to 'lay the foundation for the establishment of a continental customs union at a later stage',[4] this goal was already achieved by ECOWAS in 2015. The essence of a customs union is that the participating countries harmonise their customs tariffs in respect of trade with third-party countries. By implication, Nigeria cannot change its customs tariff or conduct its domestic trade policy outside of the rules and exceptions contained in the CET.

An important implication of the ECOWAS custom union for Nigeria's engagement in the AfCFTA is that Nigeria's 'goods offer' (i.e. liberalisation schedule or plan) is based on the ECOWAS CET, thereby giving Nigeria a longer period to implement its liberalisation commitments. This is because ECOWAS has more LDCs in its membership: hence, the liberalisation timeline follows that of LDCs, as shown above.

The AfCFTA compared to the other trade agreements: As seen from Table 3, the other (preferential) free trade agreements Nigeria belongs to (GSTP and D-8) contain lesser liberalisation commitments than the AfCFTA. However, it is difficult to ascertain the volume of Nigeria's trade that occurs under these agreements, due to lack of disaggregated data on trade under the agreements. It is important to mention that all of Nigeria's export to the European Union (EU) are conducted under the EU-GSP, and the same applies to other developed countries operating the GSP; while exports to the USA are conducted under the AGOA. All these arrangements offer Nigeria significantly limited coverage in terms of the goods Nigeria can export under them. There are no conflicts between them and the AfCFTA, and Article 18 of the AfCFTA protects the sanctity of existing agreements between any of the State Parties and a third party.

However, if Nigeria were to negotiate new free trade agreements with non-AfCFTA State Parties, Nigeria would not be able to offer to those new partners more preferences that it has offered in the AfCFTA, without extending such preferences to the AfCFTA State Parties: that is the essence of the **MFN principle under Article 4 of the Protocol on Trade in Goods**.[5]

2.2.2 Trade in services

The AfCFTA Protocol on Trade in Services follows the same pattern as the WTO. The obligations require that participating countries grant market access to each other's services suppliers, and refrain from discriminating between their national services suppliers and the foreign domestic suppliers.

Furthermore, countries are required to 'schedule' their commitments in the respective services sectors by identifying the extent of market access they would grant, the limitations to the market access, and general legal requirements for companies operating in those services sectors. Another element of the trade in services commitment is the division of services trade into four modes through which services can be sold and purchased: 1) cross-border consumption; 2) consumption abroad; 3) commercial presence; and 4) presence of natural persons. A country's commitment is expected to cover each of these modes of services trade.

The AfCFTA compared to the WTO: While the GATS covers 12 services sectors and 150 subsectors (WTO, 1991),[6] the AfCFTA State Parties have decided to focus on five priority sectors: financial services; communication; transport; tourism; and business services. However, the specific commitments under the AfCFTA have not been finalised. Nevertheless, just like under the WTO, the specific commitments under the AfCFTA would be based on demand and offer among the State Parties. In the WTO, Nigeria has scheduled varying levels of commitment on financial services, telecommunications, tourism, and transportation. This makes 'business services' the only additional sector Nigeria would be making commitments on under the AfCFTA. Overall, it is expected that the AfCFTA services commitment would go beyond the commitments made by each of the State Parties in their WTO services schedule, thereby ensuring that deeper integration is achieved within the AfCFTA.

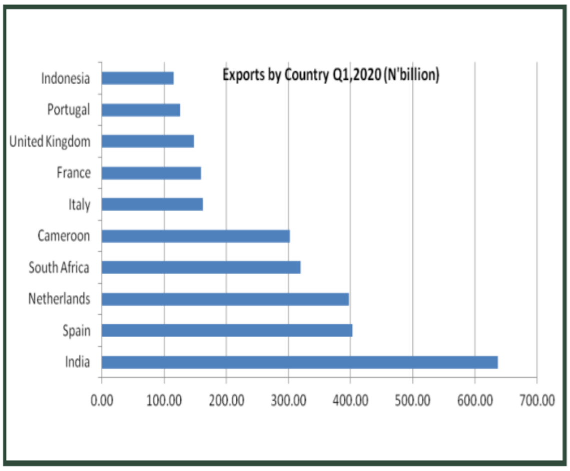
The AfCFTA compared to ECOWAS: Trade in services under ECOWAS follows a different pattern. There is no specific agreement or protocol devoted to trade in services, but there are a number of legal instruments providing for the right to movement of, and residence for, natural persons (corresponding to mode 1) and right of establishment (corresponding to mode 3).[7]. Other instruments relate to regional approach to the regulation of a range of services sectors, such as energy,[8] ICT,[9] education,[10] and transport,[11, 12]. While there are overlaps in the sectors covered under the ECOWAS system and the AfCFTA, the approach adopted by ECOWAS, once again, is deeper in that it mostly seeks to make regional regulations directly applicable in Member States. In contrast, Article 8 of the AfCFTA Protocol on Trade in Services preserves the right of the State Parties to 'regulate and introduce new regulations on services and services suppliers within its territory in order to meet national policy objectives, in so far as such regulations do not impair any rights and obligations arising under this Protocol'.
Services trade is one of the areas where Nigeria seems to have a clear advantage over most other African countries. Nigeria is already a major player in the financial services sector in the continent, with the potential to do well in the other AfCFTA priority services sectors.

On the whole, the protocol follows a GATS approach in its general obligations and disciplines (Articles 4 to 17), especially with respect to the MFN clause, transparency, special and differential treatment, domestic regulation and mutual recognition (mutual recognition agreements are fundamental for services to cross borders). The AfCFTA protocol on trade in services provides for the mutual recognition of professional qualifications, experiences, requirements, licences, or certificates among State Parties based on exchange of concessions in the services schedules[13].

The effective supply of professional services among Member States is not only determined by the guaranteed terms of market access and national treatment contained in the schedule: rather, it is largely determined by whether the regulatory authorities of the receiving country recognise or accept the qualifications and experiences of the foreign service supplier (either a firm or a natural person).

2.3 Extent of implementation of these agreements, and the implementation challenges

This subsection examines how well these agreements have been implemented, especially as this relates to Nigeria. Nigeria's foreign trade data (see Figure 7 below) shows that the bulk of the country's import and export trade is with Europe, Asia, and the rest of Africa, in that order.



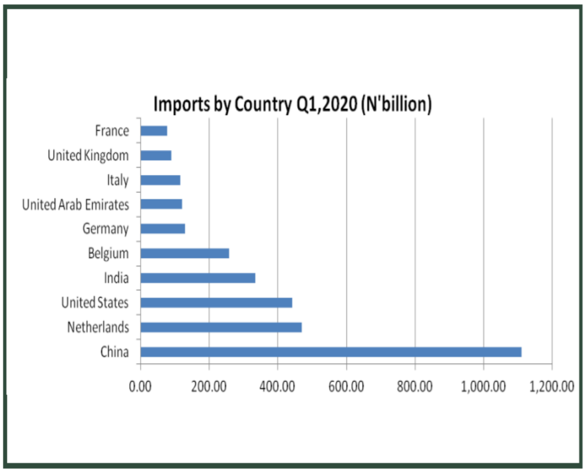


Figure 7: Nigeria's top trading partners by imports and exports Q1 2020

Source: NBS Foreign Trade Statistics, Q1, 2020

The implication of the data in Figure 7 is that the bulk of Nigeria's export trade is conducted under EU-GSP14, but because there is no reciprocal system under which the EU exports to Nigeria, Nigeria's imports from the EU are conducted under the WTO-GATT MFN tariff. That makes the **EU-**

GSP and WTO-GATT the major arrangements under which Nigeria's trade is conducted. Nevertheless, the **ECOWAS ETLS remains important**, as it is the most likely to be used by MSMEs. The foregoing data and its implications inform the selection of the three agreements (WTO-GATT, ECOWAS ETLS, and EU-GSP) analysed in this subsection.

Challenges and Recommendations

Implementation challenges with the WTO-GATT, efforts taken to address the challenges, and recommendations for the smooth implementation of the AfCFTA

Table 5: Implementation Challenges with various agreements

• Challenges	• Efforts to address them	• Recommendation
• The lack of prompt and regular submission of notifications as required for issues such as new domestic regulations. The WTO Secretariat Report on Nigeria's Trade Policy Review of 2017 noted that Nigeria lagged, with some 20 notifications.	• There has been an effort to increase the capacity of FMITI and relevant agencies regarding prompt notification of relevant measures to the WTO.	• FMITI should send quarterly questionaries' to relevant MDAs to submit qualifying measures for onward notification to the AfCFTA/WTO/ECOWAS.
• Inability to control the influx of fake and substandard imports into the domestic market.	• The Standards Organization of Nigeria (SON) has set up an elaborate system of assessment and certification of regulated products imported into Nigeria (SONCAP).	• Strengthen the existing conformity assessment and surveillance systems by implementing an effective National Single Window (with digital scanners) at the port for ease of detection of fake conformity certificates and fake products.
• Poor quality and conformity assessment system, making it difficult for Nigerian products to access high-end export markets.	• The Government, with the support of various development partners, has developed the National Quality Policy. This is in addition to the progress recorded in operationalising private sector-driven quality infrastructure in Nigeria under the National Quality Infrastructure Project.	• FMITI should speed up adoption and implementation of the Quality Policy. Of importance is the emergence of robust private sector-led quality infrastructure, while enhancing the operations of public sector institutions such as SON, the National Agency for Food and Drug Administration (NAFDAC), and Nigerian Agricultural Quarantine Services (NAQS).
• General challenges in trade facilitation, which increases the transaction cost for both importers and exporters, thereby undermining the	• Some recent gains include automation of Form M and the Nigeria Export Proceeds Form (NXP), the opening of ports outside Lagos, etc. However, Nigeria continues to	• The Federal Government should speed up the implementation of the Single Window and scanners at the ports, resolve the Lagos ports

• Challenges	• Efforts to address them	• Recommendation
efficiency gains from free trade.	perform poorly on indicators relating to trade facilitation, logistics, and trading across borders.	access infrastructure challenges, and provide adequate infrastructure for the optimal functioning of the Southern/Eastern ports etc.
• The use of trade policy tools, such as import prohibition, border closures, foreign exchange restrictions, etc in disregard of the country's obligations under the WTO-GATT.	• The WTO Secretariat Report on Nigeria's Trade Policy Review 2017 noted that since Nigeria's last review in 2011 the number of products on the Import Prohibition List by Trade has been gradually reduced from 44 to 23. However, different restrictions on access to foreign exchange, and the land border closures, remain.	• The Federal Government should: progressively eliminate products on the Import Prohibition List by Trade; align the list with Nigeria's sensitive list in the AfCFTA; and adopt trade-friendly means of border control; while gradually phasing out the restriction of access to foreign exchange for the current list of 43 items.
• Weak trade administration and enforcement capacity also means that Nigeria has hardly been able to utilise many of the legitimate tools for protecting its commercial and non-commercial interests. Such tools include trade remedies, dispute settlement, general and security exceptions, etc. The table below shows the record of Nigeria's utilisation of the WTO Dispute Settlement Mechanism.	• There have been efforts to improve the trade law capacity of FMITI in recent times, with the training of its staff at reputable international academic institutions and participation in WTO internships. However, the capacity need greatly exceeds the available capacity.	• FMITI should intensify capacity building on trade law, economics, statistics, and policy within its ranks and other relevant MDAs, such as the Ministry of Justice. The Government may wish to consider recruiting more lawyers with expertise in this field.

Nigeria's record of utilisation of the WTO Dispute Settlement Mechanism

	As complainant	As respondent	As third party
Nigeria	0 case(s):	0 case(s):	6 case(s): DS58, DS434, DS435, DS441, DS458, DS467

Source: WTO Member Information[15]

Implementation challenges with the ECOWAS trade instruments, efforts taken to address the challenges, and recommendations for the smooth implementation of the AfCFTA

• Challenges	• Efforts to address them	• Recommendation
• The lack of proper understanding of the rules has made it difficult for	• Programmes of sensitisation have been organised and easy-to-	• FMITI, the NEPC, and Customs should intensify activities that create public

• Challenges	• Efforts to address them	• Recommendation
Nigerian MSMEs to utilise the rules to penetrate the regional market.	read materials have been published over the years by various stakeholders, such as the Government, the ECOWAS Commission, development partners, etc.	awareness: develop easy-to-read materials in local languages, use local radio stations, social media, etc. to educate the business owners on the various trade agreements.
• Criminal elements hide under the right to freedom of movement of persons and goods and the freedom of establishment to engage in criminal activities, such as trade in small arms and light weapons, narcotic substances, and contraband goods, as well as to plan and carry out terrorism and banditry.	• There have been increased border patrols, prompted by the supply of patrol vehicles to Customs and other border agencies; there is also ongoing security cooperation among Nigeria's neighbours; as well as general surveillance in-country.	• The Government must invest in advanced technology assets for border security; improve cooperation and coordination among national security agencies, as well as with the neighbouring countries; and invest in improving capability for intelligence gathering within and outside the country.
• Lack of proper understanding of the rules, and sometimes sheer corruption, on the part of officials in the different countries leads to costly delays at the borders and transit routes, thereby causing losses to businesses.	• Border agencies, especially Customs, have been undergoing training over the years on ECOWAS trade rules. Considerable development partner support has gone into this initiative, and the Nigerian Customs has become a trainer for other national customs services in the region.	• More effort is needed in the area of changing the organisational culture and service discipline within Customs and other border management agencies: design and deploy real-time reporting mechanisms (using USSD or the internet) to enable businesspeople report the excesses of officials and to receive help in real-time.
• Poor transport connectivity (intra-regional roads, rail lines, maritime, and aviation) within the region makes it expensive to efficiently transport goods or persons.	• There are efforts at developing regional transport corridors (LAKAJI, LAGOS-ABIDJAN), and a regional sea liner (by NEXIM Bank), among other initiatives.	• The Governments of Nigeria should champion the fast-tracking of the road and rail corridor projects, as well as the work of NEXIM Bank on the West Africa Sea Link.
• Countries within the region still largely conduct their domestic trade policies without recourse to their obligations under the various treaties and protocols. Two good case studies are the land border closure by Nigeria and the incessant harassment of Nigerian traders in Ghana.	• The ECOWAS Commission has been making efforts at sensitising the Member States about their commitments under the treaty and various legal instruments, as well as trying to resolve issues such as the Nigeria land border closure and the harassment of Nigerian traders in Ghana.	• Nigeria should lead by example in complying with its obligations, then apply political pressure on other Members to do the same. Nigeria should also embrace the use of litigation to challenge Member States that violate the provisions of the rules, rather than just having recourse to political settlement.
• A weak dispute resolution mechanism that excludes	• There has been some advocacy by various non-	• Nigeria should consider submitting a proposal to

Challenges	Efforts to address them	Recommendation
natural and legal persons from bringing actions before the community court of justice for violations of the regional laws affecting their businesses. The right of natural persons before the community court is limited to cases of human rights violations.	state actors representing businesses within the region to change this limitation in access to the ECOWAS court.	ECOWAS to amend the Protocol on the Community Court of Justice to allow for investor-state dispute settlement; this is also recommended for the AfCFTA.
• Nigeria has mostly failed to take leadership in deciding the direction of activities and policies in the trade and economic sphere, rather focusing on the political and security spheres. Nigeria's lack of proactive leadership in the economic sphere means that decisions are not always in Nigeria's best interest.	• In the past three years, Nigeria has played an active role in setting the tone of trade discussions in ECOWAS, especially in the context of forging common regional positions in preparations for the AfCFTA negotiation.	• Nigeria must ensure that any presentation/engagement at ECOWAS and AfCFTA organs/committees and processes are made up of the right kinds of experts on trade and related policies. Nigeria should also institute a quarterly dialogue of all relevant stakeholders from public, private, and civil society actors to debrief and receive inputs on ongoing trade-related processes at ECOWAS and the AfCFTA.
• There are still lingering issues about the status of ECOWAS laws in Nigeria in the light of Section 12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). This section requires a process of 'domestication' before international treaties become applicable in the municipal legal system. There is no act of the National Assembly domesticating the ECOWAS treaty or any of its accompanying legal instruments, making it impossible for citizens to take legal action against the Government for violations of the treaty or any of the other legal instruments that may affect the interest of citizens.	• No known action.	• The executive and legislature need to work together towards the domestication of the ECOWAS treaty and other legal instruments accompanying it. It is suggested that Nigeria should adopt a wholesale domestication of the revised ECOWAS treaty and existing instruments. FMITI (in collaboration with the Federal Ministry of Justice) should set up a committee of legal experts on the domestication of Nigeria's trade agreements, including the AfCFTA. The committee should prepare the instrument of ratification based on the proposed approach above, or any other more acceptable approach.

• Challenges	• Efforts to address them	• Recommendation
• Abuse of the rules of origin by countries within the region who trans-ship goods from non-Member States and sell them to the Nigeria market as originating goods, as well as tacit support for smuggling by neighbouring Member States.	• The Nigerian Government has entered into a bilateral cooperation agreement with the Benin Republic on transit goods. There has also been cooperation between the customs services of the two countries; Nigeria has recently applied the hard measure of total closure of its land borders.	• Nigeria should utilise the rules within the AfCFTA, such as: rules requiring State Parties to verify information on application before issuing certificates of origin; and rules requiring the importing country to report suspected violation(s) which the exporting/originating country must investigate and report back. Nigeria should initiate dispute settlement when cooperation and consultation fails.

With respect to the EU-GSP, Bilal, et al (2011) noted some of the challenges with the implementation, which, in fact, call into question the utility of the arrangement. These challenges are like those that beset the AGOA.

Implementation challenges with the EU-GSP trade instruments, efforts taken to address the challenges, and recommendations for the smooth implementation of the AfCFTA

• Challenges	• Efforts to address them	• Recommendation
• MFN duties are already extremely low in the EU and therefore the preference margins are not significant enough for beneficiary countries. This limits the utilisation of the scheme.	• Nothing is being done to reverse this. Rather, as the EU enters into more free trade agreements with developing countries, the margins will be further reduced.	• As the world moves towards more bilateral and regional free trade agreements, there will be pressure on Nigeria in the coming years to enter into free trade agreements with major developed and developing country trading partners (the EU, the US, the UK, China, etc). FMITI needs to lead the design of a strategy for engaging with these emerging realities.
• The coverage of the GSP (in particular for the standard GSP) does not fit the needs of beneficiary countries since their export structure is either highly concentrated in those products that are either already duty free under the MFN or are not covered by the scheme (because the products are deemed to be 'sensitive').	• Nothing is being done about this.	
• The products covered are mostly manufactured goods. Here Nigeria has little competitiveness. Moreover, non-tariff barriers, such as technical regulations and SPS have proven to be strong obstacles to Nigerian exports to the EU over the years.	• Current efforts at improving the quality infrastructure would be useful in surmounting the non-tariff barriers in the EU market.	• More focused attention on building robust quality infrastructure in Nigeria.

Another important area of alignment between the AfCFTA and the WTO is Trade Facilitation. The AfCFTA Annex on Trade Facilitation follows same principles and rules as the WTO Trade Facilitation Agreement. Like the WTO TFA, the AfCFTA Annex on Trade Facilitation seeks to simplify, harmonise and standardise import and export procedures while ensuring transparency and predictability in the application of rules. It covers issues such as the deployment of electronic single window, publication of release time, advanced ruling, provision for appeal and reviews, etc. However, the implementation of the TFA has been poor in Nigeria, with an overall score of 40% compared to South Africa’s 90.3% and Togo’s 67.2%. Some of the challenges to the implementation of the TFA, the efforts being made by the government and recommendations for expedited implementation are contained in the table below.

Challenges	Efforts to address them	Recommendation
Absence of an electronic Single Window. This affect the speed of processing and release of cargo due to the lack of proper coordination among the various agencies.	There has been some progress in adoption of electronic platform by the Nigerian customs Service but what is lacking is the effective integration of all the agencies and service providers into a fully functional Single Window. The Federal Government recently approved a PPP for the modernization/automation of customs operations, but it is not clear, from the official statement, to what extent this addresses the lingering issue of full implementation of a Single Window.	The FMFBNP need to provide more information to stakeholders on the newly announced PPP. Specifically, does it address the issue of effective implementation of the Single Window? Does it cover the provision of scanners? What is the expected delivery date of the Single Window and scanners components? A definite communication from the government in this regard is important to enable businesses/investors manage their expectations.
Absence of scanners at the ports. this means long delays in the examination and clearance of cargo since the Customs rely on 100% physical inspection of cargo.	It is not also clear from the official statement on the PPP whether it covers the provision of scanners.	
Poor coordination among border agencies and service providers. Timely processing and clearance of export and import depends heavily on seamless coordination among the border agencies and service providers.	There have been efforts to reduce the number of agencies at the ports but what is needed is a seamless integration of the operations of the authorized agencies through the full deployment of an electronic Single Window.	In the meantime, the full implementation of Executive Order No. 001 of 2017 on port operations would go a long way in addressing the existing bottlenecks.
Archaic Customs laws. The Customs and Excise Management Act (CEMA) was enacted in 1958. Most of the provisions of the TFA relating to modern customs practices and the TFA are absent in the CEMA, even though the Nigerian Customs Service have adopted some of these practices. For example, the CEMA makes no provisions for the electronic submission of a goods declaration or	There have been efforts in the past 15 years to enact a new CEMA. This effort has been subject to disagreements among the key stakeholders (the line Ministry (FMFBNP), the Nigerian Customs Service and the National Assembly) one issue or the other but most especially on the control of the Nigerian Customs Service. At some point, this led to the draft of different versions of the Bill. Considerable amount of donor	The NAC should engage with the FMFBNP and the Nigerian Customs Service towards adopting and supporting one of the Bills before the National Assembly. There is also need for the Executive to engage with the National Assembly on the need to expedite the passage of the new CEMA.

Challenges	Efforts to address them	Recommendation
supporting documents, including the pre-arrival submission of transit declarations; no provision on advance ruling; lack of clarity on the legal provision for Post Clearance Audit, including clear definition of the persons subject to post clearance audit; etc.	support has gone into this process from since 2009. There is currently three Bills before the national Assembly – two of the Bills seek to repeal and re-enact the CEMA while one seeks to amend the old CEMA. None of these Bills have gone beyond the First Reading.	
Poor institutional framework for coordinating Trade facilitation Reforms. The national Committee on Trade Facilitation has been mostly inactive since Nigeria submitted its notifications to the WTO. The coordinating potential of the Committee – as a multi-stakeholder's body – needs to be strengthened and utilized in driving the necessary reforms. Currently, the Committee does not seem to have the required political backing and clout to drive reforms.	The National Committee of trade Facilitation has received support from some development partners in the past.	Government needs to focus more resources for the work of the Committee, including regular meetings, studies, site visits, etc. More importantly, the HM, FMITI and HM, FMFBNP need to show strong political support for the activities of the Committee as a signal to the various agencies the Committee interfaces with.

The table below provides an analysis of trade in services under the WTO and the AfCFTA.

Nigeria and Trade in Services Under the WTO and the AfCFTA

Sector	Commitment under the WTO	ECOWAS Regulations[5]	AfCFTA[6]
Financial Services	**Yes** – commitments on various aspects of only one subsector: Banking and other Financial Services excluding Securities and Insurance.	**No**	**Yes**
Transportation	**Yes** - commitment in only two subsectors: 1. Maritime Transport Services (three activities – Foreign	**Yes** – Protocols relating to: • Regulation of Inter-State Road Transportation between	**Yes**

[5] As noted in above, ECOWAS Services Trade follows a different approach: besides the Protocol on Free Movement, Right of Residence and Establishment (and it various re-iterations), the ECOWAs approach seeks to pursue regional cooperation and in some cases common regional regulations (in the form of Supplementary Acts) on specific services sectors. There is no specific agreement on Services Trade that can be directly compared to the WTO-GATS or the proposed Trade in Services Protocol under the AfCFTA. The information provided here is based on the sectors on which ECOWAS has adopted a protocol or regulation.

[6] AfCFTA commitments are anticipatory. Based on the agreed priority sectors for negotiation, it is expected that Nigeria would make commitments on all the priority sectors

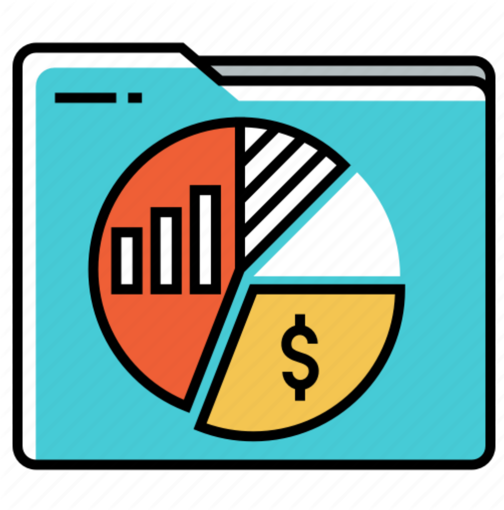
Sector	Commitment under the WTO	ECOWAS Regulations[5]	AfCFTA[6]
	transportation[7], Rental vessels with crew, Maintenance and repair of vessels; and 2. Rail Transport Services (only one activity under this: Maintenance and repair of rail transport equipment)	ECOWAS Member State • harmonization of Axle Load control Standards, procedures, etc in Member States	
Communication	**Yes** – commitments covering only the Telecommunications Services subsector, including: • Sale/installation of terminal equipment. • Operating pay phones. • Mobile communications -cellular, paging, etc. (voice and data); and • Value added services	**Yes** – various Protocols and Supplementary Acts providing for: • harmonisation of the policies and regulatory framework of the Information and Communication Technology Sector • Access and Interconnection in Respect of ICT Sector • Personal Data Protection within ECOWAS • Electronic Transaction within ECOWAS • the legal regime applicable to network operators and service providers • numbering plan management • the management of the radio-frequency spectrum • universal access/service	Yes
Tourism and travel related services	**Yes** – total liberalisation of the four subsectors: • Hotels and restaurants (incl. catering) • Travel agencies and tour	**No**	**Yes**

[7] With reservation of certain aspects for Nigerian national carriers as well as expression exclusion of cabotage)

Sector	Commitment under the WTO	ECOWAS Regulations[5]	AfCFTA[6]
	operators service • Tourist guides services Other		
Business and Professional Services	**No**	**Yes** – A Convention on the: • recognition of equivalence of diplomas, certificates and other qualifications in Education within ECOWAS	Yes
Energy	**No**	**Yes** • 2003 ECOWAS Energy Protocol A/P4/1/03 Established a legal framework to promote long-term co-operation in the energy field, based on complementarities and mutual benefits, with a view to achieving investment in the energy sector, and increased energy trade in the West African region • provides for establishment of regulatory bodies for energy systems, programmes and projects within the framework of implementation of the protocol • West African Gas Pipeline Authority (WAGPA) was established in 2004 to regulate the trans-border gas pipeline project between Nigeria, Benin, Togo and Ghana • ECOWAS Regional Electricity Regulatory Authority (ERERA) was	**No**

Sector	Commitment under the WTO	ECOWAS Regulations[5]	AfCFTA[6]
		established in 2008 to regulate cross-border electricity interconnections among all ECOWAS Member States	

Generally, the **responsibility to properly implement** the provisions of any trade agreement rests on the government of the country that has entered into the agreement. Implementation here includes being able to initiate enforcement actions against other parties to the agreement for violations caused by those parties.



Gender and Inclusion Analysis of Nigeria’s regional trade activities

3 Gender and inclusion analysis of Nigeria's regional trade activities

3.1 Introduction

The participation of women in trade and entrepreneurship has always been remarkable but understated; policymakers sometimes overlook the contributions women make – and consequently their challenges. The 2017 WTO Buenos Aires Joint Declaration on Trade and Women Economic Empowerment corroborates the fact that women's empowerment is intricately linked to international trade: the success of the former is dependent on the latter. Unfortunately, the declaration also states that '**no country has managed to close the gender gap** on economic participation and opportunity'.

The preamble of the AfCFTA underscores **the importance of gender equality for the development of international trade and economic cooperation in the region**. Under Article 3(e), one of the general objectives is to 'promote and attain sustainable and inclusive socioeconomic development, gender equality and structural transformation'. Article 27 (2) (d) of the protocol on trade in services references the expectation that state actors 'improve the export capacity of both formal and informal service suppliers, with particular attention to micro, small and medium size; women and youth service suppliers.

3.1.1 Approach to understanding gender and trade in the context of the AfCFTA

This chapter of the report seeks to inform gender considerations for the AfCFTA ratification and subsequent implementation process in Nigeria. On a broad level, it highlights key opportunities for increasing women's participation in trade in the context of the AfCFTA, while identifying the basic obstacles faced by Nigerian women entrepreneurs in the existing trade environment. It does this to pinpoint the key challenges that might encourage gender inequalities, negative impacts, low participation, and reduced economic performance for women during the expected implementation of the AfCFTA in Nigeria in 2021. It also touches on issues of social and economic inclusion.

The study team implemented a mixed methods approach for this component of the study. Specifically, we conducted a desk review of existing data sources, with a focus on gender, trade, and the AfCFTA, to understand the current state of gender gaps in Nigeria. The study team also conducted KIIs to engage staff from relevant MDAs and organisations that had a key mission related to gender and trade issues. The specific focus of the KIIs was to look at policy gaps, highlight potential benefits, understand challenges that women face in trade (including those in cross-border and informal trade), and provide recommendations which could potentially enhance the level of participation of Nigeria women in the AfCFTA

The KIIs utilised open-ended interview questions that gave the sampled respondents the freedom to express their opinions in relation to the key questions to be addressed. The key questions were designed under five research areas (RAs), in line with the scope of work for this study. The questions are listed below:

- **RA1:** Analysing challenges for women entrepreneurs in the context of the AfCFTA and establishing the interlinkages between trade, transportation, port processes, and gender inequality, with recommendations on how to mainstream gender into Nigeria's draft trade policy.
- **RA2:** Assessing the impact of the AfCFTA on informal trade (where women form the majority of traders).
- **RA3**: Assessing the transactional cost of the AfCFTA on women living below poverty lines.
- **RA4**: Assessing the impact of the AfCFTA on trade information gathering and dissemination to women and youth in rural areas.
- **RA5**: Assessing the impact of COVID-19 on the extent to which women's participation in the AfCFTA can achieve a reduction in extreme and moderate poverty.

Policy recommendations were then developed to ensure women are supported in taking on a full role in AfCFTA trade, detailing the specific inter-agency collaborations required to make this effective. Table 6 below shows the organisations that participated in the KIIs, who provided information for this chapter of the study.

Table 6: Respondent KIIs

	Category	Respondent			
	Government	*FMITI*	*The Nigerian Customs Service (NCS)*	*Nigerian Investment Promotion Commission (NIPC)*	*SMEDAN*
	Civil society organisations	*Organization of Women in International Trade (OWIT) Nigeria*	*Association of Women in Trade and Agriculture (AWITA)*	*NACCIMA Businesswomen Group (NAWORG)*	*Women Radio 91.7 FM*
		Joint National Association of Persons Living with Disabilities (JONAPWD)	*AfCFTA Women's Network*	*Women in Maritime*	
	Women's associations	*Association of Nigerian Women Business Network (ANWBN)*	*Nigerian Network of Women Exporters of Services (NNWES)*	*Association of Women Farmers of Nigeria (AWFN)*	*Association of Women in Trade and Agriculture (AWITA)*
		Women in Extractives	*ECOWAS Federation of Businesswomen Entrepreneurs (ECOWAS FEBWE)*		

3.2 Challenges to women's participation in trade in the context of the AfCFTA

- *RA1: Analysing the challenges for women entrepreneurs in the context of the AfCFTA, and establishing the interlinkages between trade, transportation, port processes, and gender inequality, with recommendations on how to mainstream gender into Nigeria's draft trade policy*

The participation of women in the Nigerian entrepreneurship space, most of which is filled by MSMEs, is sizeable, although mostly as informal MSMEs operators. Nigeria's MSMEs account for 96% of the total number of businesses in the country and contribute about 50% to the national GDP. In terms of gender, **only 23% of females operate formal small and medium-sized enterprise (SME) businesses in Nigeria** (PwC, 2020)**.** The predominance of Nigerian women entrepreneurs as informal MSMEs operators is rooted in systematic challenges, including little or no market information, limited access to finance or capacity building opportunities, limited financial literacy, and unskilled labour, among others.

3.2.1 Borders, port processes & infrastructure: key issues

Border posts and ports have been intermittently plagued by weak law enforcement environments, with the ad hoc application of existing rules and reports of bribery and harassment, among other things. Due to the large number of women participating in informal trade these issues at the border posts and ports become a barrier to their ability to trade effectively. This is due to the fact that in some cases the traders, port authorities, and border officials often have little awareness of their respective rights and obligations, and the officials can take advantage of the traders' lack of knowledge of existing rules and processes. Poor basic infrastructure and facilities. Adequate access to affordable, reliable, and cost-effective transport systems remains an urgent challenge to be met for entrepreneurs in Nigeria, especially women. Transport costs influence the volume, structure, and patterns of a country's trade, as well as its comparative advantage. High transport costs hinder export development by limiting the range of potential products and markets in which goods can be competitively and profitably traded. For instance, in 2011, the average cost of maritime transport was 67% higher in Africa than in developed countries, at 10.6% of the value of imports (UNCTAD, 2011). The lack of market infrastructure near borders reduces the ability for traders (including women) to connect with their potential customers. In addition, poor quality, absent, or very expensive storage facilities often mean that traders sell perishable stock at a loss to prevent spoilage. Gender mainstreaming. The AfCFTA recognises the importance of gender, equality both in its preamble and objectives. This provides Nigeria with the opportunity to develop an advanced gender-responsive implementation strategy that applies some of the recommendations in the literature for the AfCFTA from a gender perspective. The ITC advocates a 10-step strategy for mainstreaming gender into free trade agreements, as noted below in Figure 8:

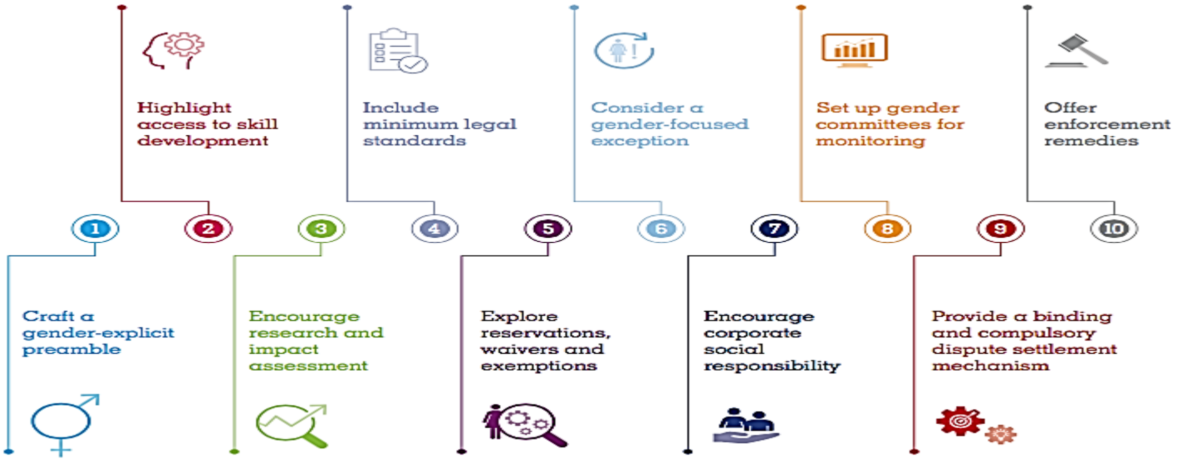


Figure 8: 10 recommendations for gender mainstreaming (International Trade Center, 2020)

Some of these recommendations could be implemented by the Government in the short to medium term, after the ratification of the AfCFTA, to create more opportunities for women traders to benefit from the AfCFTA, and to increase their participation in formal trading activities.

- *RA2: Assessing the impact of the AfCFTA on informal trade (where women form the majority of traders)*

The informal economy involves economic activities undertaken by individuals and organisations that are not subject to full government regulations. This part of the economy is particularly large in Nigeria, with the IMF estimating that it constitutes about 60% (mostly women actors) of the entire Nigerian economy.

Unlike formal imports and exports in trade, which are captured by the NCS records, informal cross-border trade (ICBT), which constitutes a critical quantity of the informal sector, and key economic activities in the informal sector, remain unrecorded, even though they are major sources of employment and income. More importantly, collecting data on informal trade is daunting: only a few countries, like Uganda, Malawi, and Mozambique, have succeeded in capturing such information. Similar records are largely lacking in Nigeria and across other African countries.

In the light of the enormous contribution of Nigerian women as major informal market operators and MSMEs, the implementation of the AfCFTA in Nigeria is projected to expand and strengthen productivity levels if the government-enabled business environment is conducive and MSMEs-friendly. It is expected that in such a situation more informal women traders will formalise. However, if the rules and their implementation turn out to be more cumbersome, some of the existing formal women traders will probably revert to informal trade due to financial constraints.

Under the AfCFTA agreement, there is the potential that the successful implementation of tariff provisions could result into more trading activities for informal trade due to the progressive elimination of tariffs and import duties for commodities mostly traded by the informal (particularly, women) traders.

Key messages

The following points highlight notable respondent responses assessing the potential impact of the AfCFTA on informal trade (where most traders are women):

- With an emphasis on business formality under the AfCFTA, the sizeable number of women entrepreneurs currently in the informal sector might decline if **targeted policy and empowerment strategies** are not put in place. On the positive side, respondents agreed that the AfCFTA could enable women in the informal sector to strengthen their aggregation systems. This will encourage them to build up finance and pursue skillsets to meet acceptable production requirements.

- Nigeria has comparative advantages in certain informal sectors, especially in the agriculture and service sectors, where women are dominant. There is a need for a deliberate focus on these sectors in order to fully explore accruable economic potential under the AfCFTA.

- Most of the respondents agreed that awareness about the opportunities in the AfCFTA could lead to increased interest by women (both in the formal and informal sectors) in seeking information on financing options and standardisation requirements for women-produced goods and services.

RA3: Assessing the transactional cost of the AfCFTA on women living below poverty lines

Transactional costs related to women in trade take various forms, including high fees and duties, unpredictable and complex regulations, extensive and centralised documentation requirements, as well as stringent immigration laws. The World Bank has linked the increase in developing countries' participation in trade to the sharp decline in extreme poverty worldwide stating that trade has increased job numbers, stimulated growth, and increased productivity. Unfortunately, the poorest and most vulnerable (mostly women and female persons with disabilities) may not benefit if the opportunity is not extended to them. Invariably, if women are not included in trade, trade is unlikely to produce the positive effects of poverty reduction.

In the Nigerian context, some of the transactional costs for business owners include the cost of incorporation; business operation space; technology; registration; certification; standardisation; legal and illegal tariffs; and business taxes, among others. These costs place a heavy burden on women and for Nigerian women business owners, studies have shown that they tend towards joining sector-based associations in order to jointly cushion these effects.

Key messages

The following are key points made by the respondents:

- The Nigerian Investment Promotion Commission (NIPC) respondent's perspective was that in Nigeria one could divide the transaction costs women face into two segments: ***context/environmental costs*** (the cost of insecurity, corruption, family demands etc.) and ***real costs*** (the cost of incorporation, technology, registration, certification, standardisation, tariffs). These transactional costs, in his view, constantly limit women's ability to break through poverty lines using trade and service exchanges. Policy actions in line with key economic plans are being taken but there remains a great need for more awareness among women traders of the schemes being implemented by the Government.

- The women trade associations all echoed that the transactional cost of business entry in Nigeria, compared to countries across the world, is fair although the process of business registration can be burdensome. Another key issue which came out of the KIIs was the need to review some of the key certifications in Nigeria to ensure they are effective enough to galvanise trade under the

AfCFTA. For instance, NAFDAC is only valid in the Nigerian business environment, and does not have any real influence on the international market and exports.

- Most of the respondents said that the system of aggregation seems to be the most prominent and effective means for women in the informal sector to overcome some of the transactional cost of doing business in Nigeria. Access to finance was referenced as a major issue, despite Nigeria enacting two laws in 2016 (the Secured Transaction in Moveable Assets Act and the Credit Bureau Act) to support SMEs. The issues around lack of awareness and the requirements were cited as potential reasons why the uptake of those credit facilities seems to be low.

RA4: Assessing the impact of the AfCFTA on trade information gathering and dissemination to women and youth in rural areas

According to the Universal Declaration of Human Rights, access to information is fundamental. One of the main drivers of gender inequalities is a lack of information or awareness. Information gathering and dissemination is key in any trading environment: information must be carefully processed and delivered to address needs and capacity. Information and data are the groundwork for awareness – particularly when addressing the empowerment of women and their protection from exploitation and harassment.

According to the ITC (2020), in order to safeguard free trade agreements creating unbiased opportunities for inclusive growth and development, it is expedient for the specific needs of men and women to be mainstreamed into the scope, content, and design of the agreement. Although gender mainstreaming is beginning to gain some traction, there are still barriers. The four major blocks to gender mainstreaming are a lack of awareness; a scarcity of gender-disaggregated data; inadequate political will; and, most importantly, an absence of expertise on gender issues within government departments.

In the same vein, information gathering, and dissemination are critical components for trade facilitation and access to markets. One of the key recommendations for mainstreaming gender in trade agreements is to encourage cooperation activities focused on information sharing (ITC, 2020). Women trade organisations can operate as mechanisms for exchanging or sharing information: they can aggregate information and disseminate it – especially to rural dwellers – within place-based languages.

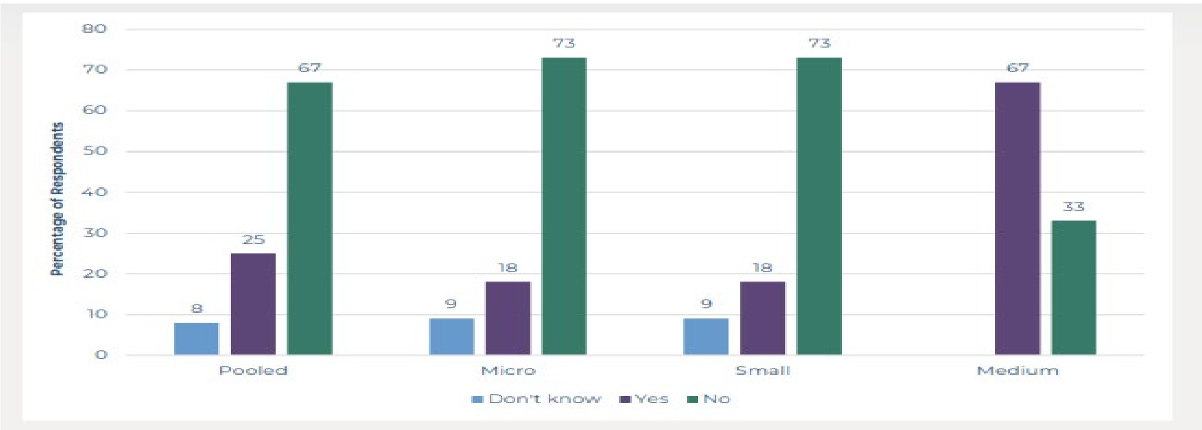


Figure 9: Reported awareness of AfCFTA by enterprise size

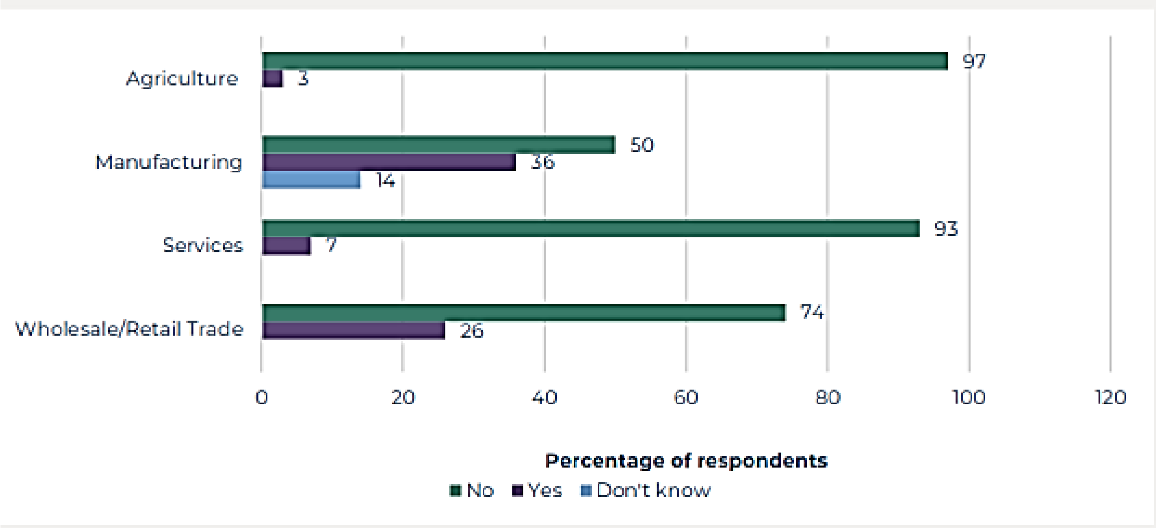


Figure 10: Reported awareness of AfCFTA by enterprise sectors

The two figures above are adapted from the Center for International Private Enterprises September 2020 survey on the 'Effect of the African Continental Free Trade Area on Medium Small and Micro-scale Enterprises in Nigeria'. Figure 9 highlights that the level of awareness is quite low regarding the existence of the agreement among MSMEs, as demonstrated by the 67% of respondents answering 'No' to the question posed. Disaggregated analysis of MSMEs' awareness by enterprise size shows that only about 18% of the micro and small enterprises are aware of the AfCFTA policy. An interesting point is that 67% of the medium-sized enterprises declared their awareness of the agreement, potentially due to advantages due to education and exposure to digital mediums. Further disaggregation by enterprise sectors shows that 97% of agricultural MSMEs are not aware of the agreement, while 50% of manufacturing sector enterprises are also not aware of the agreement (see Figure 10).

These figures probably just scratch the surface so unpacking the AfCFTA story, especially for women in trade, is critical. The media has the responsibility for shaping opinions and engaging the public on the opportunities and challenges of this regional integration. The role and potential contributions of women must be highlighted, in order to stimulate conversations and interest in participation.

Assessing the impact of the AfCFTA on trade information gathering and dissemination to women and youth in rural areas reveals some of the fundamental barriers that inhibit women's access to entrepreneurship opportunities, and their ability to strongly demand justice within the trade and business environment. Information on access to credit, certification, and registration of businesses should be easily available on trade regulatory sites, government sites, and banks, in languages and in a textual form that is appropriate for where they operate. It is important to have secure and reliable sources of information.

Key messages

Some of the key themes from the KIIs include the following:

- Due to the country's strong agrarian focus, the AfCFTA will require an efficient process for information gathering and dissemination for women aggregators, cooperatives, and farmers' groups, who are the most efficient medium for reducing the cost of collecting and disseminating information on key trade environment issues.

- The Government's interventions to improve business conditions and access to finance, and the process of certification, are not adequately disseminated among women and young women traders, especially in rural areas. This is an area that the respondents all agreed that the Government needs to increase efforts in, and they agreed that it should involve the beneficiaries in the design of these information dissemination strategies, to ensure that they are fit for purpose. Current deficits in the country on ICT infrastructure development along the relevant trade routes will need to be addressed; this will facilitate market-enabling processes like e-commerce, digital marketing, and many more.

- In providing evidence on the implementation process under Article 3 (e) and 27 (d), the AfCFTA will encourage the Nigerian Government and other stakeholders to deliberately embark on comprehensive sex-disaggregated research across the trading and business sectors. This information is required to effectively plan interventions to increase women's participation in trade.

- The fact that trade policies and rules are not being translated to at least the major local languages was also highlighted as a key barrier for rural women in local communities, who are engaged in commerce. The Association of Women Farmers specifically referenced that its members have repeatedly been exploited by agents and middlemen.

- The mainstream Nigerian media does not adequately present women's entrepreneurship, their management skills within households, and the contribution they make to the economy.

RA5: Assessing the impact of COVID-19 on the extent to which women's participation in the AfCFTA can achieve a reduction in extreme and moderate poverty

The COVID-19 pandemic has had an unprecedented impact, affecting social and economic activities in several sectors and delaying the implementation of the AfCFTA till January 2021. Generally, health pandemics affect women differently from men, with a tendency to aggravate already existing inequalities. Some of the consequences of the response to the pandemic include multiple trade restrictions, economic lockdown, and other public health measures (social distancing). These COVID-19 emergency responses have had the unintended effect of exposing many of the vulnerabilities women – especially those with disabilities – face in social, economic, and political systems, which could very likely impact on their participation in trade. COVID-19 has shown how women employees, entrepreneurs, and consumers are adversely affected due to the loss of employment, particularly in the services sector. Other effects on women have included loss of income in the informal sector, where a longer time will be required for them to reactivate their businesses.

The Center for the Study of the Economies of Africa (CSEA) conducted a survey to explore the impact of COVID-19 on MSMEs and to identify mitigating actions that could facilitate an expedited and efficient implementation of the AfCFTA in Nigeria. Among the surveyed businesses, 25% reported that the pandemic significantly impacted their preparations for the AfCFTA; about 46% experienced significant effects from the pandemic on their future plans to expand into exporting abroad; and 63% experienced significant effects on their plans to import from abroad (CSEA, 2020).

Due to the limited access to finance, the lockdown also increased household responsibilities for women within households that survive on a daily income (Amrita, 2020). COVID-19 has also magnified the need for capacity building for e-commerce, which could be a game-changer, especially as regards small businesses accessing big markets. Women have faced challenges during this pandemic, but there is now a strong opportunity for inclusive trade that can be leveraged to help the economy recover (Amrita, 2020) within a reasonable time period. While the full impact of COVID-19 has yet to be measured, we have witnessed trade restrictions that have impacted on the global economy. Nigeria is experiencing severe consequences of the initial lockdown that disrupted activities in the informal economy, including shutting down markets, which significantly affected the major players (women). There was a significant reduction in the volume of agricultural products transported and traded, causing a loss income for traders. Despite these impacts, AfCFTA presents an opportunity to mitigate the different levels of economic distortion caused by the COVID-19 pandemic, and to reorganise global and regional value chains.

Social and economic Inclusion

Social inclusion (as defined by the World Bank) is "the process of improving the ability, opportunity and dignity of people disadvantaged on the basis of their identity to take part in society." While Economic inclusion is defined as broad access to economic opportunity. It relates primarily to a greater spread of opportunities across the population and different social groups. (Das, 2013). Key themes and definitions are dealt with differently across the literature on social inclusion and growth, reflecting the range of approaches to how best to address the inclusiveness (or not) of growth and economic opportunities. The issues of inclusion usually revolve around the key themes of gender, geography/location, age, ethnicity, disability and religion. When defining exclusion and assessing who is excluded, context is also important, as the fault lines and different identities can vary dramatically in different contexts. As illustrated in Figure 11 below, the World Bank 'Inclusion Matters' report (World Bank 2013) highlights that for inclusion to effectively happen then governments must focus on policies which enable the citizenry full access to markets, services and spaces.

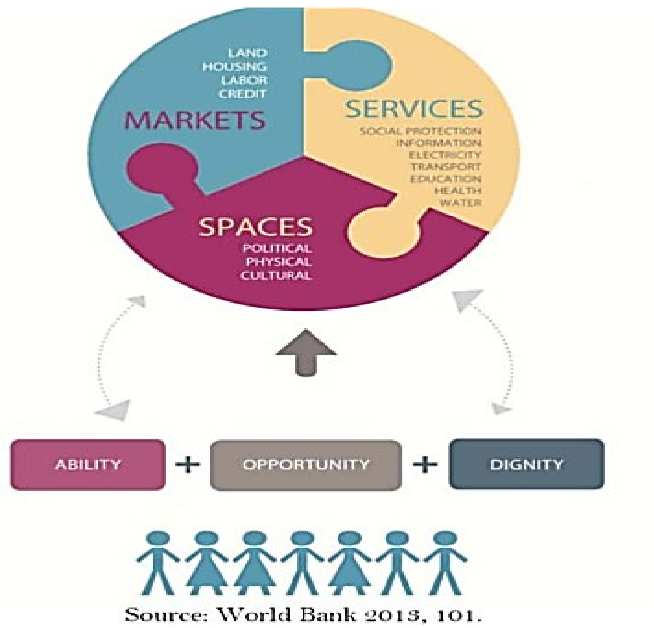


Figure 11: Inclusion - key themes

The AfCFTA offers a unique opportunity to develop an inclusive African trading system which will require strong policy development and implementation to allow Nigerians entrepreneurs enter new markets and participate effectively in key sectors like agriculture and manufacturing. The Nigerian government would need to implement its policy initiatives like the Zero Oil Plan, ESP to address infrastructural, technical and financial deficits that companies will face in trying to benefit from the AfCFTA. MSMEs would need to be supported to enable them to compete in a market with bigger and more competitive companies. The issues MSMEs face include access to finance, heavy tax burden due to multiple taxation and finding customers. The government needs to help them integrate in the export markets and to encourage them to diversify their production to face fierce foreign competition. The AfCFTA should also enhance the integration of women and youth within the trade system. Both the Protocol on Trade in Goods and Protocol on Trade in Services underline the importance of building capacity in women and youth to reinforce their inclusion within the economic and trading system.

The other area of potential benefit for young people is that the AfCFTA will facilitate easier movement of services providers across borders in search of clients and new market opportunities. Another key area of consideration for the government is that of financial inclusion. Financial inclusion means more people have easier access to funds which they can use for their businesses.

Financial inclusion can only be made possible with the introduction and deployment of technology more particularly mobile devices and the internet. Financial services are a key sector in Africa's continental market as the free movement of goods and services invariably requires ease in the movement of capital. Africa is experiencing an increase in the availability of financial products to people who would ordinarily have been excluded. For instance, financial inclusion currently stands at 83% in Kenya, up from 27% in 2006 (Kazeem 2019) while Nigeria has the ambitious goal of achieving 80% financial inclusion in 2020 (CBN, Financial inclusion 2020). These are areas where the government needs to implement more initiatives to ensure the enabling environment for the growth and sustainability of MSMEs is enhanced.

Recommendations

The Nigerian Government and other stakeholders should recognise the opportunities that could be leveraged by gender inclusion, and the threats an inequitable implementation of the AfCFTA may pose. By effectively mainstreaming gender into the implementation of the AfCFTA, the Nigerian Government can create equal opportunities for women and men, thus furthering the country's commitments towards the attainment of a global women's empowerment agenda and **contributing to the achievement of gender-focused Sustainable Development Goals (SDGs)** and those within the post-2020 development framework.

Additional recommendations include:

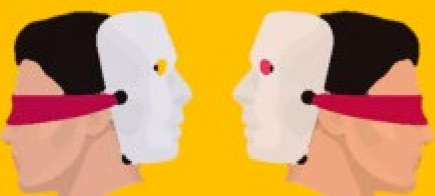
- Government should strengthen the work of woman business associations such as Organisation of Women in International Trade (OWIT), Association of Women Services Exporters, etc
- FMITI should include representatives of these women groups in the Enlarged National Focal Point (ENFP), the National Action Committee on the AfCFTA, and other committees on trade policy.
- Designate a focal person and workstream for each of the following themes: Gender, Youth, and Informal Sector at the NAC Secretariat; or one focal person and workstream to cover the three issues as one thematic area.
- Government should put in place policies that increase investment in human capital, particularly in the areas of education and health. Such investments, which have become even more relevant in the post-COVID-19 recovery, would enable women improve in their livelihood and their ability to participate for economic benefits under AfCFTA. Complementary policies should also include improved access to finance, digital trade financing training, financial literacy, and the elimination of legal barriers that women still face, especially at the rural level.

Women are less likely to be entrepreneurs and face more disadvantages starting businesses so government should continue to enable agencies like SMEDAN which are positioned to transit women in the informal sector to mainstream economic activities through their role in stimulating, coordinating and monitoring the development of the MSME subsector.

The quotes in the infographics below highlight some of the challenges faced by these groups in conducting their businesses and these point to broader systemic issues that need to be addressed for all to benefit from the implementation of the AfCFTA

"Most of the structural challenges women face in the informal sector persist because women are regarded as intangible partners. "Representative AfCFTA Women's Network"

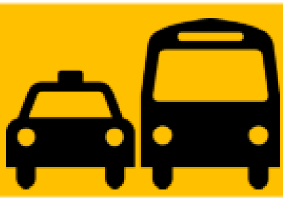
"Due to the literacy level of most women traders at the cross borders do not use the enquiry points at the borders. They are usually then faced with challenges posed by regulatory officials". Iyalode Alaba Lawson MFR; FIoD - ECOWAS Federation of Businesswomen Entrepreneurs (ECOWAS FEBWE)



GENDER BLINDNESS

"It has become increasingly clear that it is not enough for policy making to be blind to gender. Rather, to ensure that women are included, and for economies to make the most of the contribution of women, it is necessary to make policy that considers gender difference and the structural and institutional barriers to female participation. Trade policy is no different.
Hajia Bola Muse- President Women in Maritime Nigeria

"Transaction costs which include women traders being required to certify their products for several purposes are expensive and processes can be improved but they are a necessity to meet regional and international market conditions. I am constantly faced with the challenge of having to support women entrepreneurs to navigate understanding the required certifications, the numerous demands and opportunities from regional and international market. Most Nigerian women entrepreneurs do not have these certifications and the process of acquiring them is a bit expensive going by their economic situation. The Standards Organization of Nigeria (SON) needs to do more now that AfCFTA is about to be implemented in Nigeria. "Without an effective standardization process, dumping is inevitable in Nigeria.
Blessing Irabor, President- Organization of Women in International Trade (OWIT) Nigeria.



"Transportation trade unions are not usually sensitized and structured to facilitate trade, especially for women entrepreneurs" – Mrs. Patricia Idiakhoa– Chairperson, NACCIMA Businesswomen Group (NAWORG)

"Women cooperatives and farmers' groups are very strong in organizing themselves on poverty alleviation programmes at rural levels but lack the required skills and resources to sustain them"

I lead a women farmers' group and majority of the members are trying hard to fight off poverty. At a point, we wanted to expand our produce therefore we needed land, seedlings and fertilizers. We approached the State Government on these requests but were told to come pay some monies for the land mass – a resource we did not have at that time. With my knowledge from different cooperative societies, I initiated the common purse principle, where each female farmer contributes resources according to what she can afford within a set period of 3/6 months. While some contributed monies, seedlings and labor time others led in the sales of the produce. Profits from proceeds are then shared according to members' contributions. Overtime, our coalition has been grown to be able to address critical concerns of advocacy to the government, having engagements with Community Based Organizations (CBOs) and getting our knowledge strengthened in terms modern ways of farming. Now that the implementation of AfCFTA is likely to open more market for us, we need more resources and capacity building to meet standard requirements.

Mrs.Joan Obazee, National Co-coordinator, Association of Women Farmers of Nigeria (AWFAN)

4000

"Some transactional costs are enough to start micro businesses" Mrs. Agbo narrated a case of a female rural maize farmer, who harvested one full bag of corn and sells some as fresh produce for N4,000. She decided to sell the rest as roasted giving her extra N4,000. Minus the cost of fuelwood (3,000k), her take home is N5,000k. "Her expectation to return home with a means to feed the family is met for the day:" At home, more household expenses put more pressure on the revenue. "Given this context, the rural female farmer is always hesitant when asked to save and invest profit from sales to get a business name which will cost Twenty Thousand Naira (N20,000) going by legal service go-betweens". This is particularly the case for most rural farmers who are structurally denied access to Social Protection Programmes like the Agri-Business/Small and Medium Enterprise Investment Scheme (an initiative to support the Federal Government's efforts and policy measures for the promotion of agricultural businesses and small/medium enterprises (SMEs), which serves as one of the vehicles for formalizing women owned entrepreneurial activities. Even at my level of exposure, I have not been able to access the Scheme though I applied a long time ago. "You can only encourage women with evidence; AGSMEIS Loan Scheme has not produced much evidence for women in rural communities to give up any money for formalizing their trading activities"

Ruth Agbo, National President, Association of Women in Trade & Agriculture (AWITA) and Executive Member, AfCFTA Women's Network

Analysing Safeguards and Remedial Provisions for circumventing or mitigating anticipated negative outcomes of AfCFTA implementation.

4 Analysing safeguards and remedial provisions for circumventing or mitigating anticipated negative outcomes of AfCFTA implementation

4.1 Introduction

International trade policy recognises the right of members or State Parties to international trade agreements to derogate from their obligations under agreements under certain conditions. Some of these conditions relate to the protection of the domestic economic actors from the adverse impact of increased imports (safeguards), or from the unfair trade practices of other countries and their companies (subsidies and dumping). These are not the only types of protection available to member countries. Other measures include derogation for security reasons,[16] public health and safety, public morality[17] etc; derogation for balance of payment purposes;[18] and, in some cases, to protect infant industries.[19]

Additionally, countries belonging to international trade arrangements retain the right to regulate their domestic economies in the ways they deem best for the benefit of their citizens and companies. However, as a general principle, in regulating their domestic economies, countries ought not to derogate from their external obligations. This principle, as captured in the Latin maxim *pacta sunt servanda*, means that countries are bound to keep their agreements. The implication is that domestic policies and legislation regulating economic activities ought not to derogate from international obligations and, where this is the case – for example, where the policy or legislation was in force prior to the coming into force of the international agreement – there is an obligation on the country in question to amend its policies and laws, in order to bring them into conformity with the international obligation.[20]

Two sets of challenges emerge from the foregoing analysis: **the first set of challenges derives from the obligations imposed under international agreements and the constraint on policy space as regards a country pursuing its national aspirations**; the second set of challenges **relates to the capacity of the country to design and implement the appropriate policies** (within that constrained policy space) to further its national aspirations. The analysis in this chapter is cast within the framework of these two challenges.

To minimise confusion that may arise from the use of certain terms, it is important to note that the **term 'safeguards' has both a general usage and a technical usage in the field of international trade**. In the general sense, every measure that is aimed at protecting the legitimate interest of a country in international trade can be termed a safeguard. However, in the technical sense, there are specific measures that are referred to as 'safeguard measures', which are associated with another technical concept, 'trade remedies'. **Safeguard measures can only be invoked in the appropriate circumstances, as defined by the given trade agreement** as shown in this chapter**.** Therefore, in this chapter, an attempt has been made to stick to the term 'safeguards and remedial provisions' when addressing general measures for protecting countries' legitimate interest in international trade, and the term 'safeguard measures' is used when referring to the technical meaning of the term in the context of trade remedies.

4.2 Categories of safeguards and remedial provisions

4.2.1 Safeguards and remedial provisions contained in the AfCFTA and other trade agreements

This subsection identifies and analyses the safeguards and remedial provisions that are contained in the AfCFTA and the other trade agreements (ECOWAS and WTO) to which Nigeria is a signatory. The measures identified under this subsection include trade remedies (safeguards, anti-dumping, and countervailing measures), rules of origin, government support to economic development (balance of payment and infant industry protection), exceptions (general and security), a sensitive/exclusion list, and a dispute settlement mechanism. The analysis highlights the scope of application of each of these safeguards and remedies, whether they are aligned with Nigeria's current trade policy and regulations, the adequacy of these safeguards and remedies to meet the economic/industrial development needs of Nigeria, and the reforms Nigeria needs to implement in terms of policy, laws, and institutional capacity in order to utilise these safeguards and remedies.

A. Trade remedies (safeguards, anti-dumping, and countervailing measures)

Trade remedies are a common feature of all international trade agreements. They are designed to protect a country's domestic industries from unfair trade practices, such as dumping and subsidies, or to cope with a sudden surge of imports because of liberalisation (WTO, 2013). The key words here are 'unfair' and 'sudden surge'. There are three categories of trade remedies measures addressing three types or sources of injury a domestic industry may suffer as result of unfair trade practices or sudden surges in imports: measures to address subsidies (countervailing measures); measures to address dumping (anti-dumping measures); and measures to address sudden surges in imports (safeguard measures).

These terminologies (and their application) are very technical, and they are often confused in policy discussions. For example, dumping does not refer to a mere increase in 'cheap' imports from a country or group of countries. To establish a case of dumping, there are certain parameters that the importing country must prove, foremost being that the price at which the goods are sold in the import market is 'less than the normal value of the products'. Hence, dumping only occurs in the context of this price differential, which in addition, 'causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry'.[21]

Similarly, 'safeguards' in the technical context does not refer to every measure governments can take to protect their domestic industries from import competition. Rather, it means measures governments can take to protect their domestic industries if any product is being imported into their country 'in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive products'[22] in the importing country. This caution on usage applies to a lesser extent to the third term, 'subsidies. Nevertheless, it is important to underline that each of these terms has specific meanings, as well as rules that define their application.[23]

Trade remedies under the AfCFTA: The AfCFTA provides for countries to apply trade remedies in appropriate cases to protect their domestic industries. As noted above, these provisions are contained in Articles 17–20 of the AfCFTA Protocol on Trade in Goods, Annex 9 of the AfCFTA Protocol on Trade in Goods, and the AfCFTA Guidelines on the Implementation of Trade Remedies in Accordance with the Relevant WTO Agreements. Article 17 provides for the right of State Parties to apply anti-dumping and countervailing measures; Article 18 provides for the right of State Parties to apply 'global safeguard measures' (that is, safeguard measures in accordance with the WTO rules in respect of trade with all trading partners, including the State Parties); and Article 19 deals with 'preferential safeguards', that is, safeguard measure applicable only to trade under the AfCFTA. The mode of application of these trade remedies under the AfCFTA are provided for in Annex 9. Article 2 of Annex 9 merely re-states the provision that in trading under the AfCFTA, State Parties may apply anti-dumping, countervailing, and safeguard measures as provided for in Articles 17–19 of the Protocol on Trade in Goods, the Annex, and the AfCFTA Guidelines in Accordance with Relevant WTO Agreements.

Safeguards: Article 3 of Annex 9 confirms the rights and obligations of State Parties under Article XIX of the GATT 1994 and the WTO Agreement on Safeguards. The Preferential Safeguard Measures under the AfCFTA follows the same principles as Article XIX of the WTO in determining the trigger for a safeguard measure. Article 4 of Annex 9 allows a State Party to apply safeguard measures where a product traded under the AfCFTA is imported into the territory of the State Party 'in such increased quantities, absolute or relative to domestic production, and under such conditions so as to cause or threaten to cause Serious Injury to the Domestic Industry of like or directly competitive products'. Annex 9 provides for two types of preferential safeguards: the 'definitive' one and the 'provisional' one, with each following different rules for their application. Upon the application of the safeguard measure, the State Party has the obligation to immediately notify the Secretariat of the measure, and the Secretariat will then notify all other State Parties. Safeguard measures will be applied only to the extent necessary to prevent or remedy serious injury or threat thereof, and to facilitate adjustment. The safeguard measure applied cannot last for more than four years in the first instance. It must also contain clear indications of the progressive elimination of the measures at the end of the determined period. The preferential safeguard measure may be extended for another period not exceeding four years, subject to justification by the Investigating Authority.[24] A safeguard measure can take the form of a suspension of concessions or obligations, hence allowing a State Party to apply quantitative import restrictions, or an increase of duty on the product to a rate higher than the applicable rate under the AfCFTA.

Anti-dumping and subsidy, and countervailing measures: The AfCFTA Protocol on Trade in Goods and Annex 9 thereto do not set forth any standards for the application of either anti-dumping measures or subsidy countervailing measures. With respect to these issues, the AfCFTA merely re-states the rights of the State Parties to apply them in accordance with 'the AfCFTA Guidelines in Accordance with Relevant WTO Agreements'. There is no sign that these guidelines have been adopted. However, it seems that AfCFTA has chosen to transplant the WTO Rules relating to trade remedies,[25] subject to the Guidelines that the State Parties are adopting in this regard.

Trade remedies under the ECOWAS treaty and protocols: The revised ECOWAS treaty, 1993, follows the established principle that safeguards, and remedial measures are permitted under international trade agreements. There are three categories of safeguards and remedial provisions contained in the treaty.[26] Out of the three categories of trade remedies, the treaty has provisions relating to two: 'dumping' and; safeguards'. In each of the two cases, the provisions are not equivalent to the provisions of the WTO or the AfCFTA. However, the ECOWAS has adopted comprehensive regulations on safeguards measures,[27] subsidies and countervailing measures,[28] and anti-dumping measures,[29] to be applied as part of the ECOWAS CET. These instruments apply primarily to trade between Member States and third-party countries. The implication is that in the implementation of the CET, Nigeria can utilise the trade remedies provisions within the ECOWAS system to protect its domestic industries against unfair competition from third party countries. Note, however, that the treaty provisions relating to dumping and safeguards, even though not comprehensive, apply to trade among Member States.[30]

Nigeria's trade remedies readiness: Nigeria lacks a proper legal and institutional framework for applying trade remedies. This handicap has been reflected in several official and non-official reports on trade, particularly the recent reports on the AfCFTA.[31] The extant law dealing with trade remedies is the Customs Duties (Dumped and Subsidised Goods) Act Cap C48 LFN 2004 ('Dumped and Subsidised Goods Act'). This law was enacted in 1958 and makes provision for the imposition of a special duty on any goods deemed to be dumped by companies or subsidised by any government or authority outside Nigeria. There is no provision in the act for the third pillar of trade remedies, safeguard measures. The provisions of the act may be invoked if there is a threat of material injury to potential or established industries in Nigeria (WTO, 2017). The act also refers to Nigeria's obligation under the GATTS 1947, but in a rather ambiguous manner.[32]

The Dumped and Subsidised Goods Act does not meet the minimum standard for the application of anti-dumping and countervailing measures under the WTO and the AfCFTA. This particularly includes the WTO requirements relating to the mode of initiation, investigation, and determination of dumping, etc. Specifically, there are no requirements under the act for a detailed investigation of injury to the domestic economy, which should include an analysis of the economic conditions of production in the domestic economy and allow for representation by all interested parties. There is also no provision for consultation with the exporting country, which would afford the opportunity for remedial actions by the exporting company (e.g. raising export prices). Other gaps relate to the margin of dumping or the type of subsidy that could be sanctioned, the duration of the anti-dumping or countervailing measure (not more than five years for both categories, according to the WTO), etc.

In a 2007 notification to the WTO, Nigeria stated, in part, that it 'recognises the need to protect local industries from dumping and unfair competition within the framework of the remedies provided for by the WTO. Accordingly, a bill on anti-dumping and countervailing measures is under preparation to streamline the Act with Nigeria's WTO obligations.'[33] This statement buttresses the point that the country does not have a WTO-compliant legal and institutional framework for trade remedies.

There have been reports of efforts by Nigeria to design a trade remedies framework. The scope of the work done includes the drafting of an executive order to be signed by the President, as well as a bill for passage by the National Assembly. The draft executive order provides for the interim application of a WTO-compliant trade remedies regime pending the passage of the bill into law. Neither the AfCFTA nor the WTO has mandated a specific form of institutional arrangement for the investigation and application of trade remedies, so countries have adopted various approaches that suit their national circumstances. These approaches range from setting up an independent trade remedies authority to assigning the function to a department under the ministry in charge of foreign trade.

The **AfCFTA Impact and Readiness Assessment Report, 2019**, contains a summary of draft Executive Order 007 on a Nigerian Trade Remedies Framework. The summary shows that the functions of the proposed trade remedies authority is in line with the general principles and procedures contained in the relevant rules in the WTO and the AfCFTA. In addition to the above-mentioned effort, another current effort to establish a trade remedies framework in Nigeria is found in a private member bill before the National Assembly that is seeking to establish an International Trade Commission of Nigeria.[34] The bill proposes to vest in the Commission the function of a trade remedies authority, but the bill does not spell out the substantive rules which would be applied by the proposed Commission.

B. Rules of origin

At the centre of every free trade agreement are the rules of origin, which determine the conditions that goods must meet in order to be admitted for trade under the agreement. Since free trade agreements are designed to grant preferences beyond the WTO MFN preferences, it is important to define the rules that would determine whether particular goods originate from a State Party to the agreement, so as to enjoy the preferences granted under the agreement. The application of rules of origin in this manner ensures the integrity of a regional/free trade agreement by protecting it from the abusive practices of private companies or private companies in connivance with their host countries.

Every free trade agreement contains its own rules of origin. There are certain generally recognised principles that are used to determine the origin of products and their application: whether the goods are wholly produced in, or obtained from, the territory of the exporting country; whether the goods have undergone substantial/sufficient processing in the exporting country so as to change the tariff heading of the materials used; whether the goods have attained a stipulated level of value addition in the exporting country; and whether the goods have complied with a specific production process.

The NAC Secretariat Report on Safeguards Requirements for the AfCFTA has identified abuse of rules of origin as one of the threats facing Nigeria under the AfCFTA.[35] The report further highlighted the reasons for the abuse being a lack of proper understanding of the technicalities of the rules by both the enforcement officials and traders, the high cost of compliance for businesses, and inefficient administrative cooperation among Member States.

Basic element of the AfCFTA Annex on Rules of Origin: It is important to note that some details of Annex 2 are still being negotiated.[36] However, the basic principles for determining origin have been set. According to Article 4 of the AfCFTA Annex on Rules of Origin, a product will be considered as originating from a State Party if it has: (a) been wholly obtained in that State Party within the meaning of Article 5 of this Annex; or (b) undergone substantial transformation in that State Party within the meaning of Article 6 of the Annex. Article 5 contains a list of products that are deemed to be wholly obtained in a State Party.[37] Article 6(1) stipulates the criteria that confer originating status on goods not wholly obtained with the territory of the State Parties. The criteria include (a) value added; (b) non-originating material content; (c) change in tariff heading; or (d) specific processes. Article 6(2) envisages product-specific rules to be agreed upon by State Parties and included as Appendix IV to the annex.

The concern often expressed by the public and private sector in Nigeria is the possibility of goods imported from third countries being transhipped into Nigeria with minimal or no manufacturing process taking place. This is a concern shared by all the AfCFTA State Parties, hence Annex 2 stipulates the type of operations that are insufficient to confer origin on a product, such as mere repackaging, preservation, etc.[38]

An important feature of the AfCFTA rules of origin is the inclusion of the principle of *cumulation*.[39] This means that the State Parties to the agreement are regarded as a single territory. As such, materials originating from any of the State Parties used in the production process in another State Party are deemed to have originated in the State Party where the final processing or manufacturing takes place. So, for example, materials originating from Ghana, Niger, and Chad but processed into a product in Nigeria are deemed to have all originated in Nigeria for the purpose of determining the origin of the final product. Other important principles in Annex 2 include the unit of qualification for determining origin; the treatment of packaging materials; and the treatment of accessories, spare parts, and tools despatched with a piece of equipment, machine, apparatus, or vehicle; etc.

The AfCFTA provides for two major ways of proving origin: **by a certificate of origin**, whether in hard or electronic copy; or by **an origin declaration, given by the exporter in an invoice**, a delivery note, or any other commercial document, which describes the products concerned in sufficient detail to enable them to be identified.[40] These two methods of proving origin follow specific paths.

AfCFTA rules of origin vs. ECOWAS rules of origin: The important areas of improvement on the ECOWAS rules of origin include the following:
The ECOWAS Protocol expressly disqualifies goods produced in free trade zones or under special economic regimes from being treated as originating goods,[41] while the treatment of such goods has been contentious in the AfCFTA negotiation, and there is no agreement on this yet.
Another point of divergence is the acceptable ‘proof of origin’. While both systems recognise the use of certificates of origin, only the AfCFTA recognises the use of electronic certificates of origin, and the practice of making an origin declaration by certain categories of exporters[42] as a substitute for a certificate of origin.
Furthermore, the ECOWAS Protocol does not recognise the principle of de minis, which under the AfCFTA allows a consignment below a certain threshold ($5000) to be exported without a certificate of origin.

The provision of the ECOWAS Protocol in respect of administrative cooperation in the enforcement of rules of origin is less elaborate, limited only to the giving of ‘mutual aid and assistance in the authentication of certificates of origin’.[43] In cases where the importing country contests the origin of a product, the exporting country is obliged on its own or upon request by the importing country to ‘furnish all necessary information on the conditions under which the contested certificate was issued’.[44] There is no obligation to confirm the claims of the exporters upon which the certificate is issued, or to conduct an inquiry into the matter. In comparison, the AfCFTA rules place an express obligation on the exporting country to verify the claims made by the exporter upon which the certificate of origin is issued.

There is also the responsibility for authenticating the certificate and verifying compliance when requested to do so by the importing country. The exporting country is also required to investigate or make an inquiry in appropriate cases – with the participation of the importing country representatives. These additional obligations serve as better safeguards against abuse.
Perhaps the most important point of divergence is the dispute settlement mechanism relating to rules of origin under the two systems. The AfCFTA system is a stronger legal regime, while the ECOWAS system follows a more political approach. Disputes arising from the interpretation and application of

the AfCFTA rules of origin (Annex 2) are subject to a dispute settlement mechanism under the agreement. This means a country that suffers harm because of a violation of the rules by another country can sue and obtain legal redress from the violating country. In contrast, the ECOWAS Protocol only allows reference to the Council of Ministers through the Commission. The Commission determines the merits and demerits of the case and transmits it to the Council (a political body) for final decision. The decisions are usually political and not judicial and are more likely to be ignored by the party that loses.

AfCFTA rules of origin vs. Nigerian laws: The only law stipulating a rule of origin to be applied in Nigeria is the Customs Duties (Dumped and Subsidised Goods) Act. The rules of origin prescribed under this law relate specifically to the determination of the origin of a dumped or subsidised product. The law stipulates two criteria for determining origin: one, the country where the goods were wholly produced; and two, the country where the goods received value addition of not less than 75%, or the country where 75% of the components or materials were sourced from.45 However, it is important to note that this rule cannot apply to goods traded under the AfCFTA or any other free trade arrangement like the ECOWAS because what is prescribed under the law are MFN rules of origin (i.e. rules of origin applicable to all trading partners), while the applicable rules of origin under any free trade area are always determined by the agreement setting up the free trade area (and are thus called 'preferential rules of origin'). There is a need for a regulation to be issued by the Nigerian authorities to sanction the application of the AfCFTA rules of origin when it is eventually finalised.

C. Other important provisions that constitute safeguard and remedial measures

Restrictions imposed for balance of payment purposes: State Parties have the right to apply temporary trade-restrictive measures aimed at addressing a declining balance of payment, or to protect infant industries. These measures were accepted under Article XVIII of the General Agreement on Tariff and Trade (GATT) of 1947 and have undergone some modifications in their scope and application over the years, reflecting the tension between the ideology of the free market and government intervention.

The provisions of the AfCFTA relating to balance of payment are available to Nigeria to use in appropriate cases, as stipulated under the agreement. There are two provisions in respect of balance of payment derogation under the AfCFTA: one relates to trade in goods and the other relates to trade in services. Article 28 of the Protocol on Trade in Goods permits State Parties to derogate from their obligations under the agreement by adopting 'appropriate restrictive measures' to safeguard its balance of payment position. Article 14 of the Protocol on Trade in Services makes similar provisions but contains a more detailed procedure for its application: for example, the requirement for prompt consultation with the Committee on Trade in Services.[46]

i. ***Restriction imposed for infant industry protection***: Article 24 of the Protocol on Trade in Goods provides Nigeria the opportunity to impose measures for the protection of industries 'having strategic importance at the national level'. The imposition of such measures is predicated on certain conditions, which include: that the State Party has taken reasonable steps to overcome the difficulties related to the infant industry; and the application of the measures on a non-discriminatory basis and for a specified period of time.[47]

Key messages on balance of payment and infant industry protections

Nigeria has a long history of applying restrictive trade measures to support specific domestic industries or to conserve foreign exchange, and there is only scant and dated evidence to show that Nigeria has at some point tried to situate these measures within the framework of its obligations under the WTO.[48] This has implications for the implementation of the AfCFTA. **Nigeria may not continue to escape dispute settlement proceedings under the AfCFTA as it has done under the WTO, for the reason that while Nigeria is a marginal player in the WTO in terms of volume of trade, the same is not the case within the AfCFTA**. Most measures taken by Nigeria would likely come under scrutiny by other AfCFTA State Parties to gauge compliance with the rules. This raises the need for a change in attitude with respect to the formulation and application of trade restrictions. The international trading system provides ample flexibilities for countries to pursue their economic development aspirations, but these flexibilities are rules-based. The rules are designed to ensure predictability, transparency, objectivity, and non-discrimination in the national policy measures adopted by trading partners.

ii. ***Restrictions under general and security exceptions***: These provisions define the circumstances under which a State Party is not obliged to apply the rules. Trade jurisprudence has established two categories of exceptions: a general exception and a security exception. Under the WTO system, GATT Articles XX and XXI provide for the general and security exceptions, respectively.[49] This system of exceptions is adopted under the AfCFTA, almost word for word. Article 26 of the Protocol on Trade in Goods contains general exceptions, while Article 27 contains security exceptions.[50] General exceptions allow countries to take actions in pursuit of legitimate public interest measures that are necessary to protect public morals or to maintain public order; that are necessary to protect human, animal, or plant life or health; that relate to the importation and exportation of gold or silver; that are essential to the acquisition or distribution of foodstuffs or any other products in general or local short supply; etc. There is a 'chapeau' to the provisions to ensure that general exceptions cannot be used in a manner that constitutes arbitrary or unjustifiable discrimination between State Parties, or to disguise protectionism.[51]

While the general exceptions relate to issues of public interest of a general nature, the security exceptions relate to the protection of a country's national security interest. State Parties have unfettered rights: to withhold any information the disclosure of which they consider contrary to their essential security interests; and to take any action which they consider necessary for the protection of their essential security interests.[52]

It is interesting to note that under the WTO jurisprudence on security exceptions, the position is that 'every country must be the judge in the last resort on questions relating to its own security. On the other hand, every Contracting Party should be cautious not to take any step which might have the effect of undermining the General Agreement' thereby excluding the possibility of dispute settlement in respect of such decisions and actions (WTO, n.d).

Once a country indicates that it is taking a course of action for 'national security' reasons, the only option open to other parties to the agreement seems to be a resort to retaliatory measures.

Sensitive and excluded products list: The AfCFTA sensitive and exclusion lists were discussed in Chapter 2. There are two implications of these two lists for Nigeria's participation in the AfCFTA. One, Nigeria is allowed to maintain a list of tariff lines, amounting to 7% of total tariff lines, that it wants to liberalise more gradually than others; and another list, amounting to 3% of tariff lines, that it does not want to liberalise at all, in order to protect the domestic economy from possible negative impacts of speedy or wholesale liberalisation, as the case may be. Two, because Nigeria is negotiating as part of the ECOWAS Customs Union, Nigeria has been allowed to use a schedule of liberalisation that is in common with the rest of ECOWAS, which is predominantly made up of LDCs. This means that though Nigeria is a non-LDC, its liberalisation schedule will follow the dispensation for LDCs, i.e. 10 years for the initial 90% and 13 years for the remaining 7%.

iii. ***Dispute settlement mechanism****:* The AfCFTA contains a comprehensive dispute settlement mechanism that allows State Parties to initiate a legal challenge against violations of the agreement by any State Party or group of State Parties. The dispute settlement mechanism is the most important element of a rules-based trading arrangement. Its efficiency or otherwise is critical in determining the level of compliance by State Parties to the provisions of the agreement. Article 20 of the AfCFTA sets out the dispute settlement mechanism, while the details of the workings of the system are contained in the relevant provisions of the Protocol on Rules and Procedures on the Settlement of Disputes. The dispute settlement mechanism under the AfCFTA is open only to State Parties, not natural or legal persons. Businesses or natural persons who have grievances against another State Party other than their home country would have to report such issues to their home country government for possible initiation of a dispute process.

Consultation is emphasised as the preferred method of resolving issues under the agreement, with recourse to the formal panel hearing only where consultation fails to achieve an amicable resolution. It is expected that the AfCFTA dispute settlement mechanism will operate more efficiently than the existing mechanism under the ECOWAS system. The AfCFTA dispute settlement mechanism follows the same principles as the WTO's (open only to state parties, process begins with consultation then progresses to panel and appeal). it is instructive to note that Nigeria has never utilised the WTO dispute settlement mechanism either as a complainant or as a respondent. While it is difficult to say with certainty the reason for this, it seems that the reason for Nigeria having initiated any compliant could be traced to Nigeria's general poor utilisation of WTO rules; while the reason for not having had a complaint initiated against Nigeria could be explained in terms of Nigeria's marginal share in global trade, making it unlikely that any infringements by Nigeria would affect any major trading partner to the extent they would initiate a formal complaint. For a country like Nigeria, an external obligation tied to the risk of litigation could be useful in ensuring that necessary efficiency-enhancing reforms are executed in the national economy.

4.2.2 Safeguards and remedial provisions contained in Nigerian laws and policies

The safeguards and remedies identified under this heading include local content regulations in various sectors (oil and gas, ICT, etc), import and export prohibitions, foreign exchange restrictions for certain items, border closure, import licensing and quotas, and quality and standards regulations.

a. Local content regulations in various sectors (oil and gas, ICT, etc)

Local content regulations tend to discriminate against foreign service providers or products in favour of local services and product suppliers in specific industries. The policy behind local content requirements is to introduce or improve local participation and skills development in specific sectors of the economy. Local content regulations in Nigeria include those contained in the Nigerian Oil and Gas Content Development Act 2010,[53] and in the Guidelines for Nigerian Content Development in the ICT 2013,[54] issued and implemented by NITDA. In science and engineering, there is the Presidential Executive Order 5 for the Planning and Execution of Projects, the Promotion of Nigerian Content in Contracts and Science, Engineering and Technology.[55]

There are several sectors with elements of reservation or preferences for Nigerian citizens, Nigerian companies, or Nigerian qualified professionals. These include shipping/cabotage,[56] banking, professional services like law, architecture, etc. Local content regulations are viewed as legitimate tools for national development, by protecting domestic services suppliers from import coemption.
By their very nature, local content regulations run against the principle of free trade. Already, some members of the WTO have expressed concerns over the consistency of the provisions of the Nigerian Oil and Gas Content Development Act with Nigeria's obligations under the WTO Agreement on Trade-Related Investment Measures (WTO, 2017).

The chances of this and other local content regulations coming under scrutiny within the AfCFTA is dependent on two factors: one, the nature of specific commitments Nigeria makes in the services schedule; and two, the relative importance of the sectors for which there are local content regulations for other AfCFTA State Parties.

b. Import and export prohibitions, licensing, and quota

Nigeria maintains several import and export prohibitions in its trade policy. The Nigerian Customs Authority has published on its official website Nigeria's import and export prohibition lists. There are eight items on the export prohibition list and 23 items on the import prohibition list. As shown in the foregoing analysis in this report, **blanket import prohibitions for the protection of domestic production or producers are not consistent** with any of the trade agreements Nigeria has signed up to. The same applies to the special import licensing regimes that are usually applied by the country as part of backward integration in the production of items like wheat, tomatoes, maize, milk, etc. The correct approach would be for Nigeria to design protective policies that are aligned to its trade obligations, utilising the various flexibilities, safeguards, and remedial provisions contained in those agreements. Table 7 below highlights domestic safeguards and remedial measures compared to trade agreement obligations.

Table 7: Nigeria - domestic safeguard and remedial measures compared to trade agreement obligations

• Measure	• WTO	• ECOWAS	• AfCFTA
• Local content regulations in various sectors (oil and gas, ICT, etc)	• In furtherance of the National Treatment principle under Article III of the GATT, the Agreement on Trade Related Investment Measures (TRIM) forbids the application of measures "which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which require: • (a) the purchase or use by an enterprise of products of domestic origin or from any domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production" • Similarly, the National Treatment clause under GATS Article XVIII:1 provides as follows: • "In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than it accords to its own like services and service suppliers."[8]	• Article 44 of the ECOWAS Treaty requires Member States not to enact legislation and/or make regulations which • directly or indirectly discriminate against the same or like products of another Member State.	• There are similar National treatment provisions under Article 5 of the Protocol on Trade in Goods, and Article 20 of the Protocol on Trade in Services.
• Import and export	• Prohibitions, quotas and licensing	• There is a general obligation on	• Article 8 of the Protocol on Trade

[8] The first provision (under TRIM) applies to the purchase of products (trade in goods); while the second provision (under GATS) applies to trade in services. However, these two provisions are subject to the various flexibilities and exceptions discussed under sections 4.2. In other words, Nigeria can rely of those flexibilities to design and apply local content regulations in a compliant manner. Moreover, the provision under GATS applies only to services sectors and subsectors where Nigeria has made specific commitments. Finally, the provisions under TRIM does not apply to procurement (purchase of goods) by the Government.

• Measure	• WTO	• ECOWAS	• AfCFTA
prohibitions, licensing, and quota	• Systems are classified as "quantitative restrictions" (QR) under the GATT. Article XI:1 of GATT provides that no prohibitions or restrictions other than duties, taxes or other • charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any Member on the importation of any product of the territory of any other Member or on the exportation or sale for export of any product destined for the territory of any other member • Article XI:2 provides some exceptional cases where QR is allowed[9].	Member States to eliminate and refrain from the use of quantitative restrictions (QR). See Articles 35, 36(2), and 41. Also note the exceptions in Article 41(3) as discussed under Chapter 4.2.	in Goods prohibits State Parties to impose quantitative restrictions on imports from or exports to other State Parties except as otherwise provided for in this Protocol, its Annexes and Article XI of GATT 1994 and other relevant WTO Agreements

4.3 Conclusions and recommendations

The AfCFTA, like other international trade agreements, recognises that trade liberalisation may lead to adverse effects for domestic industries due to an increase in the volume of imports, or due to unfair trade practices of other trading partners under the agreement. To address these issues, the AfCFTA makes provision for the remedial measures that State Parties may apply to protect their domestic industries. The responsibility rests on the State Parties to use these provisions effectively. Moreover, this chapter has highlighted some domestic regulations and measures aimed at protecting the domestic industries. It is important to align these regulations and measures with the AfCFTA and other trade agreements. There is a serious misconception among many stakeholders in Nigeria about the content and application of international trade agreements in general, and about whether the safeguard and remedial provisions provide enough flexibility (policy space) and protection for the country. This misconception may be attributed to two factors: one, the dearth of expertise on trade law in Nigeria; and two, the history of the poor utilisation of the flexibilities and protections afforded by the agreements – whether the ECOWAS instruments or the WTO. The result is the sentiment in many quarters that free trade agreements are synonymous with unfettered liberalisation, with attendant unchecked influx or 'dumping' of imported goods. The AfCFTA provides a good opportunity for a change in both practice and perceptions.

To realise the benefits from participation in the AfCFTA, Nigeria should:

- Create the necessary frameworks, institutional structure and capacity to implement safeguards and remedial measures. This would entail the signing of the Executive Order on Trade Remedies to grant interim legal backing to the operationalisation of trade remedies actions in Nigeria, pending the passage of a law to that effect.
- The FMITI should set up an ad-hoc Committee on Trade Remedies to undertake the following functions: (a) the collection and review of baseline data on the pattern of imports from other

[9] These include where QR: is applied temporarily to prevent or relieve critical shortages of foodstuffs or other essential products; is necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade; and Import restrictions on any agricultural or fisheries product necessary to enforce certain types of government measures, to the extent some conditions are met. While import and export prohibitions are prohibited under the WTO, there are special requirements for the use of import and export licensing. Generally, these rules are subject to the safeguards and remedial measures discussed under Chapter 4.2.

AfCFTA countries to inform future trade remedies action; (b) to maintain a Secretariat made up of relevant experts and trainees in preparation for transformation into the trade remedies authority; (c) other necessary actions, including advising the Minister on the effective take-off of the authority.

With respect to national regulations and measures to protect domestic industries, Government should:

- In relation to trade with other State Parties to the AfCFTA, discard the list of 'import prohibition for trade' and use only the sensitive/exclusion list provided for under the AfCFTA.
- Start to use alternative/compliant tools (such as trade remedies, general and security exceptions, balance of payment, infant industry, etc) to defend/support the domestic economy.
- Undertake a review of all existing trade policies aimed at protecting/supporting domestic production in certain industries or conserving foreign exchange. This includes the policy on rice, textiles, automobiles, wheat, tomatoes, maize, cement, etc. The focus of this review would be to bring these policies into alignment with the requirements of the AfCFTA.
- Going forward, the NAC should track the design and implementation of intervention programmes and policies by any agency of the government and flag any policies that do not take into cognisance the obligations the country has undertaken under the AfCFTA (and indeed ECOWAS and WTO) to improve the chances of these interventions surviving legal scrutiny.

Analysing opportunities and potentials for increased export in goods and services

5 Analysing opportunities from, and the potential for, increased exports of goods and services

5.1 Introduction

The AfCFTA opens the door to a continental market of over 1.2 billion persons across 55 countries, with a combined GDP of US$ 2.5 trillion (projected to expand to US$ 29 trillion by 2050). Increased trading would result from tariff reduction, greater ease of doing business, and trade facilitation. The AfCFTA will also provide a platform for SMEs to be integrated into the regional economy and to accelerate women's empowerment, as well as providing an expanded platform for Nigerian manufacturers and service providers to be connected to regional and continental value chains (TRALAC, 2019). Given the projected growth in the African economy, as well as intra-regional trade, the challenge before Nigeria is to identify and exploit the export opportunities for goods and services within the continent, using the market access negotiated under the AfCFTA.

Most exports from Africa are primary products (natural resources, agricultural products etc.). Some African countries have developed capacity for processing primary products, while some will need other primary products from the continent. This reciprocity should be encouraged as it improves the dynamics of trade cooperation among African nations. This reciprocity is based on a national industrial profile that is determined both by natural resource endowments and by deliberate industrial and trade policies. In the case of the latter, experience has shown that the most effective policies are crafted with full cognisance of the national comparative advantage. The dynamic of trade and the power of the market will then see trade relations develop organically among complementary economies, whether geographically close or distant (Stuart, 2019).

5.2 Positioning for export under the AfCFTA: priority products

Nigeria needs an export strategy that is anchored in Nigeria's comparative and competitive advantage in natural resources, entrepreneurial skills, and capital. In designing this strategy, it is important to understand the competition Nigeria faces. The competition involves not just continental producers of specific goods and services, but also imports into Africa from the rest of the world. The NAC Secretariat has identified seven priority products for export under the AfCFTA. The Secretariat noted that these products (apart from cocoa), have an African market size of over US$ 3 billion. For cocoa, Nigeria produces 43% of Africa's current demand and exports an estimated 33% of Africa's current demand, making Nigeria a significant stakeholder in the African cocoa market, with lots of room for expansion (NAC Secretariat 2020).

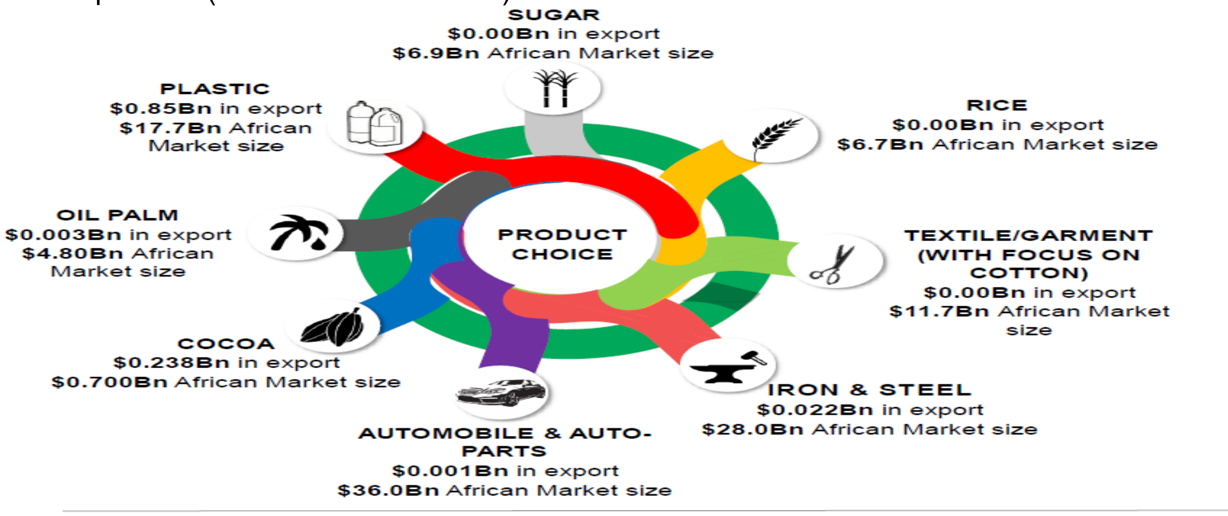


Figure 12: Nigeria's priority export products for the AfCFTA

Source: NAC Secretariat 2020

The Secretariat noted that there are opportunities to: expand production and SME engagement; integrate strongly in the fast-moving consumer goods industry; formalise existing regional trade; immediately link with domestic industries; and set up production clusters across the country, especially in the south-east region.

The ITC Export Potential Map reveals the following as the products where Nigeria has the strongest export potential for the rest of Africa, based on existing market conditions of supply, demand, and ease of trade:

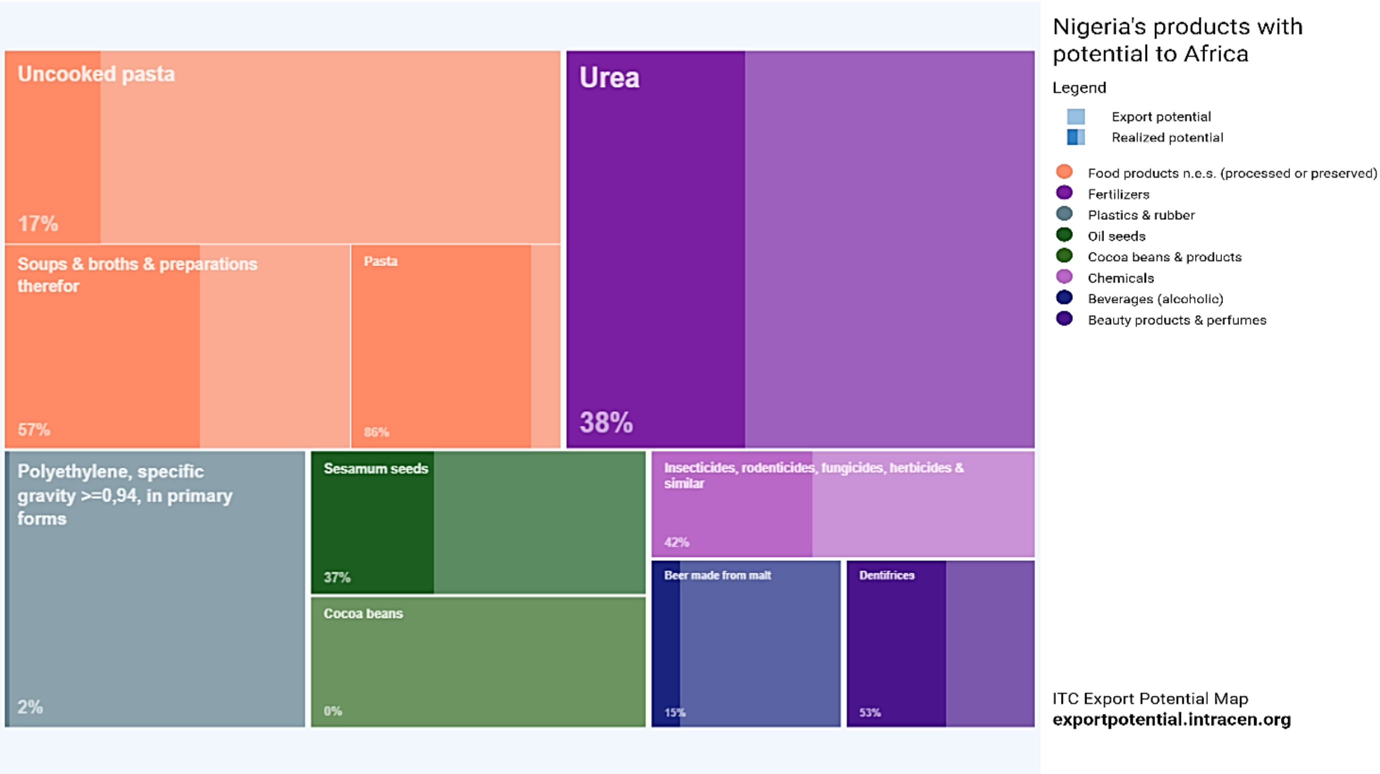


Figure 13: Nigeria's products with export potential to the rest of Africa

Source: ITC Export Potential Map

The NAC has used the demand for these seven priority products in Africa as the basis for positioning Nigeria for export competition in those products. This represents the kind of ambition Nigeria needs to display in its projection and preparations for the AfCFTA.

5.3 Enhancing the supply response capacity in priority products

Nigeria suffers weak supply response capacity for most of the products, owing to issues around low domestic productive capacity, overvaluation of the exchange rate, inflation, poor trade logistics, poor conformity assessment infrastructure, a general infrastructure deficit, etc. (Oyeranti, et al, 2018). Nigeria's persistent poor performance in the 'trading across borders' indicator of the World Bank Doing Business Report captures some elements of the export competitiveness challenges an average business in Nigeria faces. Border compliance in Nigeria takes 128 hours for exports formalities and 242 hours for imports formalities, much higher than the Sub-Saharan Africa average of 97.1 hours and 126.2 hours, respectively. Comparing with select countries, while it costs a business in Nigeria USD1035.7 and 254.4hours to comply with border and documentary requirements for export, the same activities costs a business in Togo USD188 and 78hours, respectively. On the import side, the cost is USD1641 and 407.7hours for Nigeria; and USD864 and 78hrs for Togo. Overall, Nigeria is the highest among other West African countries in the time and amount of money it costs to export or import goods. All the indicators under "trading across border" follows the same trend: Nigeria's performance falls below the Sub-Saharan African average as shown in Table 8 below.

Table 8: Summary Analysis of Time & Costs for Import and Export Procedures in West African Ports

Country/Economy	Total Costs: Border and Documentary Compliance - Exports (USD)	Total Costs: Border and Documentary Compliance - Imports (USD)	Total Time: Border and Documentary Compliance - Exports (Hours)	Total Costs: Border and Documentary Compliance - Imports (Hours)	TAB rank
Benin	434	709	126	141	107
Togo	188	864	78	348	129
Senegal	643	1247	87	125	139
Ghana	645	1027	197	116	156
Cote d' Ivoire	559	723	323	214	162
Nigeria	1035.7	1641.1	254.4	407.7	182

Source: Doing Business, 2020

Another important consideration in this regard is the cost of shipping goods from different parts of the world to Apapa ports. According to data from SBM Intelligence, it costs much more to ship to Apapa from Europe than it cost to ship to Tema (Ghana), and Durban (South Africa) in November 2019 (see Figure 14 below). The report considered the cost of freight from the EU, the terminal charges on containers while they are in the destination ports, and the average cost of local transportation from the port to selected warehouses within the port cities.

Figure 14: Cost of Shipping from the EU to Apapa, Tema and Durban in November 2019

Source: Quartz Africa, (with data from SBM Intel)

Figure 14 shows that Nigeria (Apapa) is almost 200% more expensive than Tema and 450% more than Durban. Local transportation cost is the driver of the high cost of shipping to Nigeria, a reflection of the lingering connectivity challenges between the Apapa Ports and the rest of the country (Kazeem, 2020). The data on the cost of shipping is corroborated by the shipping cost comparison website, MoverDB[57], whose data shows that in June 2020, the cost of shipping both 20-foot and 40-foot containers to Lagos ports from New York is the most expensive globally, at USD4,982 and USD7,436, respectively.

It has also been shown that without tackling these binding constraints to export supply response, many compensatory measures (such as import prohibitions for backward integration purposes, special intervention funds, export expansion grants, etc.) will not be adequate to offset the constraints posed by the weak performance of the supply response drivers (Oyeranti, et al, 2018).

The enduring lesson, therefore, is that Nigeria needs to pursue more productivity and trade enhancing reforms across the entire spectrum of the economy, rather than narrow compensatory or protective policies (which have yielded little results over the years). Addressing the challenges around trade facilitation and trade logistics is critical to improving Nigeria's export performance, hence resolving the various bottlenecks at the ports such as poor transportation connectivity, lack of scanners, lack of a single window platform, etc are some important early steps to getting Nigeria ready for export competitiveness under the AfCFTA. There is an urgent need to resolve these issues, and that may require more political will and efficient execution than they are receiving at the moment.

5.4 Comparative Implication for Nigeria

Africa's two largest economies, Nigeria and South Africa are fundamental to the success of the AfCFTA and the evaluation of their comparative export potentials benchmarked on a baseline shows deep insight into what Nigeria needs to do to compete in the intra-African export market[10]. Together they account for around a third of the gross domestic product (GDP) of the African continent and the size of their domestic markets also means they account for a high proportion of intra-African trade. South Africa is by far the biggest contributor to intra-African trade in goods, accounting for just under a quarter (24.9%) of such trade, while Nigeria is the third biggest contributor (after Namibia), accounting for 5.51%.28 Clearly, the benefits of an integrated continental market would be significantly diminished without these two.
A review of the International Trade Centre's Export Potential Map[11] indicates that Nigeria is rated as number 21 for major exporters of onions. Figure 15 shows a representation of the major exporters of onions, and Germany is the largest with an export potential of 60.4 million dollars. From Germany's economic realities, it is only able to tap 77% of this potential. Nigeria's export potential of onion is affected by a couple of economic factors. They include infrastructure, security, research, policies, and others. A comparative assessment using open-source data from the export potential map and information from the Food and Agriculture Organization [12]was used to estimate the true export potential of onion in Nigeria if the existing economic variables are fixed:

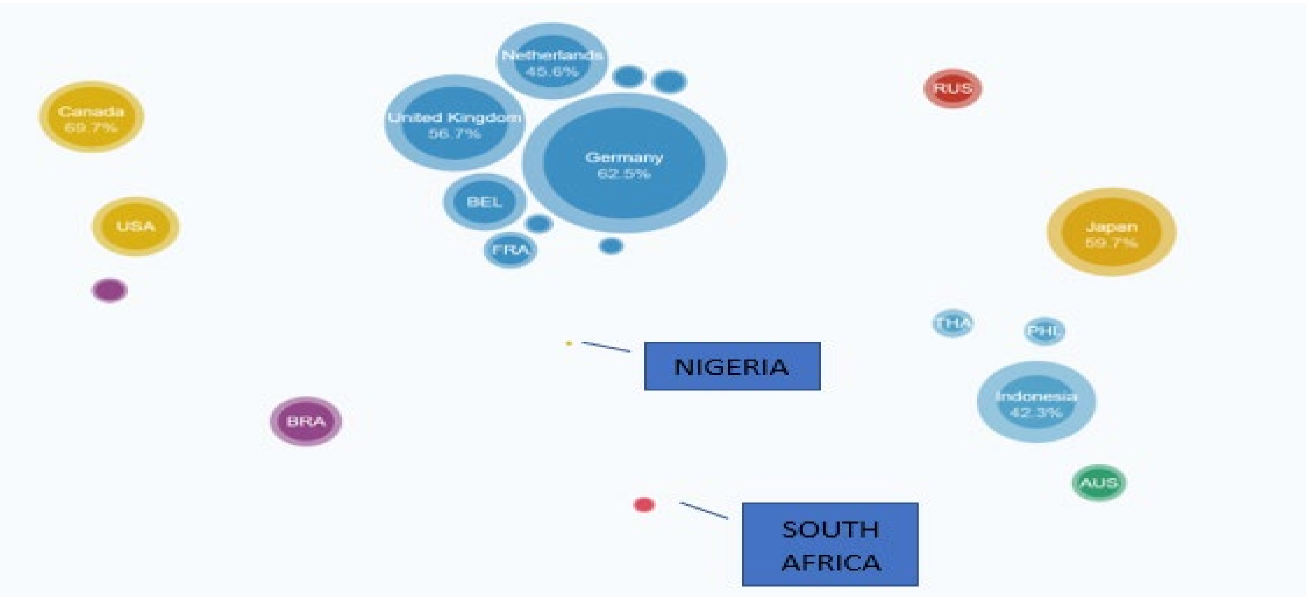


Figure 15: Largest Onion Exporters in the World

Table 9: Nigeria Analysis of Onion Export

Year	Area harvested (Ha)	Yield (Hg/Ha)	Production (tons)

[10] Nigeria and South Africa: Shping Prospects for the African Continental Free Trade Area (Discussion Paper No. 242)
[11] https://exportpotential.intracen.org/en/markets/geomap?whatMarker=k&what=071220&fromMarker=w&exporter=w&toMarker=j
[12] http://www.fao.org/statistics/en/

2015	434500	997900	997900
2016	397310	25542	1014810
2017	365544	26566	971110
2018	374316	25070	938417

Table 10: Nigeria analysis of onion export

Export potential	$5800000
Actual export	$3300000
Untapped	$2500000

Table 11: South Africa analysis of onion export

Year	Area harvested (Ha)	Yield (Ha/Hg)	Production (tons)
2015	29173	240027	700221
2016	28440	241067	685605
2017	29558	242305	716201
2018	29834	243573	726673

Table 12: South Africa analysis of onion export

Export potential	$8000000
Actual export	$5000000
Untapped	$3100000

South Africa is selected for the comparative analysis because of its competitive position with Nigeria and the fact that it is a significant onion exporter. Its export potential is rated higher than that of Nigeria, with $2,200,000 more in export potential. Figure 16 shows that since 2015 the land available for planting onions has gradually reduced in Nigeria (from 434,500 hectares in 2015 to 374316 hectares in 2018). The opposite is observed in South Africa where it has seen growth from 29,173 hectares in 2015 to 29834 in 2018.

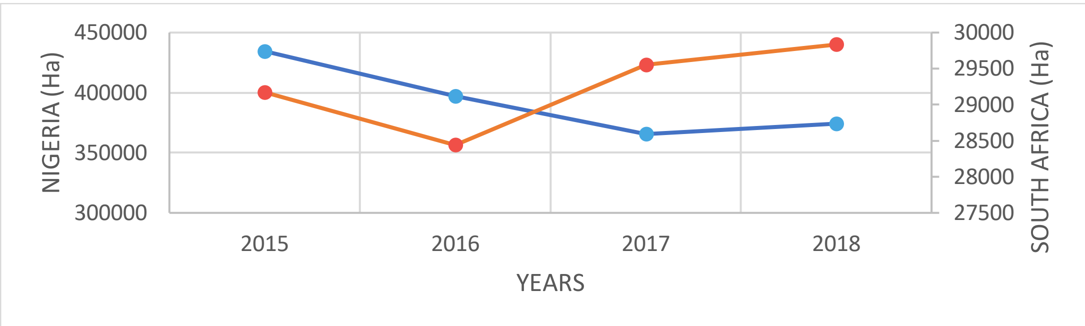
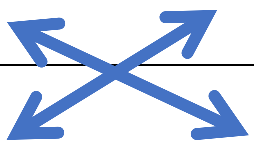


Figure 16: Comparative Diagram of an Area of Land for Harvesting Onion in Nigeria and South Africa

The most likely event that may have caused a significant reduction in land use for onion is security issues. Onion is dominant in the Northern part of Nigeria, and most farmers have faced severe security issues. Some of these security issues have made farmers abandon their onion farms. This abandonment has affected the export potential of the onion.
Referring to the 2018 records (Table 9 to Table 12), it is interesting that South Africa uses 29,834 hectares for farming onion and its export potential for onion is $8,000,000.00. On the other hand, Nigeria uses 374,316 hectares to farm onion, and its export potential for onion is $5,800,000.00.

Using the basic concept of proportion to determine efficiency, if South Africa were to plant on an area of 374,316 hectares as in Nigeria, its export potential of onion would most likely be:

29,834  **$ 8,000,000**

HA

374,316 **Estimated export potential**
HA

Figure 17: Estimated Export Potential for South Africa = $100,372,997.00

The above figure indicates that South Africa (*ceteris paribus*) would be more efficient with the same acreage of land that Nigeria has in terms of its export potential for onion. It also indicates that this is Nigeria's true export potential for onion and highlights the inefficiencies that limit Nigeria's true export potential for a broad range of products and services. More detailed research to test the hypothesis regarding which economic factors are significantly preventing Nigeria from achieving this true export potential is required, however this is an indicative appraisal of an urgent need for optimization and shows that Nigeria can become the largest world exporter (more than Germany) at extant acreage size for onion farming.

To reinforce the argument above, another product can be used to evaluate Nigeria's export potential. This time, Nigeria will be compared to Niger (a neighboring country that impacts on Nigeria's trade capacity and capabilities). Leveraging from the same export map above[13] with focus on tomatoes, Nigeria and Niger are rated amongst the top 51 major exporter of tomatoes. Figure 18 shows a representation of the major exporters, and the USA is the world largest with an export potential of 3.4 billion dollars. From its economic realities, it is only able to tap 65% of this potential.
Nigeria's export potential of tomatoes is affected by a couple of economic factors which are like those of onion exports. Using similar data sources as in the onion analysis, the true export potential of tomatoes in Nigeria and Niger if the existing economic variables are fixed can be elucidated:

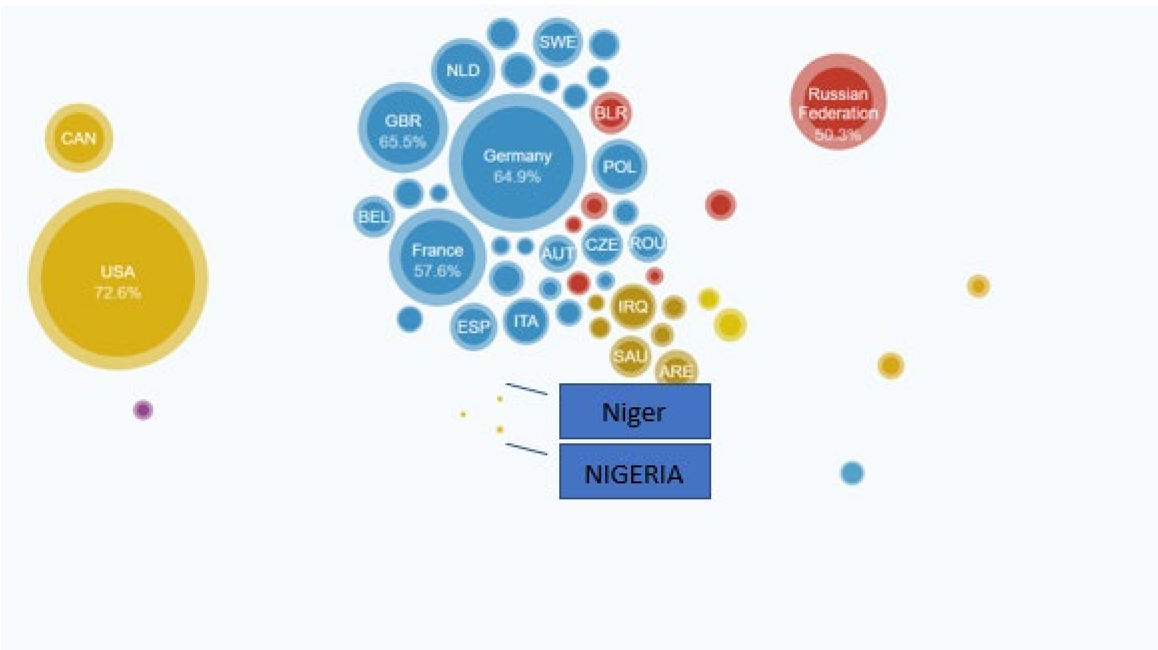


Figure 18: Largest Tomatoes Exporters in the World

Table 13: Nigeria analysis for tomatoes export

Year	Area harvested (Ha)	Yield (Hg/Ha)	Production (tons)
2015	557500	75862	4229330
2016	829299	41151	3412650
2017	655906	62509	4100000
2018	608116	64363	3913993

[13] https://exportpotential.intracen.org/en/markets/geomap?whatMarker=k&what=071220&fromMarker=w&exporter=w&toMarker=j

Table 14: Nigeria analysis for tomatoes export

Export potential	$672000
Actual export	$273300
Untapped	$502600

Table 15: Niger analysis for tomatoes export

Year	Area harvested (Ha)	Yield (Ha/Hg)	Production (tons)
2015	10475	238729	250069
2016	11297	238188	269079
2017	10848	242801	263394
2018	11037	262572	289806

Table 16: Niger analysis for tomatoes export

Export potential	$63500
Actual export	$27600
Untapped	$37100

Figure 19 shows that since 2015 Nigeria's tomatoes production has declined from 4,229,330 tons to 3,913,993 tons in 2018. The case has been the reverse for Niger as their production has shown significant increase, from 250,069 tons in 2015 to 289,806 in 2018.

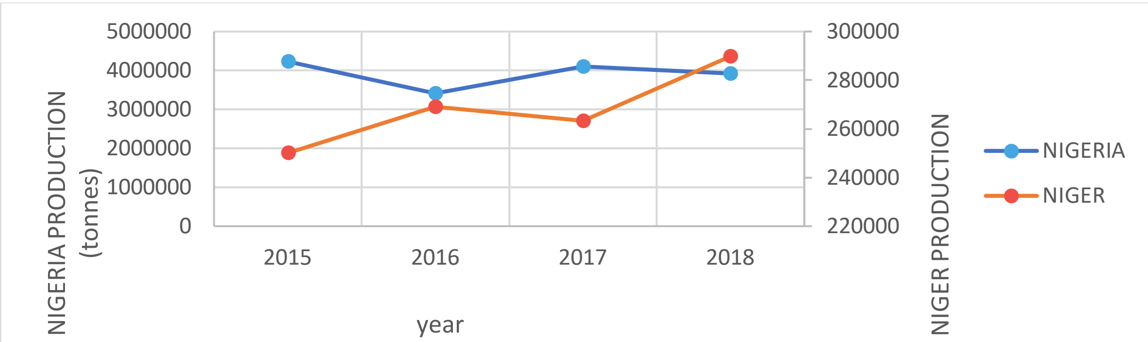


Figure 19: Comparative diagram of tomatoes production amount for Nigeria and Niger

The primary challenges limiting tomato production capacity in Nigeria are poor tomato nursery practices and after harvest yield loss largely caused by poor investment in adequate and reliable transport systems such as electric rail systems as well as modern storage facilities[14]. Despite climate-related hazards, specifically, drought, that resulted in production shortfalls and price reverberations along integrated market systems Niger shows more efficiency than Nigeria in terms of export potential inferring that the challenge with Nigeria's position is man-made and related to political/economic decisions over the years.

Product	Value in Millions of US$	Percentage Share in Total Intra-Africa Exports	Rank
Petroleum oils, oils from bitumen. materials, crude	5372.48	7.84	1
Petroleum oils or bituminous minerals > 70 % oil"	4662.00	6.80	2
Gold, non-monetary (excluding gold ores and concentrates)	2444.25	3.57	3
Ships, boats & floating structures	1613.86	2.36	4
Fertilizers (other than those of group 272)	1409.60	2.06	5
Natural gas, whether or not liquefied	1379.26	2.01	6
Pearls, precious & semi-precious stones	1256.54	1.83	7
Electric current	1167.57	1.70	8
Copper ores and concentrates; copper mattes, cement	1112.45	1.62	9
Lime, cement, fabrication construction materials. (excluding glass, clay)	1099.12	1.60	10
Motor vehicle for transport of goods, special parsons	1083.58	1.58	11

Table 17: Relative Importance of Individual Products in the Intra-Africa Export in 2017[58]

The single market which will be ushered in through AfCFTA will offer Nigerian products and services, preferential access to the enormous African market, which currently sources over 85% of its products imports from outside the continent. Preferential market access to Africa is particularly important to Nigeria as a lack of access to foreign markets was identified as a key constraint to export of Nigeria's non-oil products to Africa and the world[15]. Nigeria has built significant capacity and competitive advantage in financial services (including insurance and pension) so the sector's contribution of $1.7bn ($1.35bn import and $0.36bn exports) or 5% of total *services export points to spare capacity* which can be deployed in Africa. Nonetheless, data from International Trade Center (ITC) reveals some product category in which Sub-Sahara Africa has failed to realize its potential; Production of cocoa bean, whole or broken, raw or roasted has an unrealized potential of 20 percent; sesame seeds (whether or not broken) has an unrealized potential of 96 percent; Hides and skins has an unrealized potential of 98 percent. In comparison, Cocoa paste (wholly or partly defatted) has an unrealized potential of 100 percent.

Nigeria has real potentials in the agricultural product lines mentioned above and the realization of this potential is critical to meeting AfCFTA inferred thresholds for competitiveness. More so, the top ten most traded products among African countries are crude oil, natural gas, refined petroleum products, gold (in raw and semi-processed forms), and non-industrial diamonds, frozen fish, ships and light vessels, sugar, vehicles (for the transport of people and goods) and cement. Africa's imports are mainly manufactured products, the focus of Nigeria's development agenda; AfCFTA, therefore, provides Nigeria with the opportunity to realize her economic growth and diversification aspirations based on the African market. With massive oil reserves, extensive potential in the agriculture and service sectors, and a youthful, rapidly growing population, Nigeria is equipped to emerge as a global economic powerhouse.

[15] http://www.iodnigeria.org/membershipgrades/News/-AfCFTA-Opportunities-for-Nigeria

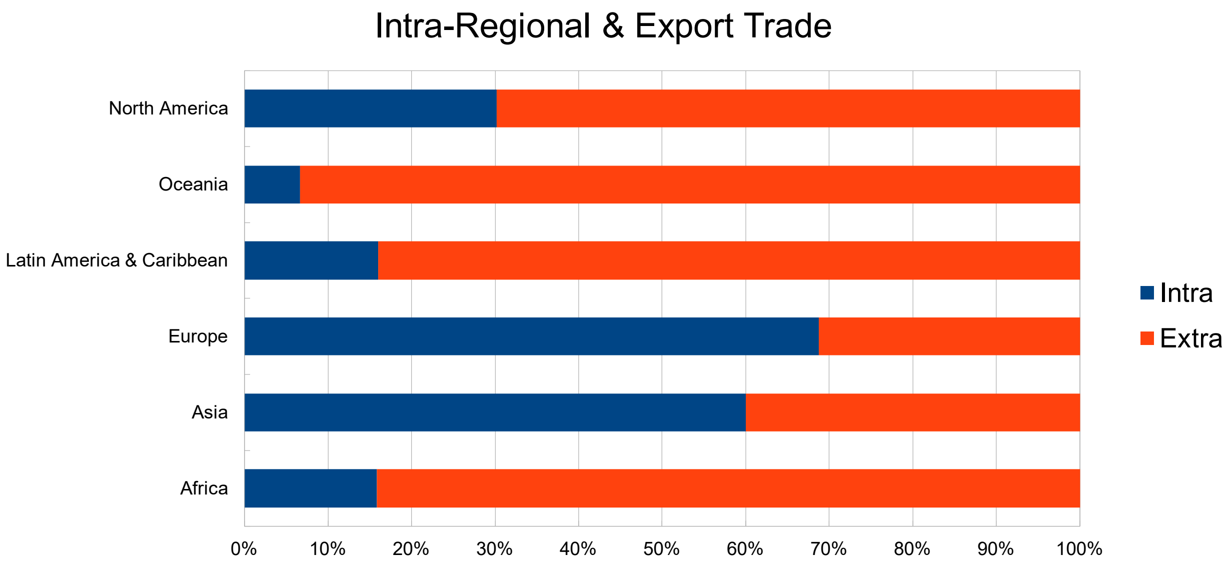


Figure 20: Global Intra-Regional and Export Trade

Some of the issues that emerge from the foregoing analysis include:

- Nigeria in under performing in terms of its export potential on several goods and services
- AfCFTA may not lead to significantly improved export for Nigeria because of inherent inefficiencies
- Opportunities for improvement exist within the right policy and governance framework
- Currently, Nigerian's production output for most value chains may not be enough to provide for local consumption and export
- Services export may be hampered by continental integration challenges related to harmonizing regulations across member countries, as well as institutionalized apathy

5.5 Positioning for export under the AfCFTA: priority services sectors

Nigerian banks and technology firms with a finance focus (FinTech's) are already penetrating several African markets. Nigeria's interest in the AfCFTA should be to secure more favourable domestic regulation for Nigerian banks and fintech's across the African countries where they operate.

Similarly, on tourism, the PwC Hospitality Outlook 2019–2023 shows a growth trend in hotel services in Nigeria. The study states that Nigeria, Kenya, and Mauritius had the fastest-growing markets in 2018, with increases of 20.0%, 14.6%, and 11.7%, respectively. It also posits that Nigeria is likely to emerge as the fastest-growing market, with a projected 12.0% compound annual increase. In 2018, PwC projected that growth in guest nights would follow continued improvement in the domestic economy and would be the principal driver of growth in room revenue in Nigeria during the next five years. However, most of this growth is driven by business travel and MICE (meetings, incentives, conferences, and exhibitions) since, despite its numerous natural endowments, Nigeria is not highly rated when it comes to leisure travel within Africa. In transportation services, Nigerian companies are making inroads in the cargo and passenger segments of the market. For example, the recently launched Uber-like logistics start-up Kobo360 is already penetrating other African countries, with operations in Togo, Ghana, Uganda, Burkina Faso, Kenya, and Ivory Coast. However, Nigeria underperforms in maritime and air transport services in Africa. Nigeria stands a chance of competing in business and professional services (which includes accountancy services, advertising services, architectural and engineering services, computer and related services, legal services, etc). Nigeria's strategy in business and professional services should be to push for mutual recognition of its professional qualifications by other African countries, to enable Nigerian professionals and companies to have easy access to those markets.

5.6 Tackling the supply response capacity in priority services sectors

Nigeria's potential to penetrate the financial services market in Africa is not in doubt, but this is not the case for the other AfCFTA priority sectors, such as tourism, transportation, business services, and communication. Nigeria's export of tourism (attracting tourists) is challenged by issues relating to the external perception of insecurity (which may not always align with the reality); poor cross-country transport infrastructure (road, rail, and flight connections); and lack of focused marketing of tourist attractions. Hence the approach to address this supply response constraint in the tourism market would include tackling the security challenge in the country more aggressively and improving the marketing of Nigeria's tourism potential to the rest of Africa. It is recommended that NAC collaborates with the NTDC to revisit the Nigeria Tourism Development Master Plan 2006, with a view to updating and implementing all outstanding aspects of the plan.

In transportation services, NAC needs to collaborate with the Nigeria Maritime Authority and other relevant stakeholders to identify and address the challenges with the operation of the Cabotage Act, which was designed to improve indigenous participation in maritime transportation. In business and professional services, improving the quality of professional qualifications is critical to attain competitiveness in the African market. There is, therefore, a need to pursue in the medium to long term a review of the curriculum of the various courses in Nigerian higher institutions of learning, to make them skills-oriented and industry-ready.

5.7 E-Commerce: intricacies and value addition for service export

Key issues and considerations:

- Nigeria's digital ecosystem in relation to Africa.
- the National Digital Economy Policy and Strategy in the context of export potential.
- barriers hampering the development of e-commerce in Nigeria.
- policies and institutional arrangements that support e-commerce; and
- opportunities for the services sector in terms of export facilitation.

Digital trade is possible using mobile phones, which enables access to distant markets. Africa has one of the fastest-growing mobile phone penetration rates, and Nigeria leads with the most smartphone connections at 154m higher the combination of South Africa (73m) and Ghana (47) (GSMA, 2020). Nigeria's export potential can be optimised by leveraging technological innovations that already exist for trading.

The AfCFTA enables African businesses to tap into the US$ 29 trillion global market (Ismial, 2017), with potential positive ripple effects on productivity in various sectors of the economy. A lot of B2C businesses operate online in Nigeria, and payments are made through both informal and formal channels. However, due to poor regulation, online trading is often abused.

Nigeria could become the African hub for internet-enabled business services export, such as call centre operations, accounting services, management and business advisory services, and other forms of professional services within the AfCFTA priority services sectors. Nigeria can take the path which India has taken in terms of being a net exporter of software developers and other internet-enabled service providers. With the COVID-19 pandemic, the attractiveness of remote work has greatly increased. Companies all over the world are looking for capable hands to recruit, with location not being as much of a barrier as it once was. The key to harnessing this opportunity is to actively encourage the development of those skills which will serve to boost e-commerce, and to take advantage of the AfCFTA. There is a need for a definite strategy for harnessing services export through e-commerce. NAC should collaborate with the Ministry of Communication and Digital Economy, NITDA, and the operators in the tech ecosystem in Nigeria to develop and implement such a strategy.

5.8 Trade corridors and export potential

Trade corridors are important for creating the transport connectivity required to drive trade. Nigeria is currently part of at least three trade corridor projects at different stages: Lagos-Abidjan corridor, the LAKAJI corridor, and the Enugu-Bamenda corridor (Bamenda-Mamfe-Ekok-Ikom–Abakaliki–Enugu). These corridors face the same issues:

- *The material environment of the borders: Under-sized and poor absorption of traffic flows and accelerated degradation of infrastructure.*
- *Trade environment: Issues of prohibited products and contraband, the problem of repatriation is affected by the inconvertibility of the region's currencies.*
- *Human environment: The responsibilities of drivers and carriers and the status of vehicles.*[59]
- *Corruption and poor compliance by customs and security personnel: Illegal extortion of money, and numerous checkpoints that serve little official purpose.*

The LAKAJI corridor was named for the three largest cities along the trade route (Lagos-Kano-Jibiya). The corridor runs along eight major states: Kaduna, Kano, Katsina, Kwara, Lagos, Niger, Ogun, and Oyo. Over 54 million people live along the corridor, accounting for almost 30% of Nigeria's population. Agriculture entrepreneurs along the LAKAJI corridor are involved in the production of cassava, cotton, fruits and vegetables, groundnuts, rice, maize, shea, livestock, and many other agricultural products. The corridor serves three major functions:

- *internally linking the larger producing areas in northern Nigeria to the more populous states in the south.*
- *exporting and shipping goods produced along the corridor; and*
- *importing and distributing goods from the shipping ports in Lagos to the middlebelt and northern states.*

Unfortunately, the corridor has not well served the needs that it was intended to address, as it has been hampered largely by the above-mentioned issues (Nzewi, 2017). In 2013, USAID conducted a baseline study of the LAKAJI corridor. The study revealed that it costs over US$ 3,000 and takes approximately 12.5 days to send a 20-foot container from Jibiya in northern Nigeria to Lagos in the south-west. Conversely, it costs nearly US$ 5,000 and takes approximately 19.5 days to ship a 20-foot container from Lagos to Jibiya. The higher cost to transport goods along the corridor **is largely due to the lengthy clearance time** and associated costs at the Lagos port. The overall cost and delivery times along the Lagos-Kano-Jibiya corridor are significantly greater than similar corridors in West Africa.

5.9 Economic clusters and export aggregation centres

There are a few existing clusters in Nigeria that have attained international acclaim for their economic importance. Clusters, whether for manufacturing/processing or for the provision of services, enhance productivity and trade. Some of the advantages of clustering include:

- *The possibility of providing targeted infrastructure (roads, electricity, quality assurance, export processing, etc) and business development services for firms located within the cluster.*
- *The pooling of skills from various location and the long-term enhancement of the overall capacity within the cluster as a result of persistent interaction between learning and doing in the production process.*
- *Reduction of cost of production for the firms located within the cluster, thereby, improving their competitiveness in the export market.*
- *Serve as export aggregation centres.*

There are several clusters that merits engagement and support as Nigeria prepares for the AfCFTA. These include Igun Street in Benin (the historic cluster of bronze art work), Dawano Market (the largest grains market in Africa), Yaba ICT Cluster (a cluster of Africa's leading tech firms), Ikeja Computer Village (West Africa's largest computer and computer accessories market), Aba Shoe Making Cluster, Kano Leather Making Cluster, etc. The focus would be to understand their challenges and to assist in crafting appropriate responses, in terms of policies or other forms of interventions. Also, there are several ongoing efforts at the Federal and State levels to develop export processing and aggregation centres. These include the initiatives on agro-processing zones being championed by the FMARD in collaboration of AfDB; the One State One Product (OSOP) programme of the NEPC; the One Local Government One Product programme (OLOP) of SMEDAN, etc. The major task ahead is in channelling these various efforts towards expanding Nigeria's non-oil exports, especially in the context of the AfCFTA.

5.10 Conclusion

The objective of the AfCFTA **is not to increase intra-Africa trade only: more importantly, it aims to enhance trade with the rest of the world**. The danger of promoting intra-Africa trade alone is that this would easily lead to a trade-off that favours a relatively small regional market (in terms of its share of world GDP) at the expense of a market represented by the rest of the world, which constitutes a large share of world GDP. The goal of Nigeria, therefore, should be to strategically integrate the Nigerian economy into both the African market and, at the same time, be better connected to global markets. It is, therefore, **recommended as follows**:

- ***Support existing economic clusters for trade growth***
  - The government should design a programme of support for some of the important economic clusters in Nigeria such as Igun Street in Benin (the historic cluster of bronze art work), Dawano Market (the largest grains market in Africa), Yaba ICT Cluster (a cluster of Africa's leading tech firms), Ikeja Computer Village (West Africa's largest computer and computer accessories market), Aba Shoe Making Cluster, Kano Leather Making Cluster, etc. to drive intentional dynamic comparative advantages of this clusters
  - Coordinated approach towards the promotion of industrial clusters and export aggregation centres
  - The FMITI and NAC should coordinate the various ongoing efforts by the Federal Ministry of Agriculture, SMEDAN, Nigerian Export Promotion Council (NEPC), Nigeria Export Processing Zones Authority (NEPZA) and other MDAs in this space to maximize efficiency and also to ensure AfCFTA specific considerations are mainstreamed.
  - These centres should be used as centres of excellence for applying AfCFTA compliant customs and border management and quality conformity regulations as a short-term measure to increase efficiency and reduce the cost of export logistics.

- ***Improve on trade logistics, trade facilitation and export corridors***
  - The NAC should leverage on information from past and present projects on the LAKAJI and Lagos-Abidjan corridors by GIZ, USAID and the Trade Facilitation West Africa programme (delivered by World Bank/GIZ) which is supporting a regional approach to these issues. Engaging with these projects would aid NAC to develop initiatives to optimize export corridors and trade logistics.

- NAC should work closely with the National Committee on Trade Facilitation to ensure that Nigeria keeps up with its commitments under the Trade Facilitation Agreement, especially with respect to automation (single window), simplification and transparency of rules and procedures. Develop an AfCFTA (and ECOWAS) trade information portal: The NAC should collaborate with the NEPC to develop an AfCFTA (and ECOWAS) market information portal where businesses can access export (and import opportunities) within the continent, the applicable rules and cost estimates for logistics.

- ***Institute an 'export ready MSMEs' incentive scheme:***
  - There is need for NAC and NEPC to develop an incentive scheme to be applied to MSMES (below a certain turnover threshold) who attain the set criteria for 'export ready MSMEs'.
  - This would also support the social inclusion component of the AfCFTA as if this scheme is implemented effectively it will affect various groups including women, youth and people living with disabilities, among others.
  - Attaining export readiness would be tied to the acquisition of the necessary skills, quality certifications and operational capacity to operate in export trade.
- ***Revamp the tourism industry:*** The NAC/FMITI should collaborate with the Nigerian Tourism Development Corporation (NTDC) on the implementation of the Nigerian Tourism Development Masterplan. This will start to drive an improved environment for tourism in Nigeria.
- ***Promote indigenous participation in maritime trade***: The NAC needs to collaborate with the Nigerian Maritime Administration and Safety Agency (NIMASA) and other relevant stakeholders to identify and address the challenges with the operations of the Cabotage Act, which was designed to improve indigenous participation in maritime trade
- ***Coordinate the various initiatives on digital skills development for export:***
  - While the challenge of appropriate infrastructure (power, broadband connectivity) would require a long terms intervention, the focus of NAC, on the short term should be on taking stock (mapping) of available skills and skills development interventions in the field and harnessing them towards export.
  - In the long term, the government should invest in the appropriate infrastructure to drive a digital revolution for enhanced productivity and export of skills.
- ***Effective long-term strategy for improving skills for professional services export:***
  - The FMITI and NAC should engage, on the medium to long term, with the relevant MDAs to ensure the review of the curriculum of the various courses in Nigerian higher institutions of learning to make them skills oriented and industry ready considering the AfCFTA implementation.
  - The government should also pursue mutual recognition of professional qualifications on a demand and offer basis with select countries based on data on export opportunities in those countries.
- ***Awareness of the AfCFTA across various MDAs:***
  - The FMITI and NAC should sensitise and build the capacity of all relevant MDAs on the AfCFTA and their various roles in its implementation
- ***Promote innovative financing for trade infrastructure***
  - The government should prioritise the deployment of well-designed PPPs for the provision and continued improvement of most of the trade infrastructure needs whether at the ports, intra-city and cross-border road and rail transport, sea links, etc.
  - The FMITI and NAC should engage with relevant stakeholders to articulate the critical trade logistics and trade facilitation infrastructure needs and commence project development for PPP.
- ***Sensitise and train the private sector on the AfCFTA rules:*** The NAC, FMITI, NEPC and other relevant MDAs should embark on sustained training and information dissemination aimed at helping the private sector understand the provisions of the AfCFTA for the purpose of their import and export activities, and for the purpose of reporting possible abuses by other importers or exporters within and outside Nigeria.

Domestic preparedness for implementation of AfCFTA

6 Domestic preparedness for implementation of the AfCFTA

6.1 Export competitiveness

The domestic business environment in Nigeria poses a challenge to entrepreneurship and export. This situation is reflected not just in the daily realities of entrepreneurs in Nigeria but also in the various global rankings on different elements of competitiveness and ease of doing business. Some of these issues relate to macroeconomic instability (an unstable exchange rate, a high interest rate and rising inflation, taxation, etc), and some relate to deeper structural issues that affect the functioning of the economy (level of production, efficiency of laws and regulations, skills availability, infrastructure, security, etc).

To improve the domestic business environment and attain export competitiveness, Nigeria needs to adopt a multisectoral intervention strategy, with due attention given to the factors that are critical to enhancing the productive capacity and trade competitiveness as detailed in box 1 below

Box 1: High level Factors for Enhanced Productive Capacity and Trade Competitiveness

Production Related Considerations	Trade Related Considerations
1. Production resources a. Natural capital b. Human capital c. Financial capital d. Physical capital 2. Entrepreneurial Capabilities a. Core Competencies b. Technological Capabilities 3. Productive Linkages a. Backward and Forward Linkages b. Information Flow and Exchange of Experience c. Resource Flows d. Territorial Production Clusters e. Global Value Chains f. Links Between FDI and Domestic Entrepreneurs g. Link Between Firms and SMEs h. Transport Infrastructure i. Private sector development j. Energy k. ICTs	1. Trade Policy, Trade Agreements, Foreign Policy, and National Security 2. Trade Competitiveness and Rules-Based Safeguards 3. Trade and Companion Policies 4. Trade in Services 5. Trade in Goods 6. Trade in the "Knowledge economy": Digital Economy and Data, Intellectual Properties and Innovation 7. Trade and Investment Facilitations and Global Value Chain 8. Informal Economy Trade/Micro, Small and Medium Enterprise 9. Empowerment of Women in Trade 10. Standards and Quality Infrastructure 11. Institutional Framework for Management of Trade Policy 12. Trade Remedy and Trade Dispute Settlement 13. Monitoring Reviews & Evaluation

The Global Entrepreneurship Monitor as shown in Figure 21 below indicates that Nigerians consider entrepreneurship to be a good career choice, due to a remarkably high perception of the opportunities and capabilities within the country. However, the below-average rate of entrepreneurial intentions[16] the early-stage entrepreneurial activity[17], and the business ownership[18] among Nigerians shows that these perceived opportunities and capabilities are latent. This is demonstrative of a "Nigeria enterprise Know-do gap"[19] attributable to Nigeria's inadequacies in the productive capacity and trade competitiveness priorities identified in Box 1 above. The consequence of this gap between entrepreneurial aspiration and low actual practice is an overall low job creation expectation rate, as shown in Figure 21 below. This gap is attributed to concerns around fear of failure, limited capacity for innovation, etc.

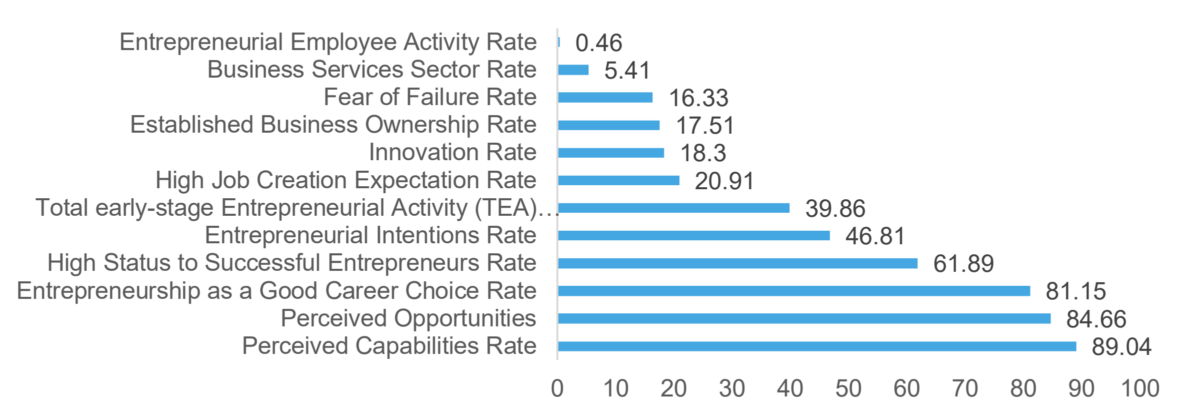


Figure 21: Score of entrepreneurial behaviour and attitudes in Nigeria (%) for 2016

Source: Global Entrepreneurship Monitor (Explanatory notes are provided on each indicator in the annex)

The Index of Economic Freedom, reported by the Heritage Foundation[lx] for 2020, revealed some attributable causes of the "Nigerian enterprise know-do-gap" observed from the Global Entrepreneurship Monitor Assessment (despite having different indicators)of the level of entrepreneurial drive in Nigeria.

The report placed Nigeria at 116 out of 180 countries, behind Morocco (78), Cote d'Ivoire (101), Ghana (104), and South Africa (106). Overall, Nigeria scored the lowest (below a 50% score) among selected African peers. Further disaggregated in Figure 22, Nigeria owes its poor performance in this index to the low scores in property rights (38.1%), judicial effectiveness (32.2%), government integrity (22.3%), investment freedom (45%), financial freedom (40%), tax burden (85.1%), government spending (96.2%), and labour freedom (84%). These are indicators of an unfavourable domestic investment climate.

[16] Entrepreneurial intentions measure the percentage of 18-64 population (individuals involved in any stage of entrepreneurial activity excluded) who are latent entrepreneurs and who intent to start a business within three years.

[17] (Total) Early-stage entrepreneurial activity measures the percentage of the 18-64 population who are either a nascent entrepreneur or owner-manager of a new business.

[18] Established business ownership measures the percentage of 18-64 population who are currently an owner-manager of an established business, i.e owning managing a business that has paid salaries, wages or any other payments to the owners for more than 42 months.

[19] The Nigerian enterprise know-do gap refers to the low levels of entrepreneurial propensity (such as entrepreneurial intentions, early-stage entrepreneurship, and business ownership) amongst Nigerians relative to the popular perception of high levels of opportunities and capabilities amongst the generality of Nigerians

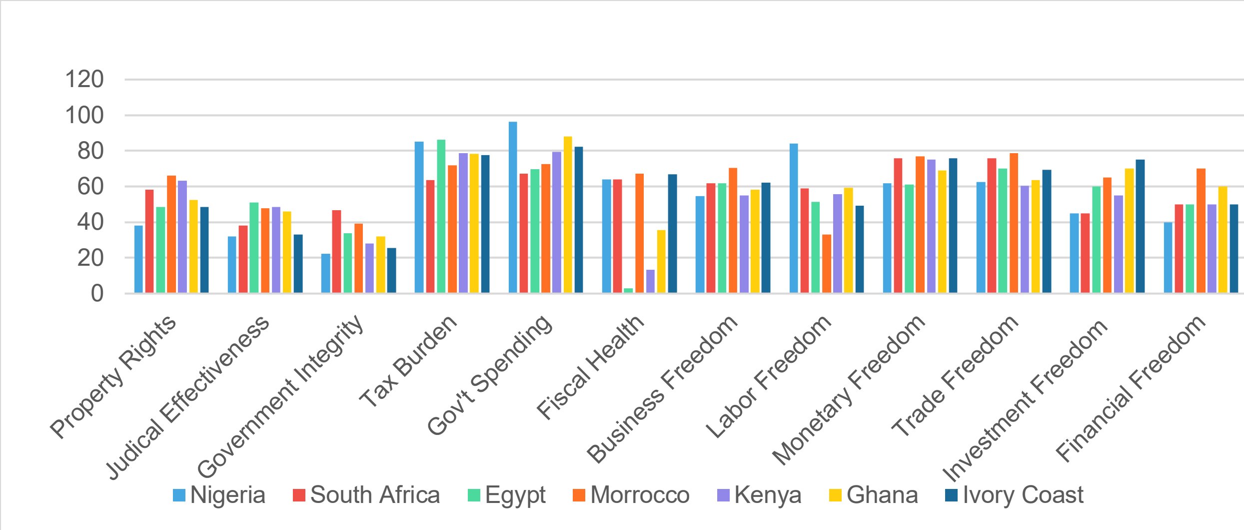


Figure 22: Indicators of the Index of Economic Freedom for select comparator economies (2020)

Source: The Heritage Foundation

Nigeria ranks the lowest – relative to the selected six comparator African economies – on ease of doing business, at a rank of 131 (among 190 countries), it has consistently recorded high performance in the access to credit indicator under the Doing Business Report. However, this does not seem to reflect the actual access to credit for MSMEs; this ranking is based on the presence of certain rules that potentially promote access to credit, such as collateral registry and the legal framework for transaction in moveable assets. The real challenges MSMEs face in accessing finance remain. These include: high interest rates; difficult collateral requirements; a poor business documentation and record-keeping culture on the part of the MSMEs; and, in the case of trade finance, bank branches lacking trade desk officers and requiring traders to visit head offices for export and import processing documentation (such as the Form M and The Nigeria Export Proceeds (NXP) form); together with difficulty in accessing the Investors and Exporters forex window, and constrained access to export proceeds for quick plough-back and seamless business operations.

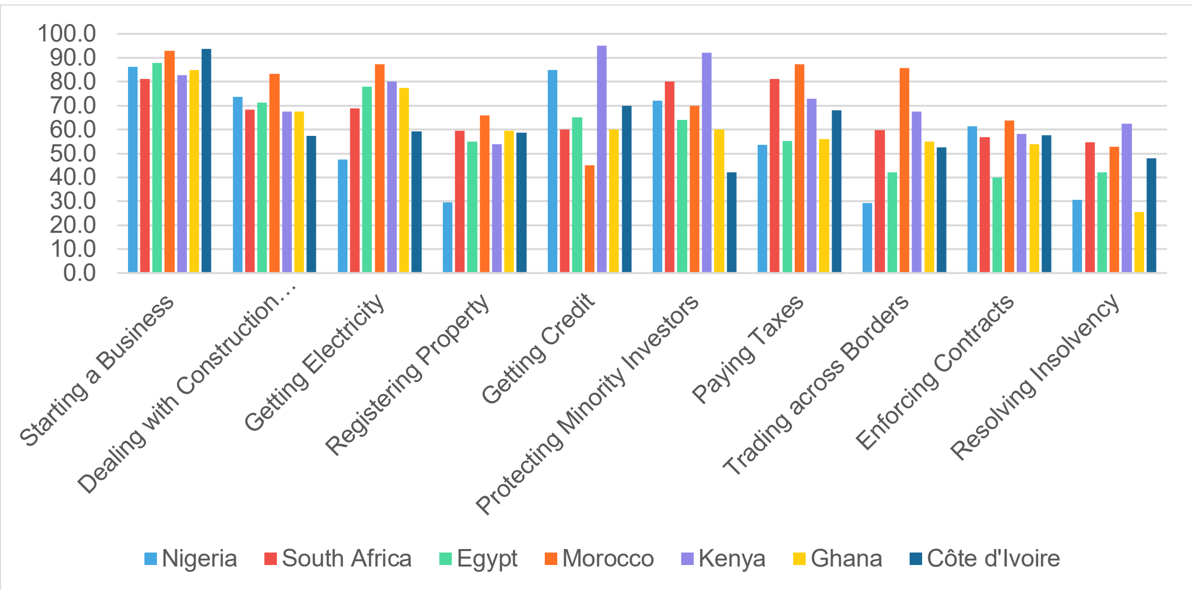


Figure 23: Distance to frontier (DTF) scores for ease of doing business pillars for select comparator economies (2020)

Source: World Bank

As Figure 23 above highlights, of the several ease of doing business pillars, Nigeria Distance to Frontier (DTF) scores the least among comparator economies on dealing with trading across the border (29.2%), paying taxes (53.7), registering property (29.5%), and getting electricity (47.4). The Global Competitiveness Index (GCI) for 2019 thoroughly confirmed the earlier identified weaknesses of the Nigerian competitiveness landscape, ranking the country 116 position globally, identifying Nigeria as a factor-driven economy with huge volumes of commodity exports, weak institutions, weak infrastructure, poor macroeconomic environment, inadequate health and primary education.

The Enabling Trade Index (ETI) ranks Nigeria 127 out of 136 countries globally, with Morocco (ranking 49) as the most competitive of the comparator economies, followed by South Africa (55), Kenya (77), Ghana (100), and Egypt (116). Among the selected comparator economies, Nigeria ranks the least in the four sub-indexes of the ETI: market access (131), border administration (121), infrastructure (110), and operating environment (126). Kenya scores the highest in market access (4.62).

Nigeria's poor ranking in the ETI as further observed by the global alliance for Trade Facilitation is evident in the total transit time hours, total direct cost and total indirect cost of 448 hours, $2,569/40 ft container, and $3,483/40ft container respectively borne by private trade players. These huge costs of imports/exports are comprised of inadequacies in ship-inward/outward processes, discharge processes, documentation processes, border clearance processes, truck turn around processes, inland transport processes, stripping container process, and return container processes. Of these processes, it is estimated that the indirect costs of border clearance processes and truck turn around processes respectively accounts for $1,343/40ft container and $1,810/40ft container. These indirect costs are majorly attributable to unreceipted fees, breakage and spoilage costs, theft of cargo costs, demurrage cost, storage costs, inventory costs, idle trucking costs, etc.

Morocco receives the highest score for efficiency and transparency of border administration (4.89), attributable to advanced port automation, and timely import, export, and entrepôt/transhipment operations. This degree of efficiency has contributed to Morocco's rising structural transformation and enhanced participation in global value chains, with commendable product sophistication, such as the manufacture of aircraft components and the assembly of aircraft. For operating environment, Morocco also scores the highest (4.59), with huge commitment to energy affordability, which is critical for the survival of small, medium, and large enterprises.

To further buttress the performance of the South African economy among comparator economies, the Logistics Performance Index (LPI) in Figure 24, reveals South Africa's dominant performance across the board, with Nigeria performing the least well in customs, infrastructure, international shipments, and logistics competence. This explains why South Africa and Nigeria are opposites in the rankings of the LPI, respectively ranking 29th and 103rd out of the 160 nations in the world.

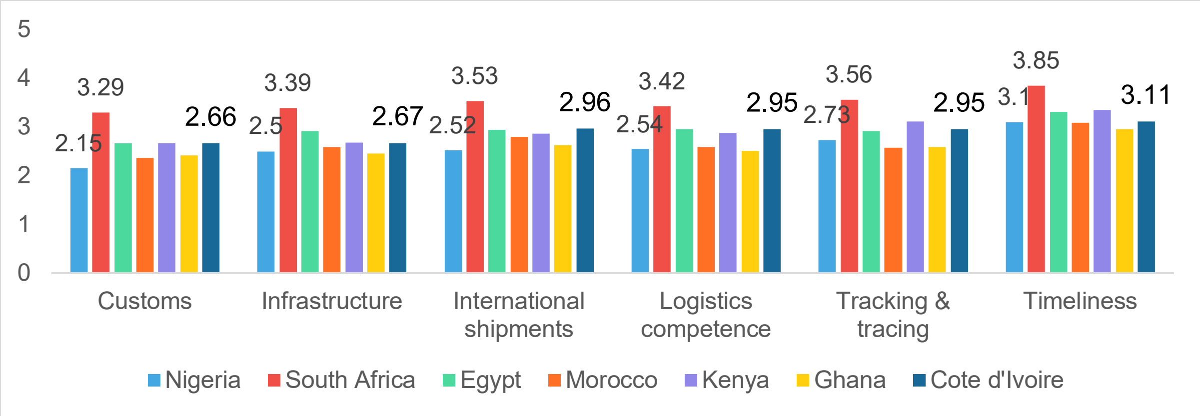


Figure 24: LPI disaggregated scores for Nigeria and comparator economies (2018)

Source: World Bank

Figure 25 below reveals that Nigeria scores comparatively low (below 1) on procedures relating to information availability, involvement of the trade community, advance rulings, formalities (documentation, automation, and procedures), internal border agency cooperation, external border agency cooperation, and governance. South Africa and Morocco show substantial leadership in most indicators. This is understandably so because Nigeria has fallen short of its commitments on the Trade Facilitation Agreement. For example, the obligation under the Trade Facilitation Agreement on information availability can be fulfilled by the availability of an online trade portal but the existing portal (trade.gov.ng) does not achieve the purpose of ensuring timely notification, as it lacks up-to-date information.

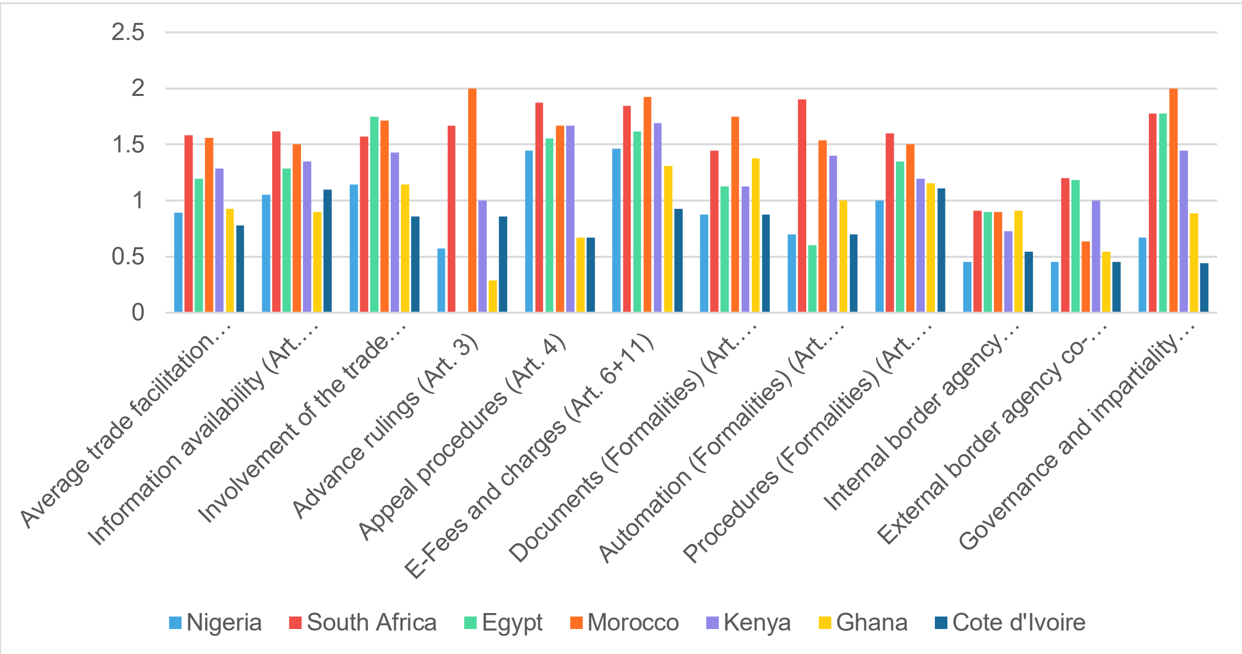


Figure 25: Scores for trade facilitation indicators for Nigeria and comparator economies

Source: Organisation for Economic Co-operation and Development (OECD)

6.2 Conformity assessment

As considered in the National Quality Policy (2020–2025), conformity assessment is the demonstration of specified requirements relating to products, processes, systems, persons, or bodies. Conformity assessment is mostly applicable to production processes, as regards ensuring standard regulatory compliance. This provides for trust in trade between economies, and equally between producers and consumers, which is critical for the success of enterprises producing in Nigeria for export trade and the domestic market.

To ensure the effective and efficient implementation of conformity assessments the UNIDO National Quality Infrastructure Project (NQIP) **proposed that Nigeria promote a globally compliant private sector-led quality infrastructure system based on accreditation**. In a quality infrastructure system, accreditation is the process of ensuring that the practices of conformity assessment bodies are acceptable, and that they have the technical capacity to test and certify third parties. This requires the democratisation of laboratory product testing, inspection, and certification processes to allow accredited private sector involvement. In such a system, the accreditation of private sector players would be carried out by a special purpose vehicle, based on the standards prescribed by government regulators: SON, NAFDAC, the Federal Competition and Consumer Protection Commission, and NAQS. This is the thinking behind the establishment of the Nigeria National Accreditation System (NiNAS) as the 'special purpose vehicle charged with accreditation. It is expected that the above process would ensure better oversight and limited direct involvement of government officials in practices of conformity assessment, as illustrated in Figure 26 below. However, there are presently a few private certification operators (such as ECOCERT/NICERT and Control Union) in Nigeria, yet to be accredited nor adequately recognized/mainstreamed into the Nigerian quality infrastructure system. This is so because NiNAS has not been able to carry out its assignment effectively. This is principally due to the lack of legislative legitimacy (without the passage of the National Quality Bill), lack of an apex body desirably within the presidency (to oversee the implementation of the National Quality Policy and ensure jurisdictional alignment amongst standards regulators), lack of effective existing laboratories enrolment into the national online laboratory directory (possibly due to inadequate sensitization on the relevance and equally due to the lack of capacity for enforceability by NiNAS).

Whilst this is the reality, it invariably implies that private certification players lack the needed full national legitimacy for seamless operation as key actors in the Nigerian quality infrastructure system. This is because certification operators (international or domestic) with full legal presence in Nigeria are subject to Nigeria's regulatory environment. Consequently, there is the need for the statutory standards regulators (SON, NAFDAC, NAQS, National Seeds Council, Federal Competition and Consumer Protection Commission, etc.) to be globally compliant by recognizing and easing the domestic accreditation of certification operators (with international accreditations) within provisions of the National Quality Bill yet to be passed. This should be done without compromising the UNIDO supported National Quality Policy, which is reflective of global best practice.

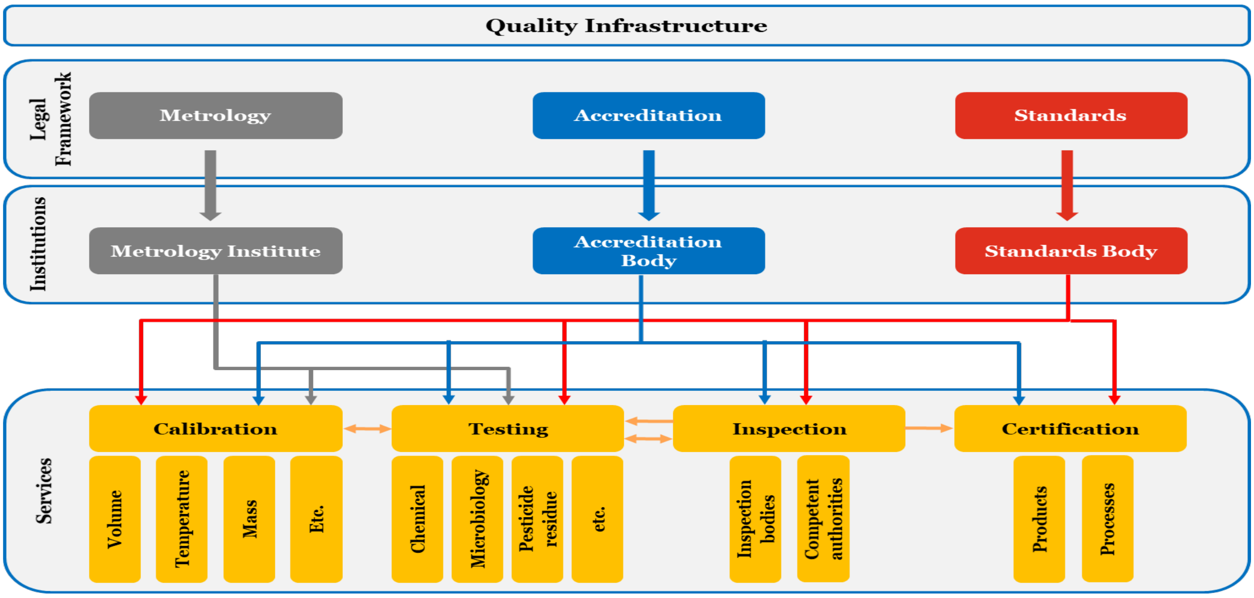


Figure 26: Illustration of conformity assessment processes within a quality infrastructure system

Source: UNIDO

6.3 Addressing coordination challenges

It is obvious that trade cuts across the mandates and activities of various MDAs at the federal and state levels, the executive and legislative arms of government, and the public and private sector. In practice, there is little effective coordination across these various actors in trade policy governance. The default situation is one of turf wars, with overlapping and sometimes conflicting regulations leading to a high cost of compliance for businesses, etc.

Federal-state, executive–legislature

The competitiveness-enhancing reforms that are required to reap the benefits of the AfCFTA require a coordination of efforts across the various tiers and arms of government. The state governments can play a leading role in promoting the competitiveness of MSMEs in their states, through the implementation of enabling business environment reforms. Similarly, at the federal level, most such reforms require collaboration between the executive and the legislative arms of government. The required nexus between the Federal and the State Governments would then be the need for harmony and synergy in trade/trade-related policy development (or review for existing policies) and implementation. Indeed, this need for collaboration will become more pronounced as Nigeria seeks to domesticate the AfCFTA. However, there are several bills before the National Assembly and State Assemblies that demand immediate attention. These include: bills seeking to reform the operations of the commodity ecosystem in Nigeria; bills seeking to modify the legal framework on special economic zones (export processing zones); the bill seeking to repeal the Export Prohibition Act; the Factoring Bill, etc. The recent report by CTBA/GIZ on the 'Mapping and Analysis of the Major Existing and Pipeline Rules and Regulations with effect on Trade and Competitiveness of MSMEs at the Federal Level in Nigeria' provides a compendium of the legal reforms that are necessary to improve the enabling business environment for MSMEs in Nigeria.

Coordination in conformity assessment and technical regulations

In the quality and technical regulations space, the mandates of SON and NAFDAC were to be clearly defined by their enabling laws. Nonetheless, some cross-cutting standards set by SON are applicable for the generality of products. As such, SON and NAFDAC sometimes repeat similar processes, with more time and financial costs for businesses. Likewise, the procedures (such as lab testing, documentation etc.) of NAFDAC are duplicated in the operation of NAQS regarding overlapping SPS oversight functions. Additionally, NAFDAC being responsible for establishing SPS for drugs and foods leaves room for jurisdictional misalignment on SPS considerations for agricultural products, plants, and animals (which are statutorily within the purview of NAQS), as these can equally be classified as food in some cases. The fine line between these overlapping mandates leaves exporters and importers facing systemic incoherence.

A recent report by CTBA and GIZ observes that ‘the field of quality inspection and certification for export purposes seems to have the greatest number of obsolete laws that also create overlapping and conflicting mandates. For example, the process of clearing an agriculture produce for export would involve the following laws and agencies: the Federal Produce Inspectorate Service (FPIS) created under the Produce (Enforcement of Export Standards) Act; the export Pre-Shipment Agents operating under the Pre-Shipment Inspection of Exports Act (whose mandate includes inspecting for quality, quantity and price comparison); the Nigerian Agricultural Quarantine Services (NAQS) operating under the Nigerian Agriculture Quarantine Services (Establishment) Act of 2018, whose mandate could be confusing to an exporter in relation to the mandate of FPIS in respect of pest control and inspection of produce bound for export under the Produce (Enforcement of Export Standards) Act, and Pest Control of Produce (Special Powers) Act’ (CTBA, 2020).

In addition to these overlaps, these agencies rarely have enough laboratories and functional testing facilities to carry out all the tests required of them. Global best practice suggests that it is quite daunting for a single agency of government to regulate standards in as large an economy as Nigeria, without the participation of accredited private sector standards regulators. What is required in this space is to democratise standards and conformity regulation through private sector participation. NiNAS was set up for this purpose, but it is not properly empowered to coordinate a globally compliant national quality infrastructure. Proper empowerment and operationalisation of NiNAS would provide for more private sector testing facilities, more global standards certifications, greater efficiency in standards regulation, and fewer exports rejections, etc.

6.3.1 Coordination in port operations

The Nigerian Customs Service (NCS) is the lead agency in the inspection and clearance of cargoes at the ports, but other agencies also play some role in the process: for example, the National Drug Law Enforcement Agency, the Directorate of State Security, NAFDAC, SON, etc. Nigeria has effectively reduced the number of agencies operating at its ports, but the absence of a Single Window remains a serious impediment to the seamless operation of the approved agencies. Similarly, the absence of scanners means that containers undergo 100% manual inspection, and when such containers are flagged by other agencies, the process may be repetitive.

The lack of coordination is also visible in the relationship between Customs, the National Port Authority (NPA), and the Nigerian Shippers Council. This has been shown in the handling of issues relating to truck parking and access to ports in Apapa. This overlap produces systemic failures at the ports, due to buck passing. The NPA, as the administrative manager of port operators, is expected to ensure port operation effectiveness and timeliness. However, the activities and structures of the NCS partly contribute to port congestion and delays, thereby affecting the administrative intentions of the NPA, and vice versa. The fact that the NPA and NCS respectively report to the Ministry of Transport and the and the Ministry of Finance results in slow bureaucratic procedures to address challenges. This is equally the case with the Shippers Council, the supposed economic regulator of the ports, whose mandate and regulations are constantly challenged by the operators (shipping lines, terminal operators, etc) due to the weakness in its legislative framework.

6.3.2 Coordination in the negotiation and implementation of trade agreements

There is still a lingering issue in respect of the mandate of the NOTN in relationship to the Department of Trade under FMITI, and, recently, the Secretariat of NAC on the AfCFTA. Ostensibly, the NOTN was established to coordinate Nigeria's trade negotiations, but there is a lack of a clear structure for coordination with the Department of Trade, which had hitherto discharged that mandate. This situation is further complicated by the establishment of NAC. For example, what is the role of the Intra-Africa Unit under the Department of Trade in respect of AfCFTA negotiation and implementation? For how long is the mandate of NAC set to last? Ordinarily, the responsibility for implementation of the AfCFTA and similar agreements should be domiciled in the Department of Trade. Will Nigeria have to set up similar *ad hoc* structures in the future to implement other trade agreements it may enter? There is a need for a long-term strategy of focusing capacity in FMITI to effectively discharge its functions. Alternatively, an independent trade administration body could be set up, under the supervision of FMITI, to replace the Department of Trade. The mandate of this body would be to implement Nigeria's trade policies and agreements.

There is a need to define the various remits of these bodies in law, and in the trade, policy being drafted by FMITI. The bill seeking to establish the NOTN must limit its role to that of negotiations, and it must define an appropriate coordination mechanism that will ensure that the Department of Trade makes inputs into Nigeria's trade negotiations. Similarly, while the agencies under FMITI negotiate trade agreements, the power to set and collect tariffs rests with the Ministry of Finance Budget and National Planning, while the administration of the ECOWAS ELTS rests with the Federal Ministry of Foreign Affairs

Recommendations

Proper coordination in the management of trade policy is critical to the effective participation of Nigeria in the AfCFTA and other trade agreements. Nigeria continues to perform poorly in the different metrics of competitiveness which are critical for enhancing domestic productivity and trade. The lack of an efficient quality policy and infrastructure as well as lack of proper coordination across the various actors in the public space are major factors that would likely undermine Nigeria's effective participation in the AfCFTA.

It is, therefore, recommended as follows:

- ***Strengthening of the ease of doing business reforms strategy***. In this regard,
  - the government should encourage stronger adherence by MDAs to reform targets set by The Presidential Enabling Business Environment Council (PEBEC). This will support the widespread penetration of initiatives and reforms in improving the business environment.
  - PEBEC and NEC should strengthen the engagement of the States on ease of doing business reforms to ensure that competitiveness enhancing policies are also mainstreamed at the subnational levels.
  - NAC should facilitate closer engagement with PEBEC on issues of domestic ease of doing business reform that are relevant to Nigeria's participation in the AfCFTA.
- ***Enact and Repeal Laws to enhance economic competitiveness:***
  - The FMITI/NAC should commence engagement with the National Assembly and other stakeholders like the National Assembly Business Environment Roundtable (NASSBER) coordinated by the NESG, local think tanks like CTBA

and development partners who are already championing legislative reforms in some aspects of the business environment in Nigeria.

  - Some of the outstanding issues for legislative attention include: Bills on reforming the Commodity Exchange Ecosystem in Nigeria, including provision for warehouse receipts system; reforming the legal regime for export processing zones; introducing a legal framework for factoring, franchise, crowdfunding; repeal of the Export Prohibition Act; repeal and re-enactment of the Customs and Excise Management Act; etc

- ***Establish a globally compliant quality infrastructure system:*** The FMITI and NAC should prioritise in the short term the adoption and operationalisation of the National Quality Policy to pave way for reforms such as the wide deployment of Global Good Agricultural Practice (Global GAP) compliance to upscale agricultural output quality and productivity. The UNIDO supported development of the National Quality Policy requires the passage of the National Quality Bill, to enable the speedy implementation of robust quality infrastructure in Nigeria, one that will ensure a mandate and operational alignment among standards regulators and that will promote the enrolment and accreditation of more laboratories in Nigeria.
  - Create an efficient structure for trade policy management as recommended under Chapter 1. Several options should be explored, including a long-term strategy of focusing on capacity development in FMITI to effectively discharge its functions; establishing an independent trade administration body, under the supervision of FMITI, to replace the Department of Trade. The mandate of this body would be to implement Nigeria's trade policies and agreements, including trade remedies, as well as being the lead agency on trade law advisory and litigation. Experiences of other countries such as the UK, South Africa, and the US could provide insights in this regard.
  - The bill seeking to establish the NOTN should limit its role to that of negotiations, and it should define an appropriate coordination mechanism that will ensure that the Department of Trade makes inputs into Nigeria's trade negotiations.
  - Government should focus on addressing the inter-MDA bottlenecks on establishing an efficient single window operation which is key to ensuring efficient structural and operational complementarities amongst all trade related regulating agencies and minimizing the indirect costs as unreceipted fees, breakages and spoilage costs, theft or cargo cost, storage cost, inventory costs, idle trucking costs, etc.

The start of trading on January 1 2021 for Nigeria under the preferential terms of the (AfCFTA) signals a new chapter in Nigeria's development and with the right strategies, effective implementation and commitment, Nigeria will be poised to reap the benefits of economic and social transformation

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Endnotes

[1] According to a major statistical rebasing carried out four years ago.
[2] Including traditional trade remedies (safeguards, anti-dumping, and subsidy countervailing measures), rules of origin, infant industry protections, dispute settlement, general and security exception, etc. See Chapter 4 for a discussion of these topics.
[3] The negotiation on the AfCFTA Protocol on Intellectual Property Rights is part of the Phase II workplan starting in January 2021.
[4] Article 3(d) of the AfCFTA.
[5] An equivalent provision is found in Article 4 of the Protocol on Trade in Services.
[6] www.wto.org/english/tratop_e/serv_e/mtn_gns_w_120_e.doc
[7]1979 Protocol A/P.1/5/79 relating to Free Movement of Persons, Residence and Establishment; 1985 Supplementary Protocol A/SP.1/7/85 on the Code of Conduct for the implementation of the Protocol on Free Movement of Persons, the Right of Residence and Establishment; 1986 Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence) etc.
[8] 2003 ECOWAS Energy Protocol A/P4/1/03.
[9] Supplementary Act A/SA 1/01/07 on the Harmonisation of the Policies and Regulatory Framework of the Information and Communication Technology Sector.
[10] Convention 2003 A/C.1/1/03 on the Recognition of Equivalence of Diplomas, Certificates and Other Qualifications in Education within ECOWAS.
[11]Convention A/P4/82 regulating Inter-State Road Transportation between ECOWAS Member States.
[12] Paragraph 2(d)(iii) of Article 3 of the 1993 ECOWAS Revised Treaty: '…the establishment of a common market through: the removal between Member States, of obstacles to the free movement of persons, goods, services and capital, and to the right of residence and establishment.' Other relevant articles include: Article 32 on Transport and Communications; Article 33 on Posts and Telecommunications; Article 34 on Tourism; and Articles 51–55 on Financial Services.
[13] 'Mutua recognition' is only offered between two or more Parties who have negotiated the recognition in specific services sectors. For example, Nigeria and South Africa may choose to pursue mutual recognition in legal services, in which case the two countries would also agree on rules relating to evaluation and equivalence of qualifications, etc.
[14] This is because Nigeria rejected the EU-ECOWAS Economic Partnership Agreement (EPA), which would have given Nigeria duty free quota free access to the EU market in exchange for liberalisation of at least 75% of Nigeria's imports from the EU. Also, Nigeria's request to secure the more favourable GSP+ from the EU was rejected by the EU.
[15] Available at www.wto.org/english/thewto_e/countries_e/nigeria_e.htm
[16] Article XX of GATT 1994 (WTO) and Article 27 of the AfCFTA contain security exceptions.
[17] These are usually covered under 'general exceptions. See, for example, Article XXI of GATT 1994 and Article 26 of the AfCFTA.
[18] Article XVIII:B of GATT 1994 and Article 28 of the AfCFTA recognise the right of countries to deviate from their obligations under those agreements for the purpose of correcting a balance of payment deficit.
[19] Article XVII:C of the GATT 1994 and Article 24 of the AfCFTA recognise the right of countries to adopt measures for the protection of 'infant industry'.
[20] See, for example, Article 44 of the ECOWAS treaty.
[21] Article VI of GATT.
[22] Article XIX GATT.
[23] For example, Article VI, GATT, and more particularly the 'Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994' (commonly referred to as the 'Anti-Dumping Agreement), set out the rules on the determination of dumping and the remedies a country can apply upon determining that dumping has indeed occurred. In the case of safeguards, Article XIX of GATT and the Agreement on Safeguards set out the substantive and procedural rules for how to determine cases deserving of safeguard measures, as well as the remedies/measures a country can apply to protect its domestic industries. Finally, the substantive and procedural rules on subsidies and the countervailing measures a country can take to protect its domestic industries are contained in the Agreement on Subsidies and Countervailing Measures under the WTO.
[24] Article 4 of Annex 9 to the Protocol in Trade on Goods.
[25] WTO rules discipline trade-distorting subsidies, which are considered to confer an unfair advantage on recipients, such as export subsidies and subsidies contingent on the use of domestic (rather than imported) goods. Measures or support provided by governments to domestic firms are generally classified as subsidies. Consequently, countervailing measures are applied to offset injury caused by subsidised imports. Examples of subsidies include grants, loans or loan guarantees, equity participation, tax elimination or reduction, and government provision of goods and services.
[26] The three categories include: the provisions relating to 'Quantitative Restriction on Community Goods' found in Article 41. Paragraph (3) allows Member States to impose quantitative restrictions on community goods for a variety of reasons listed in the paragraph. This provision is worded more as an 'exception' than as a safeguard measure; hence, it is analysed further under Section xxx dealing with exceptions. The second category is the provisions on 'Dumping' (Article 42) and 'Exceptions and safeguard clauses' (Article 49); and the third is the provision relating to 'Settlement of disputes' (Article 76) and "Sanctions" (Article 77). These are analysed in the relevant sections of the report. Also, the CET comes with the Supplementary Protection Measures (Import Adjustment Tax and Supplementary Adjustment Tax), which Member States can rely on to reduce or increase tariffs to protect domestic industries/the economy.

[27] Regulation C/REG.4/06/13 Relating to Safeguard Measures.
[28] Regulation C/REG.05/06/13 Relating to the Imposition of Countervailing [sic] Duties.
[29] Regulation C/REG.6/06/13 Relative to Defence Measures to be Imposed on Imports which are Dumped from Non-Member States of the Economic Community of West African States.
[30]Article 42(2) of the treaty defines dumping as 'the transfer of goods originating in a Member State to another Member State for sale: (a) at a price lower than the comparable price charged for similar goods in the Member States where such goods originate (due allowance being made for the differences in the conditions of sale or in taxation or for any other factors affecting the comparability of prices); and (b) under circumstances likely to prejudice the production of similar goods in that Member State'.
[31] See, for example, the AfCFTA Impact and Readiness Assessment Report, 2019; and the National Action Committee Report on Safeguard Requirements for the AfCFTA, 2020. This issue was also variously highlighted by speakers and contributors at the series of Stakeholders Dialogue hosted by the National Action Committee in September 2020.
[32] This provision raises the issue as to whether the need to consider Nigeria's obligation under the GATT is an independent requirement or whether it can only be triggered where the there is no cause or threat of material injury.
[33] https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/G/SCM/N1NGA1.pdf&Open=True
[34] International Trade Commission of Nigeria Bill, HB53
[35] The report does not make any attempt to elaborate on the content and application of the rules of origin under the ECOWAS ETLS or the AfCFTA.
[36] The outstanding work on Annex 2 covers: (a) implementing decisions on the definitions of 'value added' in Article 1 (x) and requirements for 'their vessels' and 'their factory ships' in Article 5 (2) and 26 criteria and issues pertaining to special economic arrangements/zones in Article 9 in Annex 2 on Rules of Origin; (b) drafting additional definitions in Annex 2 on Rules of Origin; (c) drafting hybrid rules in Appendix IV to Annex 2 on Rules of Origin; (d) drafting regulations for goods produced under special economic arrangements / zones; (e) drafting additional provisions in Annex 2 on Rules of Origin on value tolerance, the absorption principle, and accounting segregation/GAAP; and (f) drafting AfCFTA rules of origin manuals/guidelines. See Article 42 of Annex 2.
[37] See Appendix xxx of this report for the list of products under this category.
[38] See Appendix xxx of this report for the list of operations that do not confer origin.
[39] Article 8 of Annex 2.
[40] Article 17 of Annex 2.
[41] Article 7.
[42] Article 19, Annex 2 on Rules of Origin.
[43] Article 12
[44] Article 13.
[45] Section 10 of the Customs Duties (Dumped and Subsidised Goods) Act.
[46] The article does not state whether this consultation should be prior to or after the adoption and application of the restriction. However, the use of the word 'promptly' seems to suggest soon afterwards and not prior to. It is also important to note that this consultation involves reliance on IMF data as to the balance of payment position of the State Party applying the restriction 'and conclusions shall be based on the assessment by the Fund of the balance-of-payments and the external financial situation of the consulting State Party' – Para. 9.
[47] The article also stipulates that the implementation of the infant industry protection will be based on guidelines to be adopted by the Council of Ministers. It is envisaged that the proposed guidelines will define the nature of the measures that could be imposed by a State Party under this article, among other details.
[48] A search through the WTO notification archives (https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=38834,30589,42662,6555&CurrentCatalogueIdIndex=0&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True) shows that between 1998 and 1999, Nigeria made four notifications to the WTO in respect of phasing out restrictions (import prohibitions) which were imposed for balance of payment purposes. There is no record of the initial notification for the application of those measures.
[49] See also Articles XIV and XIV *bis* of the General Agreement on Trade in Services for equivalent provisions relating to trade in services.
[50] There are identical provisions in Articles 15 and 16 (respectively) of the Protocol on Trade in Services.
[51] www.wto.org/english/tratop_e/dispu_e/repertory_e/g3_e.htm
[52] This is with reference to nuclear materials, traffic in arms, ammunition and implements of war, and to such traffic in other goods and materials taking place either directly or indirectly for the purpose of supplying a military establishment; as well as measures taken in time of war or other emergency in international relations.
[53] Available at www.ncdmb.gov.ng/images/GUIDELINES/NCACT.pdf
[54]Nigerian Content Development in the ICT 2013. Available at https://nitda.gov.ng/wp-content/uploads/2018/08/Guidelines-for-Nigerian-Content-Development.pdf
[55]Available at https://statehouse.gov.ng/wp-content/uploads/2018/02/PRESIDENTIAL-EXECUTIVE-ORDER-5.compressed.pdf
[56] Coastal and Inland Shipping (Cabotage) Act (CA), Cap. C51 LFN, 2004.
[57] https://moverdb.com/freight-costs-usa/
[58] The Trade Effects of the African Continental Free Trade Area (AfCFTA): An Empirical Analysis

the Index Economic Freedom, reported by the Heritage Foundation[59]
[lx] The Index of Economic Freedom is computed on the basis of an empirically controlled aggregation of authoritative perceptions harnessed from empirically controlled citizen, firm, and government surveys indicated in the World Economic Forum's World Competitiveness Report, the World Bank Doing Business Report, the Credendo Group Country Risk

Assessment Report, the World Justice Project Rule of Law Index, the Transparency International Corruption Perceptions Index, the TRACE International Trace Matrix, Deloitte International Tax and Business Guide Highlights, International Monetary Fund Staff Country Report, PricewaterhouseCoopers Worldwide Tax Summaries, International Monetary Fund Article IV Consultation, etc.

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Annex

Appendix 1: Explanatory Notes on the Indicators of the Global Entrepreneurship Monitor Entrepreneurial Behaviour and Attitude Assessment

Indicator	**Explanatory Note**
Entrepreneurial Employee Activity Rate	Rate of involvement of employees in entrepreneurial activities, such as developing or launching new goods or services, or setting up a new business unit, a new establishment or subsidiary.
Business Services Sector Rate	Percentage of those involved in early-stage entrepreneurial activity in the business services sector – Information and Communication, Financial Intermediation and Real Estate, Professional Services or Administrative Services, as defined by the ISIC 4.0 Business Type Codebook.
Fear of Failure Rate	Percentage of 18-64 population who agree that they see good opportunities but would not start a business for fear it might fail. This is a percentage of those seeing good opportunities, and not the total adult population.
Established Business Ownership Rate	Percentage of 18-64 population who are currently an owner-manager of an established business, i.e., owning and managing a running business that has paid salaries, wages, or any other payments to the owners for more than 42 months.
Innovation Rate	Percentage of those involved in TEA who indicate that their product or service is new to at least some customers AND that few/no businesses offer the same product.
High Job Creation Expectation Rate	Percentage of those involved in TEA who expect to create 6 or more jobs in 5 years.
Total early-Stage Entrepreneurial Activity (TEA) Rate	Percentage of 18-64 population who are either a nascent entrepreneur or owner-manager of a new business.
Entrepreneurial Intentions Rate	Percentage of 18-64 population (individuals involved in any stage of entrepreneurial activity excluded) who are latent entrepreneurs and who intend to start a business within three years.
High Status to Successful Entrepreneurs Rate	Percentage of 18-64 population who agree with the statement that in their country, successful entrepreneurs receive high status.
Entrepreneurship as a Good Career Choice Rate	Percentage of 18-64 population who agree with the statement that in their country, most people consider starting a business as a desirable career choice.
Perceived Opportunities Rate	Percentage of 18-64 population who see good opportunities to start a firm in the area where they live.
Perceived Capabilities Rate	Percentage of 18-64 population who believe they have the required skills and knowledge to start a business.

Source: Global Entrepreneurship Monitor