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Nigeria and South Africa: SHAPING PROSPECTS FOR THE AFRICAN CONTINENTAL FREE TRADE AREA

Political Economy Dynamics of Regional Organisations in Africa PEDRO

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Summary

In March 2018, African leaders signed an agreement establishing the African Continental Free Trade Area (AfCFTA). This was an important step towards the longstanding goal of African economic integration, but there is a long way to go before an integrated continental market exists. Beyond concluding and ratifying the deal, African states will need to fully implement the AfCFTA Agreement to enjoy its benefits. Their record on implementing regional trade arrangements is not encouraging.

This paper analyses the political economy of trade policymaking in Africa's two largest economies, Nigeria (which has not signed the AfCFTA Agreement) and South Africa (which belatedly signed), to better understand how domestic dynamics influence the way these two countries engage with the AfCFTA. In doing so, it seeks to shed light on the approach that these two African 'swing states' are likely to take towards AfCFTA implementation.

In Nigeria's case, the analysis reveals domestic opposition to regional trade liberalisation from both interest groups and rent-seekers, and concerns about the government's ability to implement effectively. But it also shows that the AfCFTA negotiations have inspired new domestic initiatives which may help implementation. In South Africa's case, it appears that AfCFTA implementation will be more straightforward, but the low level of interest among the country's private sector reveals scepticism about the AfCFTA's benefits.

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Acronyms

AfCFTA	African Continental Free Trade Area
AfDB	African Development Bank
ANC	African National Congress
AU	African Union
BIAT	Boosting Intra African Trade
BUSA	Business Unity South Africa
CAADP	Comprehensive Africa Agricultural Development Programme
CET	Common external tariff
COMESA	Common Market for Eastern and Southern Africa
COSATU	Congress of South African Trade Unions
DfID	Department for International Development
DTI	Department of Trade and Industry
EAC	East African Community
ECOWAS	Economic Community of West African States
EMT	Economic Management Team
ENFP	Enlarged National Focal Point
EPA	Economic partnership agreement
ERGP	Economic Recovery and Growth Plan
ETLS	ECOWAS Trade Liberalisation Scheme
FMARD	Federal Ministry of Agriculture and Rural Development
FMITI	Federal Ministry of Industry, Trade and Investment
FTA	Free trade area
GDP	Gross domestic product
IPAP	Industrial Policy Action Plan
LCCI	Lagos Chamber of Commerce and Industry
MAN	Manufacturers Association of Nigeria
NAAMSA	National Association of Automobile Manufacturers of South Africa
NACCIMA	Nigerian Association of Chambers of Commerce and Industry

NANTS	National Association of Nigerian Traders
NASME	Nigerian Association of Small and Medium Enterprises
NBA-SBL	Nigerian Bar Association Section on Business Law
NDP	National Development Plan
NEDLAC	National Economic Development and Labour Council
NEPAD	New Partnership for Africa's Development
NIPF	National Industrial Policy Framework
NLC	Nigerian Labour Congress
NOTN	Nigerian Office for Trade Negotiations
NUM	National Union of Mineworkers
PEBEC	Presidential Enabling Business Environment Council
PIDA	Programme for Infrastructure Development in Africa
REC	Regional economic community
SACTWU	Southern African Clothing and Textiles Workers Union
SACU	Southern African Customs Union
SADC	Southern African Development Community
SME	Small and medium enterprise
T-FTA	Tripartite Free Trade Area
TIC	Trade and Industry Chamber
UNECA	United Nations Economic Commission for Africa

1. Introduction

In March 2018, 44 African countries signed an agreement establishing the African Continental Free Trade Area (AfCFTA). In doing so, they created the world's largest free trade area (FTA) by membership, at least on paper, and took a significant step towards realising the longstanding goal of African economic integration. The AfCFTA Agreement commits member states to eliminate tariffs and non-tariff barriers on trade in goods, liberalise trade in services, and cooperate on customs matters, competition, investment and intellectual property rights. By creating a single continental market for goods and services, the Agreement aims to boost intra-African trade, facilitate structural transformation of African economies and promote sustainable and inclusive socio-economic development across the African continent.

However, while the signing of the AfCFTA Agreement is a noteworthy achievement, it is only the beginning of what is likely to be a long and challenging process. In addition to addressing their domestic competitiveness constraints, member states will need to take three important steps to ensure that the AfCFTA yields maximum benefits.

First, in finalising the AfCFTA Agreement, member states need to commit to significant liberalisation of trade in goods and services and meaningful action on the other areas covered by the Agreement. Second, they need to ratify the Agreement and fully implement it. In some cases this will involve difficult domestic reforms. Partial implementation should not be an option though, as this could "delegitimise th[e] project in the eyes of those who stand to benefit" (Erasmus, 2018). Finally, member states need to implement other regional and continental initiatives aimed at connecting and integrating their economies. These include the regional trade arrangements of Africa's regional economic communities (RECs), which will continue to coexist alongside the AfCFTA, and African Union (AU) programmes, such as the Comprehensive Africa Agricultural Development Programme (CAADP), the Programme for Infrastructure Development in Africa (PIDA) and the programme for Boosting Intra African Trade (BIAT).

This paper focuses on the first two steps, and seeks to identify some of the actors and factors that will influence what is ultimately agreed under the AfCFTA, and whether the Agreement is effectively implemented. African countries have a history of not ratifying and/or not properly implementing the treaties and agreements they sign, a habit that has created a so-called 'implementation gap' in African regional integration. To paraphrase former AU Commission Chairperson, Nkosazana Dlamini-Zuma, Africa is not short of agreements, implementation is the problem.[1] This conclusion was echoed in the 2017 'Kagame Report' on the 'Proposed Recommendations for the Institutional Reform of the African Union', which described a "crisis of implementation" in relation to the "constant failure to see through African Union decisions".[2] Slow, uneven and incomplete implementation of regional trade agreements has certainly hampered progress on economic integration through Africa's RECs. The challenge is to ensure the AfCFTA does not suffer the same fate.

In their work on the political economy of regional integration in Africa, Vanheukelom et al. (2016), find that effective implementation of regional initiatives is more likely where these are in line with key national interests of participating states, as defined by their domestic ruling elites. They also find that the national interests of regional hegemons or 'swing states', and the roles played by these states in regional processes, are particularly important in determining the outcomes of these processes (ibid.).

[1] Speaking at the OECD Forum on Africa in Paris, October, 2014.
[2] H.E. Paul Kagame, 29 January 2017.

Building on these findings, this paper analyses the domestic political economy of regional trade policymaking in Africa's two largest economies, Nigeria and South Africa. This analysis draws on secondary sources, and on interviews carried out between April and December 2018 in Ethiopia, Nigeria and South Africa.[3] It aims to identify the key domestic actors and factors that influence the way these two swing states participate in regional trade negotiations and that are likely to influence whether and how the two states effectively implement the AfCFTA. Through this analysis, the paper shows how certain domestic dynamics within these two countries have influenced the AfCFTA negotiations and shaped the content of the AfCFTA Agreement. The paper also identifies specific actors and factors within Nigeria and South Africa that could support or impede effective AfCFTA implementation.

The paper proceeds as follows. The rest of the introduction briefly describes the history and content of the AfCFTA, and the challenges ahead of it, and explains why the interests and roles of Nigeria and South Africa are crucial for effective AfCFTA implementation and for maximising the benefits of the AfCFTA. Section 2 describes the political economy of regional trade policymaking in Nigeria, describing how certain domestic actors and factors have shaped the country's engagement with the AfCFTA. Section 3 does the same for South Africa, before Section 4 concludes with some implications of this analysis for the AfCFTA.

1.1. The AfCFTA in context

An important step for African integration

Continental integration is a longstanding ambition of African countries. African leaders adopted many resolutions and declarations during the 1970s and 1980s promoting continental economic integration as a way to address the economic challenges posed by the colonial legacy of a continent fragmented into numerous small national economies reliant on raw commodity exports. The 1979 Monrovia Declaration[4] and 1980 Lagos Plan of Action[5] set out a roadmap for using sub-regional economic integration arrangements as steps toward the establishment of an African Common Market and, ultimately, an African Economic Community. This roadmap was later formally adopted by African Heads of State through the 1991 Treaty establishing the African Economic Community (Abuja Treaty).

In the years following the adoption of the Abuja Treaty, progress was made on regional economic integration through Africa's various RECs. However, many African countries implemented the regional trade agreements of their RECs in a partial or inconsistent manner, while some simply didn't implement at all. As a result, intra-African trade continues to be constrained by high tariffs, various non-tariff barriers and complications arising from the existence of a patchwork of RECs with overlapping memberships. In this context, informal trade flourishes, creating incentives for practices (e.g. corruption at borders) that undermine efforts to facilitate formal intra-regional trade. In addition, North Africa, which includes the continents' third, fourth and fifth largest economies,[6] remains economically fragmented from Sub-Saharan Africa (Berahab and Dadush, 2018). Against this backdrop, the 18th Ordinary Session of the Assembly of Heads of State and Government of the AU, held in Addis Ababa, Ethiopia in January 2012, adopted a decision to fast-track the establishment of a Continental Free Trade Area by 2017. The AfCFTA was later adopted as one of the flagship projects of the AU's Agenda 2063.

[3] Interviews for this paper were carried out with a cross section of stakeholders, including government officials and representatives of private sector associations in Nigeria and South Africa, as well as representatives from development partners, regional organisations, think-tanks and academia.
[4] Monrovia Declaration of Commitment on the Guidelines and Measures for National and Collective Self-reliance in Economic and Social Development for the Establishment of a New International Order.
[5] Lagos plan of action for the economic development of Africa 1980-2000.
[6] Egypt, Algeria and Morocco.

Negotiations on the AfCFTA were launched in 2015. Two phases were planned: a first covering trade in goods, trade in services and dispute settlement; and a second covering investment, competition and intellectual property. While the 2017 deadline was missed, an Extraordinary Summit of the AU was organised in Kigali, Rwanda from 17-21 March 2018, where the AfCFTA Agreement was presented to African leaders for signature, along with the Kigali Declaration - a declaration signalling commitment to the AfCFTA and its principles - and the Protocol to the Abuja Treaty relating to the Free Movement of Persons, Right to Residence and Right to Establishment (Protocol on Free Movement of Persons) (tralac, 2018). Out of 55 AU member states, 44 signed the AfCFTA Agreement, 47 signed the Kigali Declaration and 30 signed the Protocol on Free Movement of Persons. Africa's two largest economies, Nigeria and South Africa, did not sign the AfCFTA Agreement, although South Africa did sign the Kigali Declaration, and has since signed the AfCFTA Agreement along with four other AU member states, bringing the total number of AfCFTA signatories to 49 by the end of 2018.

An unfinished agreement

The AfCFTA Agreement signed at the Kigali Summit is a framework agreement comprising a Protocol on Trade in Goods, a Protocol on Trade in Services and a Protocol on Rules and Procedures on the Settlement of Disputes.[7] These Protocols come with Annexes that contain the crucial detail of the Agreement. The Annexes on Rules of Origin, on Schedules of Tariff Concessions and on Schedules of Specific Commitments on Trade in Services had not been completed by the time of the Kigali Summit. This meant that member states signed the Agreement without knowing which tariffs would be lowered, what rules of origin[8] would apply and what commitments would be made on services. These are fundamental elements of an FTA and it is highly unusual for countries to sign a trade agreement before concluding negotiations on these issues. The uncertainty entailed in doing so was one of the reasons that some countries, notably South Africa, did not sign the Agreement in Kigali. It may be that others were also wary, but felt "diplomatic pressure to prove they support African solidarity".[9]

The AfCFTA Agreement also reflects a compromise on the role of Africa's RECs. The Agreement is meant to "[r]esolve the challenges of multiple and overlapping memberships" of African regional integration arrangements (Article 3), but it does not provide for the AfCFTA to replace existing regional trading arrangements. Instead, the FTAs of the various RECs are to be the "building bloc[k]s" of the AfCFTA (Article 5). Moreover, the Agreement reaffirms member states' existing rights and obligations under their other trade agreements (Erasmus, 2018). As a result, trade within RECs will continue under the existing trading regimes in place in each REC, at least for those RECs that have functioning FTAs or customs unions. New tariff liberalisation will only occur between African states that are not party to the same trading arrangement, such as between a member of the East African Community (EAC) and a member of the Economic Community of West African States (ECOWAS) (Erasmus, 2018). In short, the AfCFTA Agreement does not resolve overlapping membership, it simply adds another (continental) FTA to the mix.

A long road ahead

Establishing a comprehensive trade agreement between a large and diverse group of countries is not easy. African states have adopted a gradual and incremental approach to concluding and implementing the

[7] Protocols on Intellectual Property, Investment and Competition will be added once these have been negotiated and concluded.

[8] These are the rules in any trade agreement that are used to determine whether a product counts as having been produced in a Member State and is therefore eligible to qualify for the relevant preferences under that trade agreement.

[9] Gerhard Erasmus speaking to the Namibian, 'Namibia must suspend signing of AfCFTA',17 May 2018. According to a UNECA official, the fact that the AfCFTA negotiations work on the basis of consensus is a key reason why some member states were willing to sign (and in some cases already ratify) the AfCFTA Agreement, despite its unfinished nature.

AfCFTA, at least partly because the AfCFTA introduces elements that are relatively new for many African countries, such as liberalization of trade in services and the use of trade remedies and dispute settlement procedures.[10] While the signing of the AfCFTA Agreement by the majority of AU member states is an impressive achievement, even if it was more of a "political act" than a technical one,[11] there still a long way to go before the AfCFTA is in force, fully implemented and facilitating increased intra-African trade.

For one thing, negotiations need to be concluded. Under phase one, member states still need to agree on rules of origin and to make their market access offers for both trade in goods and trade in services. On rules of origin, member states with larger domestic industries, notably Egypt and South Africa,[12] argued for 'product-specific' rules to prevent other member states from importing goods from China or elsewhere, and then making small changes to these goods before exporting them as local goods under the AfCFTA.[13] However, many smaller member states lack the administrative capacity to enforce complex product-specific rules and would prefer a simple rule for all goods, such as a specified percentage of value added domestically, as is the case in some RECs. In light of these contrasting positions, member states ultimately agreed on a hybrid approach involving both a general rule and a number of product-specific rules. Finalising these rules could take some time. In the case of the Tripartite Free Trade Area (T-FTA),[14] for example, rules of origin negotiations have not yet been concluded, more than seven years after they were launched. Nonetheless, the AU expects the agreed package on AfCFTA rules of origin to be submitted by mid-2019.[15]

On market access offers for trade in goods, member states have agreed to liberalise 90% of tariff lines, to designate 7% of tariff lines as 'sensitive products' (to be liberalised over a longer period) and to allow for 3% of lines to be excluded from liberalisation altogether, provided that this does not reflect more than 10% of imports by value.[16] They now need to prepare and negotiate their tariff offers in line with these modalities, and to submit them for adoption by January 2020.[17] On trade in services, meanwhile, member states have agreed on five priority sectors to be liberalised under the AfCFTA: transport, communication, tourism, financial services, and business services. They have also agreed on the liberalisation modalities, and are also expected to submit their negotiated market access offers on services for adoption by January 2020.[18] Terms of reference for the phase 2 negotiations are to be developed by April 2019, with a view to these negotiations being concluded by June 2020.

The AfCFTA Agreement will enter into force once 22 member states have ratified the Agreement and deposited their ratification instruments with the AU Commission.[19] As of the end of 2018, seven member states had deposited their instruments of ratification, while seven more had received parliamentary approval for ratification, with some indicating their intention to deposit their instruments at the AU Summit in February 2019.[20] The AU Commission hopes that 22 member states will have ratified by March 2019, which would

[10] Interview with an African trade law expert.
[11] Gerhard Erasmus speaking to the Namibian, 'Namibia must suspend signing of AfCFTA',17 May 2018.
[12] Tatira Zwionira, 'Rules of origin stall AfCFTA' in NewsDay, 29 March 2018.
[13] David Luke in the New Times, 'AfCFTA: Big economies afraid of 'cheating', says ECA's David Luke', 27 November 2018.
[14] Between the Member States of the Common Market for Eastern and Southern Africa (COMESA), the EAC and the Southern African Development Community (SADC).
[15] See AU-UNECA 'Joint Press Release: African Union Ministers of Trade conclusively reach Consensus on all outstanding issues on AfCFTA modalities for tariff liberalization', 15 December 2018.
[16] See Francis Mangeni, 'Fast-tracking implementation of the African Free Trade Area', 14 December 2018.
[17] See AU-UNECA 'Joint Press Release: African Union Ministers of Trade conclusively reach Consensus on all outstanding issues on AfCFTA modalities for tariff liberalization', 15 December 2018.
[18] Ibid.
[19] Or, more accurately, one month after the deposit of the 22nd instrument of ratification.
[20] 'Status of AfCFTA Ratification', 13 December 2018. Accessed online at https://www.tralac.org/resources/infographics/13795-status-of-afcfta-ratification.html.

allow for the AfCFTA Agreement to enter into force by April 2019.[21] However, this would create legal uncertainty if, as is quite likely, the negotiations on rules of origin and on goods and services market offers have not been finalised by then.[22] In such a situation, the AfCFTA would be in force, but would not yet be able to function as an FTA, as the rules necessary for goods and services to be traded under the AfCFTA would not yet be finalised. What would be possible, however, would be for work to begin on the establishment of the institutional architecture of the AfCFTA.

Beyond concluding negotiations, ratifying the AfCFTA Agreement and establishing the AfCFTA institutions, member states will eventually need to implement the AfCFTA. Effective implementation will require concerted effort by member states, many of whom don't have a good track record of implementing the trade agreements they have signed. To implement effectively, many member states will need to establish and/or strengthen domestic institutions to administer, monitor and enforce the AfCFTA Agreement. For example, only four African countries - South Africa, Egypt, Morocco and Tunisia - currently have trade remedy dispensations in place (Erasmus, 2018). Member states will also need to engage with their private sectors (and other non-state actors) and involve them in the implementation process to ensure that the AfCFTA is implemented and administered in the most user-friendly way possible, and that potential risks are effectively mitigated.

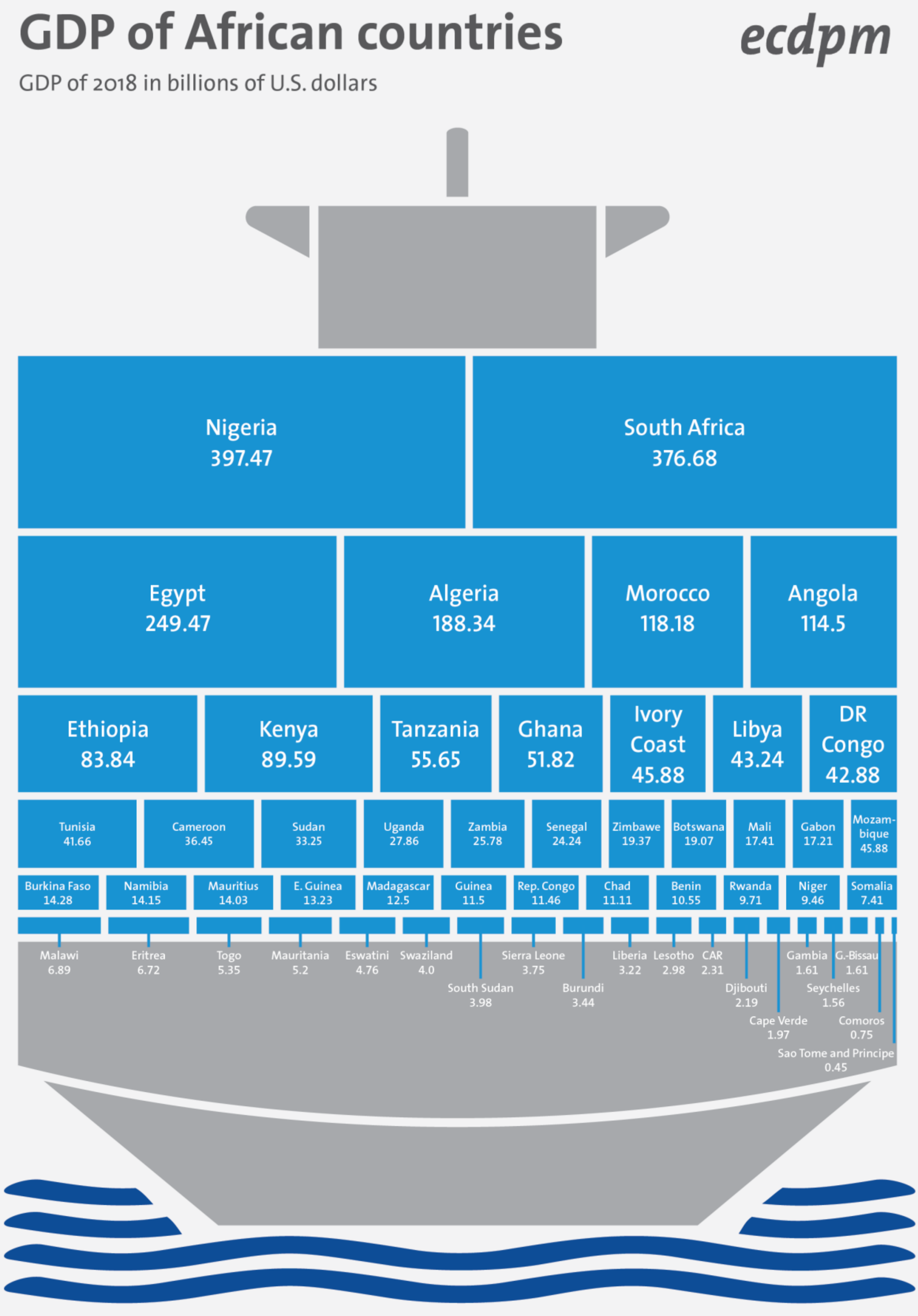
1.2. The importance of Nigeria and South Africa to the AfCFTA

Nigeria and South Africa are certainly not the only actors influencing the AfCFTA. Many other African countries and leaders have played important roles during the AfCFTA negotiations. Niger's president, Mahamadou Issoufou, is the designated 'AfCFTA Champion',[23] while the leadership of Rwanda's president, Paul Kagame, and the behind-the-scenes efforts of Rwandan government officials, were crucial factors in the success of the Kigali Summit.[24] The AU Commission and United Nations Economic Commission for Africa (UNECA) have provided administrative and technical support to the AfCFTA negotiations, while international partners such as the European Union (EU) and Germany have provided financial and technical assistance to the AU Commission in support of the AfCFTA.[25] The African Development Bank (AfDB), meanwhile, has committed to support the institutional and human capacity of the AfCFTA Secretariat.[26]

Nonetheless, Nigeria and South Africa are particularly crucial to the success of the AfCFTA for two related reasons. The first is purely economic. Nigeria and South Africa are Africa's two largest economies, together accounting for around a third of the gross domestic product (GDP) of the African continent (see Figure 1).[27] 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 African economic powerhouses.

[21] Ibid.
[22] See blog by Gerhard Erasmus 'South Africa to ratify Tripartite FTA and Continental Free Trade Area Agreements', 17 September 2018.
[23] See UNCTAD's article 'UNCTAD work on Africa reviewed, encouraged by governing board', 6 July 2012.
[24] Interview with a UNECA official.
[25] Interview with a GIZ representative; and GIZ paper 'Development for Africa through free trade', September 2017; also European Commission's 'Communication on a new Africa – Europe Alliance for Sustainable Investment and Jobs: Taking our partnership for investment and jobs to the next level'.
[26] See AfDB article, 'African Development Bank pledges full support towards success of Continental Free Trade Area', 23 March 2018.
[27] IMF data, GDP current prices.
[28] Afreximbank, Africa Trade Report 2018

Figure 1: GDP of African countries



Source: ECDPM (based on the IMF DataMapper)

The second reason they are so important to the AfCFTA, is that their relative economic, military and diplomatic weight enables them to act as 'swing states' (or 'regional hegemons') in regional and continental processes (McNamee, 2016).[29] Such states are typically characterised by their ability to exert power and influence over regional neighbours, including through their capacity to act as "guarantors of security" and "stabilising influences" in their region, and to take leadership roles in the bodies through which regional conflicts are managed (McNamee, 2016). More relevantly here, such states also have the capacity to act as key drivers or catalysts of regional or continental integration processes, by, for example, taking the lead on overcoming coordination failures or unblocking stalemates (McNamee, 2016; Vanheukelom et al., 2016). On the other hand, they are also able to "instrumentalise" regional processes for their own interests, or to block those processes that undermine their domestic agendas (Vanheukelom et al., 2016). For these reasons, swing states, play a crucial role in determining the success or failure of regional integration processes (ibid.).

While a number of countries could claim to be swing states in Africa,[30] few would argue against the claims of Nigeria and South Africa (McNamee, 2016). Both have played prominent roles in the integration processes of their respective regions. In West Africa, Nigeria was instrumental in the creation of ECOWAS, and progress on ECOWAS' region-building agenda has tended to fluctuate in line with the willingness and capacity of successive Nigerian governments to play a strong leadership role in regional affairs (Hulse, 2016). Nigeria has "long been the motor behind regional cooperation" on peace and security in ECOWAS (Vanheukelom et al., 2016; Bossuyt, 2016). On trade, however, the country has often taken a more protectionist stance than its neighbours, slowing down the ECOWAS market integration agenda (Vanheukelom et al., 2016; Bossuyt, 2016). South Africa, meanwhile, has played a dominant role in regional dynamics in Southern Africa, strongly influencing the regional agendas of the Southern African Development Community (SADC) in areas such as energy, infrastructure, trade and peace and security (see e.g. Vanheukelom and Bertelsmann-Scott, 2016; Desmidt, 2017; Woolfrey and Verhaeghe, 2017).

The two countries have also exerted influence at a continental level. Close cooperation between their leaders facilitated the transformation of the Organisation of African Unity into the AU, the creation of the New Partnership for Africa's Development (NEPAD) and the introduction of the African Peer Review Mechanism (Ogunnubi and Okeke-Uzodike, 2016; McNamee, 2016). Nigeria has also been "at least symbolically or rhetorically… at the forefront of efforts to integrate Africa economically" (Professor Olu Fasan quoted in Anudu and Edeh, 2018). For example, the 1980 Lagos Plan of Action for the Economic Development of Africa was drawn up in Nigeria's largest city, while the 1991 Abuja Treaty Establishing the African Economic Community was signed in Nigeria's capital.

Nigeria was also initially at the forefront of efforts to establish the AfCFTA. Nigerian officials played a central role in the negotiations leading up to the signing of the AfCFTA Agreement. Nigeria's Chief Trade Negotiator chaired the AfCFTA Negotiating Forum, while the country's trade minister chaired negotiations at the ministerial level. Nigeria also lobbied to host the proposed AfCFTA Secretariat.[31] South Africa, meanwhile, mobilised the largest and best-resourced delegation at the AfCFTA negotiations, and has been an effective advocate for its positions.[32] For proponents of African integration it was therefore disappointing that neither Nigeria nor South Africa signed the AfCFTA Agreement in Kigali, although this was mitigated in South Africa's case when the country's president, Cyril Ramaphosa, insisted that South Africa would sign once domestic formalities had been cleared, and by South Africa's subsequent signing and ratification of the Agreement.[33]

[29] See Institute for Security Studies, 'South Africa and Nigeria are crucial for continental initiatives', 4 April 2018.
[30] See e.g. Cilliers et al., 2015 and McNamee, 2016.
[31] Tijani Mayowa, 'Buhari missing yet another opportunity to make history', 22 March 2018.
[32] Interview with a UNECA official.
[33] See Institute for Security Studies, 'South Africa and Nigeria are crucial for continental initiatives', 4 April 2018.

Most successful regional integration arrangements around the world have been underpinned by one or more swing states "championing the arrangement" (UNECA et al., 2017), and the roles played by Nigeria and South Africa (and other African swing states) will be critical to the success of the AfCFTA. This provides a strong rationale for examining the domestic political economy of regional trade policymaking in these countries in order to better understand the interests of political elites and other influential actors in these countries with regard to the AfCFTA, and the implications in terms of room for manoeuvre in support of AfCFTA implementation. This is the task for the rest of this paper.

2. The political economy of regional trade policymaking in Nigeria

Given Nigeria's historical support for continental integration, and the prominent role it played in the early stages of the AfCFTA negotiations, its decision not to sign the AfCFTA Agreement was somewhat surprising. In January 2018, Nigerian President Muhammadu Buhari had signalled Nigeria's commitment to the AfCFTA process, stating that "[i]t is Nigeria's position that, as African leaders and principal architects of our Union, we must now speed up action to conclude the negotiations and establish the Continental Free Trade Area".[34] In the lead-up to the Kigali Summit, the AfCFTA Agreement was endorsed by Nigeria's Chief Trade Negotiator and the country's National Committee for the AfCFTA Negotiations, and approved by the Nigerian Federal Executive Council.[35] However, at the last minute, President Buhari decided against attending the Kigali Summit, citing a need for further domestic consultations on the AfCFTA.[36]

This section analyses the political economy of trade policymaking in Nigeria, identifying key actors, institutions and other factors that shape trade policymaking in Nigeria, and that have influenced Nigeria's engagement with the AfCFTA process, including the decision not to sign the AfCFTA Agreement. In doing so, the section identifies the individuals, organisations and institutions that are likely to influence if - and how effectively - Nigeria implements the AfCFTA.

2.1. Structural factors

Various 'structural' factors have shaped the environment in which Nigeria's formal and informal institutions, or 'rules of the game', for trade have developed. The *size of the country's domestic market* coupled with its *long and porous borders with neighbouring countries* makes Nigeria "a magnet for transnational flows of goods and people in the region" (Hoffman and Melly, 2015). Nigeria's large domestic market also supports a *relatively developed industrial base*, at least by West African standards (ibid.). The 'economic power' conveyed by Nigeria's large economy contributes to the country's influence in West African politics, and Nigeria is said to have used its 'unofficial veto' in ECOWAS' affairs to secure numerous concessions and opt-outs on regional trade matters (Chambers et al., 2012).

Another important structural factor is Nigeria's *abundance of oil and gas resources*, which has led to the development of a "highly opaque" oil economy characterised by "pervasive rent capture", and contributed greatly to Nigeria's poor record on governance and corruption (Roy, 2017: 3). Redistribution of oil rents sustains Nigeria's "live and let live" political arrangements, but the country's oil dependency, particularly for

[34] Daka Terhemba, 'Buhari canvasses single market to create jobs, reduce poverty' in The Guardian, 30 January 2018.
[35] Udo Bassey, 'FEC approves proposed agreement on African free trade' in Premium Times, 14 March 2018.
[36] See Institute for Security Studies, 'South Africa and Nigeria are crucial for continental initiatives', 4 April 2018

government revenues and foreign exchange earnings,[37] has stifled growth in other sectors and undermined efforts to diversify the Nigerian economy (ibid: 3). As a result, Nigeria's merchandise exports are dominated by oil,[38] and the country exports relatively little to other African countries. In 2016, less than 15% of Nigeria's merchandise exports went to other African countries (WTO, 2017).

The need to create jobs for Nigeria's *large, young and rapidly growing population* has inspired renewed efforts by the Nigerian government to diversify the economy. However, underdeveloped infrastructure, unreliable electricity supply and widespread corruption are major challenges to this ambition (ibid.). Nigeria's *unfavourable business environment* - the country ranks 145th out of 190 countries for ease of doing business in the World Bank's Doing Business 2018 report - is a major driver of informality in Nigeria, and encourages "a culture of adapting and improvising rather than of following the rules" (Hoffman and Melly, 2015). Finally, *regional, ethnic and religious divisions*[39] have shaped Nigeria's 'political settlement'[40], which, according to Roy (2017), is "evolving into a competitive clientelist one", characterised by short time horizons and weak implementation capacities. These divisions also influence public policy discourse in Nigeria, as group solidarity often trumps rational evaluation of policy proposals in the country.[41]

2.2. Institutions

Against this backdrop, the trade regime that has emerged in Nigeria is highly protectionist, "arbitrary", "opaque" (Fasan, 2015) and sometimes "ad hoc" (Hoffman and Melly, 2015), with the country ranking 183rd in terms of ease of trading across borders in the Doing Business 2018 report.

National trade policy

There is *no strategic policy framework for trade currently in place* in Nigeria. The country's national trade policy was last updated in 2002,[42] and many of Nigeria's trade-related laws are outdated (WTO, 2017). Nigeria also lacks a proper legal framework for administering trade remedies (ibid.). The incumbent government's economic blueprint, the Economic Recovery and Growth Plan (ERGP: 2017-2020), provides relatively little guidance on trade issues, focusing mainly on the need to diversify the country's export base.

The lack of a guiding policy framework for trade is reflected in Nigeria's *policy inconsistency on trade*, part of a broader pattern of inconsistency in economic policymaking.[43] In recent years, successive Nigerian governments have made frequent changes to tariff and non-tariff policies.[44] Private sector representatives bemoan the fact that many trade policies and instruments that have been adopted have only been partially implemented, or not implemented at all.[45] This combination of policy inconsistency and failure to properly implement policies has resulted in an unpredictable trade regime that increases uncertainty for firms and discourages investment.

[37] Oil accounts for about 90% of export earnings and 70% of government revenue (WTO, 2017).
[38] The share of crude oil in total exports was 82% in 2016 (WTO, 2017).
[39] Nigeria is divided into a predominantly Muslim north and a largely Christian south. The country's socio-political structure comprises three main ethnic groups: the Hausa-Fulani (concentrated in the north), the Yoruba (south-west) and Igbo (south-east), as well as a number of other minority groups (Roy, 2017: 22).
[40] A political settlement is the "distribution of organisational power based on a mix of formal and informal institutions that are supported by these organisations, and which deliver benefits or 'rents' to them" (Roy, 2017).
[41] Interview with a Nigerian trade expert.
[42] According to a representative of the Enlarged National Focal Point on Trade, efforts are underway to produce a new national trade policy.
[43] See Stephanie Adinde, 'Policy Inconsistency in Nigeria' in the Stears Business, 4 October 2018.
[44] See Deloitte, 'Federal Government releases 2018 Fiscal Policy Measures', 14 August 2018.
[45] Interviews with representatives of the Manufacturers Association of Nigeria and the Lagos Chamber of Commerce and Industry.

The trade policies and policy instruments currently applied in Nigeria create a highly restrictive trade policy regime. Import bans are applied on a number of imports, and high and variable tariffs or special levies on many others (WTO, 2017). These trade restrictions aim to protect certain domestic industries including the cement, rice, automobiles, sugar and poultry industries, and in some cases are complemented by incentives, such as access to import licenses or concessionary loans, for investors who invest in backward linkages in these industries (Roy, 2017). There are also many imports for which access to foreign exchange from the Central Bank is prohibited (ibid). This raises costs for domestic manufacturers that rely on imported inputs, and has incentivised some companies to move production to neighbouring countries where they have easier access to foreign exchange.[46]

The Nigerian government struggles to properly enforce trade policy instruments. For example, it has been unable to adequately monitor whether beneficiaries of import licenses have actually made the backward linkages required to obtain the licenses, or to ensure that customs officials are not allowing prohibited imports into the country in exchange for bribes (ibid). In the rice sector, government incentives for backward linkages have benefitted "'political farmers' intermediaries who use political connection to access loans or vouchers and distribute these onward for profit", while large-scale smuggling has continued to put downward pressure on domestic prices (ibid).

Nigeria uses high tariffs and import restrictions to protect domestic industries and promote industrialisation, and there is widespread belief in the country that local industries would struggle to compete in a "more liberal setting" (Hoffman and Melly, 2015).[47] Narrower commercial interests have also been a factor behind the introduction of protectionist policies. Nigerian politics is heavily influenced by "the strong protectionist interests of the powerful lobby of producers" seeking protection for their specific products of interest (De Melo and Mancellari, 2013). Whether they succeed depends on their political connections and influence. According to Roy (2017), the current trade protection for automobiles emerged through close political links between a new indigenous automobile firm and members of the former government. Similarly, Nigeria's richest man, Aliko Dangote, who made his fortune in cement, makes no secret that he convinced former president Olusegun Obasanjo to restrict cement imports into Nigeria.[48] Some trade policy decisions may also relate to specific interests of the political elite. For example, restrictions on poultry imports were introduced during the presidency of Olusegun Obasanjo, who is also the owner of a major poultry producing company.[49]

Regional trade arrangements

As an ECOWAS member state, Nigeria applies the *ECOWAS Common External Tariff (CET)* for imports from outside the region, and the *ECOWAS Trade Liberalisation Scheme (ETLS)* for imports from other ECOWAS member states. The ETLS aims to eliminate tariffs and non-tariff barriers on intra-ECOWAS trade and establish an effective free trade area within the region (WTO, 2017). However, implementation by ECOWAS member states has been slow and uneven, and tariffs and non-tariff barriers on intra-ECOWAS trade persist. As a result, trade costs in the region remain high and intra-regional trade is low. Nigeria exported only around 6% of its total exports to other ECOWAS countries in 2016 (WTO, 2017).

According to Hulse (2016), Nigeria has "displayed an absence of leadership" in relation to the ETLS and ECOWAS CET, and has in the past behaved "in an obstructionist fashion", delaying ECOWAS negotiations

[46] Interview with a Nigerian trade expert.
[47] Such concerns were also behind Nigeria's decision not to sign the ECOWAS economic partnership agreement (EPA) with the EU (Hoffman and Melly, 2015).
[48] Pilling David, '[Aliko Dangote, Africa's richest man, on his 'crazy' $12bn project]' in Financial Times, 11 July 2018.
[49] Wallis William, '[Dinner with FT: Olusegun Obasanjo]' in Financial Times, 10 December 2010.

towards a free trade area and customs union (Olayiwola et al., 2015, cited in Hulse, 2016).[50] While Nigeria has (reluctantly) adopted regional trade instruments, it hasn't implemented these particularly effectively. In the case of the ETLS, corrupt practices by customs officials at border posts and checkpoints along trade corridors have undermined implementation (Hulse, 2016). A 2015 Chatham House report found that "[c]orruption and unofficial 'taxation'" on cross-border trade had become a "rich source of revenue for illegal patronage networks within state agencies" in Nigeria (Hoffman and Melly, 2015: viii). Revenue targets for the Customs Service create an incentive for customs officials not to recognise ECOWAS Certificates of Origin or to engage in other revenue maximising practices.[51] A lack of publicly available information about the ETLS means that many Nigerian traders are unaware of their rights under the scheme.[52]

While Nigerian companies are the biggest users of the ETLS in West Africa, the procedures put in place by Nigerian authorities for clearing customs are complex and cumbersome.[53] It is also difficult for traders to register products under the ETLS,[54] and to make international trade payments through formal channels. These factors provide strong incentives to use informal trade routes, which contributes to the *significant volumes of unrecorded 'informal' trade across Nigeria's borders* (ibid.).[55]

Effective implementation of the ETLS has also been undermined by *high level of smuggling* across Nigeria's borders. Before the recent implementation of the ECOWAS CET, Nigeria's high tariffs (compared to those of its neighbours) and significant use of import restrictions, as well as capacity issues at its ports, created incentives for traders to import goods from outside the region into other ECOWAS member states, particularly Benin,[56] and then to smuggle these shipments across the border to their intended destination in Nigeria (ibid.). The harmonisation of Nigerian tariffs with those of its neighbours through the ECOWAS CET has led to a reduction of such smuggling, but has not eradicated it, possibly because Nigeria continues to maintain some higher tariffs on a number of products, and has introduced other measures to restrict imports from neighbouring countries.[57] Nigerian stakeholders complain that unscrupulous practices in neighbouring countries continue to lead to non-ECOWAS goods entering into Nigeria under the ETLS.[58] This smuggling is facilitated by the *widespread corruption at border posts*, to which the Nigerian government "turns a blind eye" or in which it actively participates (Hulse, 2016). According to Roy (2017), collusion between traders and customs authorities is widespread, and is exacerbated by "politicians who deliberately create restrictions to raise political funds".

[50] According to Hulse (2016) progress on implementation of the ECOWAS economic integration agenda only picked up in the late-1990s once the West African Economic and Monetary Union (UEMOA), the bloc of francophone states in West Africa, was about to finalise its own CET. Wary about having UEMOA states establish the baseline for a future ECOWAS-wide external tariff, ECOWAS' anglophone states, particularly Nigeria, pushed ECOWAS to fast track its own CET. This effort was unsuccessful, however, as UEMOA completed its external tariff in 2000, one year before the ECOWAS deadline. Subsequently, UEMOA and ECOWAS sought to negotiate an ECOWAS CET, but Nigeria's reluctance to adopt UEMOA's tariff bands as the basis for the ECOWAS CET meant that little progress was made. It was only when the economic partnership agreement (EPA) negotiations with the European Union demonstrated the importance of an ECOWAS CET, that a compromise was found and an ECOWAS CET agreed.

[51] Interview with a Nigerian trade expert.

[52] See 'The ECOWAS Trade Liberalization Scheme – Myth or Reality?' in The Guardian, 10 April 2017.

[53] Interview with a Nigerian trade expert.

[54] Nigerian exporters have complained about the "bureaucratic bottlenecks of product registration" under the ETLS and have requested that ETLS administration be moved from the Ministry of Foreign Affairs to the Nigeria Investment Promotion Commission. See Iroegbu-Chikezie Okwy, 'How to make ECOWAS trade liberalisation work, by LCCI' in The Nation, 13 August 2018.

[55] Anecdotal evidence suggests that at least 70–80% of overall trade between Nigeria and its neighbours is unrecorded (Hoffman and Melly, 2015).

[56] Benin has been described as "a smuggling depot for rice and vehicle imports for the Nigerian market". See Itodo Yemi, 'NigExit: Senate urges FG to leave ECOWAS' in *Daily Post*, 29 November 2016.

[57] Interview with a Nigerian trade expert.

[58] See e.g. 'How ECOWAS Trade Pact Undermines Nigeria's Economy' in Business & Maritime West Africa, 18 April 2017.

Nigeria's apparent "ambivalence" towards regional trade integration reflects domestic opposition from both interest groups and rent-seekers (Hulse, 2016). Many stakeholders in Nigeria claim that regional trade liberalisation threatens Nigeria's manufacturing sector, which is largely focused on supplying the domestic market (ibid.). In 2016, the Nigerian Senate called on the Federal Government to suspend Nigeria's participation in the ETLS and CET, claiming that these instruments had damaged the manufacturing sector and incentivised the exit of manufacturing firms from Nigeria to neighbouring ECOWAS states to "manufacture and ship same products back to Nigerian market at zero duty".[59] Effective implementation of the ETLS would also threaten the "systemic corruption" at Nigerian borders. The "beneficiaries of these corrupt practices" have a vested interest in opposing the removal of trade barriers and in limiting the supply of information to traders (Hulse, 2016).

Trade policymaking

The Federal Ministry of Industry, Trade and Investment (FMITI) is formally responsible for trade policy in Nigeria and hosts the Enlarged National Focal Point on Trade (ENFP),[60] which facilitates stakeholder consultation and gives advice on trade policy. The Economic Management Team (EMT) serves as a clearing house for economic policy proposals, including those on trade, before they go to the Federal Executive Council for approval. In the recent past, consultation by these bodies with non-state actors on trade-related matters has been insufficient, contributing to an "unclear environment around Nigeria's trade policy process, weak coordination and, critically, little to no voice for local stakeholders" (Hoffman and Melly, 2015).

In 2017, President Buhari established the National Committee for the African Continental Free Trade Area (AfCFTA National Committee)[61] and the Nigerian Office for Trade Negotiations (NOTN), headed by the country's Chief Trade Negotiator, Ambassador Chiedu Osakwe. The former is meant to monitor and advise the government on the AfCFTA negotiations, while the latter is responsible for leading Nigeria's trade negotiations, ensuring proper coherence between Nigeria's trade policy and its position in trade negotiations, promoting better coordination between various national agencies involved in trade policymaking and organising consultations through the ENFP and AfCFTA National Committee (NOTN, 2018).[62]

However, these formal institutional structures have not performed their intended functions effectively. In the case of the AfCFTA negotiations, for example, it is widely agreed that stakeholder consultation was rushed and inadequate. This failure may be partly due to capacity and organisational constraints. For example, private sector representation in the ENFP is often limited to staff of industry associations,[63] while according to one participant in the ENFP, the Nigerian government is not receptive to rigorous analysis undertaken by ENFP members, as government officials lack the technical knowledge to assess and use evidence-based analysis.[64] Participants in the AfCFTA National Committee claim that meetings were only used to debrief on the AfCFTA negotiations.[65] Funding is also an issue. ENFP has struggled to find funds to organise regular meetings, while the NOTN lacked funding to organise consultations ahead of the Kigali Summit.[66]

Inter-agency tensions exacerbate these challenges. NOTN took over responsibilities previously held by the Department of Trade in FMITI, and tensions have arisen between the two agencies. Some FMITI officials

[59] Itodo Yemi, 'NigExit: Senate urges FG to leave ECOWAS' in Daily Post, 29 November 2016.
[60] The ENFP comprises trade policy stakeholders from the public and private sectors and from non-governmental organisations (NOTN, 2018).
[61] The AfCFTA National Committee has a similar composition to the ENFP.
[62] See NOTN Mandate at http://www.notn.gov.ng/mandate.
[63] Interview with a Nigerian trade expert.
[64] Interview with a member of the ENFP.
[65] Interviews with officials from the Manufacturer's Association of Nigeria (MAN) and the National Association of Nigerian Traders (NANTS).
[66] Interview with an NOTN official.

have objected to the NOTN's mandate and expressed strong reservations about its exercise of this mandate.[67] These sentiments may have undermined the NOTN's influence regarding the signing of the AfCFTA Agreement. More broadly, institutional mechanisms such as the NOTN and the Presidential Enabling Business Environment Council (PEBEC), established by President Buhari to address constraints to doing business in Nigeria, face questions about their legitimacy and sustainability, as they are viewed as initiatives of particular political leaders. In addition, their efforts are not optimally coordinated. For example, PEBEC is not fully connected to trade policy discussions.[68]

The influence and effectiveness of these formal economic and trade policy mechanisms is also limited by the fact that powerful actors make use of other, informal, channels to influence policymaking. Some big businesses and industry associations prefer to engage political leadership directly on substantive issues, rather than through technical committees or stakeholder forums. In some cases this may be because formal channels do not provide an effective mechanism for consultation. This seems to have been the case with the AfCFTA, where pre-Kigali consultations with the private sector were rushed.[69] Representatives from the Manufacturers Association of Nigeria (MAN) and the National Association of Nigerian Traders (NANTS), two influential private sector associations, indicated that they were not able to get a "favourable response" to their AfCFTA concerns from the Chief Trade Negotiator through the AfCFTA National Committee.[70] Following President Buhari's request for more domestic consultation post-Kigali, these private sector associations successfully lobbied for direct engagement with the NOTN, giving them an opportunity to consult the Chief Trade Negotiator directly on their AfCFTA positions.[71]

In making trade policy decisions, the Nigerian political leadership appears to be influenced by the views and interests of well-connected actors lobbying through informal channels, rather than by the positions and recommendations generated through formal institutions, analysis and consultative processes.[72] In his decision to pull out of the Kigali Summit - thereby ignoring the recommendations of the FEC and NOTN that Nigeria sign the AfCFTA - President Buhari was reportedly influenced by certain influential business people.[73] This illustrates how direct connections to political leaders are key to determining the influence private actors have on Nigeria's trade policy. It is no surprise then that such actors prioritise political connections and use methods such as donating to political parties and politicians to secure connections and influence.[74]

2.3. Actors, interests and agency

Beyond the structural and institutional factors discussed above, much of what takes place with regard to Nigeria's trade and regional integration agenda depends on the interests and agency of different actors operating within those structures. They are important for understanding Nigeria's position and role regarding the AfCFTA.

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[67] Interview with an official from the Federal Ministry of Industry, Trade and Investment (FMITI).
[68] Interview with a Nigerian trade expert.
[69] Interview with a member of the ENFP.
[70] Interviews with officials from the Manufacturer's Association of Nigeria (MAN) and the National Association of Nigerian Traders (NANTS).
[71] Interviews with officials from the Manufacturer's Association of Nigeria (MAN) and the National Association of Nigerian Traders (NANTS).
[72] According to one interviewee, a former staff member of a donor agency in Nigeria, the country's decision not to sign the ECOWAS-EU EPA ignored the recommendations of a World Bank study commissioned by the Ministry of Finance to assess the impact of the EPA on the Nigerian economy. Instead, the decision not to sign was influenced by the opinions of local manufacturers.
[73] See Anudu, O. and H. Edeh, 'Inside story of how Nigeria pulled out of AfCFTA' in Business Day, 14 May 2018.
[74] Interview with a Nigerian trade expert. See also '2019 and the Politics of Campaign Finance' in This Day, 15 May 2018.

The Nigerian government

Interviews with officials from the various *government agencies* involved in trade policy reveal they agree that Nigeria would benefit from the AfCFTA. FMITI officials say they believe the AfCFTA is good for Nigeria because the country has the industrial base to export to Africa and the capacity to invest in other African countries, just as Nigerian banks have done.[75] Interviewees from the Federal Ministry of Agriculture and Rural Development (FMARD) believe that deeper intra-African agriculture trade can serve to alleviate uncertainties in global trade, but insist that care should be taken to protect special projects being implemented by the Ministry to attain self-sufficiency (such as in rice production).[76] Customs officials, although wary about the impact of the AfCFTA on their revenue targets, believe the AfCFTA contains sufficient protection for Nigerian industry, and that smuggling into Nigeria will increase if Nigeria does not participate in the AfCFTA.[77]

The positions of the country's *political elites*, and, in particular, *the President*, are crucial to trade policymaking in Nigeria, as they have the ability to block or adopt agreements and policies. With ultimate responsibility for agreeing (or not) to regional trade agreements, the President's role and interests are crucial. For example, President Obasanjo, a 'Pan-Africanist' and proponent of regional integration, is credited with having brokered a compromise over the ECOWAS CET that facilitated Nigeria's participation in the CET.[78] President Buhari, on the other hand, is not known to have strong feelings about regional integration or to be particularly decisive on economic policy matters.[79] With regard to the AfCFTA, his actions appear to have been influenced by a close group of advisors and by certain influential business people, as well as by considerations of the impact of the AfCFTA on Northern Nigeria, Buhari's home region and a region from which he draws much of his political support, a not insignificant factor given that he is running for re-election in 2019.[80]

The private sector

The trade-related interests of the Nigerian private sector are diverse, and some private sector actors are more able than others to engage with government and influence policy decisions. In general, those actors who stand to benefit from a more liberal trade policy stance, including consumers and small-scale traders, are less organised and carry less weight in trade policy debates. Large and politically well-connected *manufacturers*, many of whom benefit from protectionist trade policies, are better organised and more influential in trade policy formulation. The Dangote Group, for instance, is often "linked with high politics in Nigeria" and has leveraged the political influence of its head, Aliko Dangote, very successfully (Roy, 2017). It and other large Nigerian industrial firms have lobbied the Nigerian government to provide protection to domestic industries.[81] In relation to the AfCFTA, Nigerian manufacturers are wary that the agreement might lead to the Nigerian market being indirectly opened to goods from China, the EU and other non-African sources.[82] They also insist that the private sector was not sufficiently consulted by the NOTN and that more analytical work is needed to assess the potential impact of the AfCFTA on the Nigerian economy.[83]

Within Nigeria's *services sector,* some industries appear to be more open to regional and continental trade integration. Firms in Nigeria's successful 'Nollywood' film industry see an opportunity to consolidate market

[75] Interview with an official from FMITI.
[76] Interview with an official from FMARD.
[77] Interview with an official from the Nigerian Customs Service.
[78] Interview with a Nigerian trade expert.
[79] Interview with a Nigerian trade expert. See also 'Buhari's allies join in criticism of Nigerian economic 'paralysis'' in Financial Times.
[80] See Anudu, O. and H. Edeh, 'Inside story of how Nigeria pulled out of AfCFTA' in Business Day, 14 May 2018.
[81] See for example 'FG Urged to Ban Tomato Paste Importation' in This Day, 27 July 2016.
[82] Interview with a representative of the Lagos Chamber of Commerce and Industry (LCCI). See also: Okereocha Chikodi, 'Africa Free Trade deal: Why manufacturers are adamant' in The Nation, 31 August 2018.
[83] Okereocha Chikodi, 'Africa Free Trade deal: Why manufacturers are adamant' in The Nation, 31 August 2018.

leadership on the African continent and to ensure protection of intellectual property,[84] while financial services firms see opportunities in e-commerce partnerships.[85] The Nigerian Bar Association, meanwhile, views the AfCFTA as a "welcome 'disruption'", as, among other things, it would open a "new vista of legal practice - International Trade Law - to Nigerian lawyers".[86] The Nigerian services sector has not provided much input to trade policymaking processes or trade negotiations, and has not been represented in consultative bodies such as the ENFP. This may be changing, however, as the Nigerian Coalition of Services Industries was launched in July 2018 to function as a lobby group on trade in services.[87]

The main *private sector associations* in Nigeria can be divided into two camps with regard to the AfCFTA, and on regional trade liberalisation in general. On one side are MAN and NANTS, both of which are very vocal in trade policy discussions. These two associations coordinate and align their positions on trade policy, and insist on the need for protection of local industries. Two of their key concerns are the need for appropriate and properly enforced rules of origin to prevent Nigeria becoming a 'dumping ground' for goods produced outside Africa, and the absence of a national trade remedy regime to apply rules relating to safeguards, antidumping and countervailing measures.

On the other side are various chambers of commerce, such as the Nigerian Association of Chambers of Commerce, Industry, Mines and Agriculture (NACCIMA) and the Lagos Chamber of Commerce and Industry (LCCI), as well as other industry associations, such as the Nigerian Association of Small and Medium Enterprises (NASME). These associations have more diverse memberships, representing firms from the manufacturing, services and agricultural sectors. Although they too recognise potential risks from trade integration, they have generally been more supportive of Nigeria's participation in the AfCFTA.[88]

While it is perhaps unsurprising that MAN should seek protection for local manufacturers,[89] the cautious position of NANTS on the AfCFTA is harder to explain, as traders would in theory stand to benefit from a comprehensive agreement. NANTS aside, *traders*, and particularly small-scale traders, do not play a prominent role in trade policy processes in Nigeria. One possible reason for this is that they fear being targeted by government agencies for tax audits and other forms of regulatory enforcement, especially in Lagos, where the state government has intensified its tax drive in recent years.[90] Another reason is that many small traders' or market associations in Nigeria are instrumentalised as tools of political advancement and mobilisation by local politicians, reducing their ability to act as pressure groups for the interests of their members.[91] NANTS' position on the AfCFTA is that traders will benefit from a stronger Nigerian manufacturing sector. However, this position represents the views of its secretariat, which, according to one observer, is somewhat detached from its membership.[92] This, coupled with its counterintuitive position on regional trade, raises questions as to how well NANTS positions reflect the interests of Nigerian traders.

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[84] Interview with a Nigerian trade expert, citing the views of the former Managing Director of a prominent film distribution company in Nigeria.

[85] Interview with the CEO of an e-commerce company in Nigeria.

[86] Chairman of the Nigerian Bar Association Section on Business Law (NBA-SBL), Seni Adio, SAN, quoted in Kio-Lawson Theodora, 'AfCFTA will open new vista of legal practice- Seni Adio, SAN' in Business Day, 13 September 2018.

[87] Ikokwu Constance, 'Nigeria Launches Coalition of Services Industries (NCIS)', 26 July 2018.

[88] See for instance Alhassan Amina, 'Nigeria Can't Afford To Be Left Out Of AfCFTA Agreements – NACCIMA' in Leadership, 21 May 2018.

[89] Although MAN represents firms and industries with differing positions on regional trade, and hence is not always able to speak with one voice on such matters. Its positions on trade policy generally reflect the positions of its most vocal members (often those seeking protection), rather than its entire membership (interview with a Nigerian trade expert).

[90] Interview with a Nigerian trade expert.

[91] For an example see '2019: Buhari Group, traders' Association sign MoU, plan 1m march for Buhari' in Vanguard, 11 November 2018.

[92] Interview with a Nigerian trade expert.

Many private sector actors in Nigeria are opposed to trade liberalisation under ECOWAS or the AfCFTA because they believe that the Nigerian manufacturing industry is vulnerable to competition from imports due to various supply-side constraints in Nigeria, including an unsupportive business environment, poor infrastructure, corruption and policy inconsistency. The diverse views and specific concerns of different private sector stakeholders in Nigeria about the AfCFTA emerged during the nationwide 'AfCFTA consultation and sensitization exercise' conducted by the NOTN between March and October 2018.[93] This exercise involved consultations with representatives from industry, sector-specific groups, labour, think tanks and civil society in each of Nigeria's six geopolitical zones.

The communiques issued at these consultative sessions indicate that while some key stakeholders, notably MAN,[94] remain concerned about the potential impact of the AfCFTA, there is broad support for the AfCFTA in Nigeria, but that this support is qualified. Stakeholders indicated that if Nigeria is going to participate in the AfCFTA, complementary action by the Nigerian government is needed to, among other things: address power supply challenges; improve the business environment; invest in trade infrastructure; support informal traders to enter the formal economy; improve the effectiveness of bodies to support Nigerian exporters and address the problems of transshipment, dumping, smuggling and other illicit trade practices by establishing an effective rules-based trade remedies regime and properly enforcing rules of origin.[95]

Interviews suggest that private sector actors across the spectrum are sceptical about the government's ability to implement and enforce trade (and other) policies and agreements effectively. A legacy of institutional and policy inconsistency and a poor record on policy implementation, has made it difficult for the Nigerian private sector to trust that government will: effectively implement reforms needed to improve the business environment in Nigeria, thereby addressing the disadvantage Nigerian firms face when competing with foreign firms; follow through on incentives proposed to support Nigerian firms engaging in trade; or implement its obligations arising from the AfCFTA and other trade agreements and take steps to ensure other parties comply with their obligations.

Other actors

Along with MAN, the Nigerian Labour Congress (NLC) was one of the loudest voices calling on President Buhari not to sign the AfCFTA Agreement, arguing that opening the Nigerian market would have a negative impact on employment.[96] The fact that *labour* representatives were not sufficiently consulted during the lead up to the signing of the AfCFTA Agreement seems to have been a key issue for the NLC, as, following the sensitisation and consultation exercise, its leadership appears to be more positive about the prospect of Nigeria participating in the AfCFTA.[97] Research by CUTS International (2015) shows that *consumers* are poorly represented in trade policymaking in Nigeria. *Consumer advocacy groups*, such as the Consumer Advocacy Foundation of Nigeria, have largely been neglected in trade policy discourse in Nigeria, and, as a result, policies have tended to favour producers' interests (e.g. domestic protection), and not consumers' interests (e.g. lower prices).

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[93] See tralac, 'Nigeria's Technical Work Group of the Presidential Committee on the Impact and Readiness Assessment for the Agreement establishing the AfCFTA meets', 1 November 2018.

[94] MAN is reportedly still concerned about the tariff commitments Nigeria would have to make under the AfCFTA and has called for more evidence on the impact of such commitments. See Sunday Michael Ogwu, 'MAN rejects outcome of African trade pact consultation', 27 June 2018.

[95] See tralac, 'AfCFTA: Nigeria's process of consultations is through systemic and robust stakeholder engagement', 5 November 2018.

[96] See 'Labour hails FG's decision on AfCFTA' in The Sun, 26 March 2018. In an interview, the General Secretary of the Nigerian Labour Congress, Dr Peter Ozo-Eso has indicated that the Congress' only objection to the AfCFTA was on the grounds of non-consultation.

[97] See the Eagle Online 'African Continental Free Trade Agreement Beneficial To Nigeria -NLC', 16 April 2018.

Overall, the analysis and interviews show that despite the formal mechanisms and processes in place, Nigeria's engagement with the AfCFTA has been strongly influenced by informal linkages between powerful actors and the political class. While their concerns about the need for protection may be legitimate, not least given the difficult business climate, the point is more that these informal processes will continue to play a role in implementation of what is the *formal* process of the AfCFTA. Ignoring this reality is likely to lead to frustration further down the line.

3. The political economy of regional trade policymaking in South Africa

South Africa's political leadership realised well ahead of the Kigali Summit that it would not be in a position to sign the AfCFTA Agreement.[98] Under the country's laws, the executive must submit international agreements for vetting by legal advisors before it can sign them, and this had not yet been done for the AfCFTA Agreement.[99] South Africa's trade minister indicated that such vetting was important because of the uncertainty entailed by the Agreement's unfinished annexes, and the fact that its chapter on rules of origin was like "an empty circuit board".[100]

South Africa needed more time to consult and seek legal advice on signing the AfCFTA Agreement. But it also wanted to signal its support for the AfCFTA process and principles, and thereby avoid making the kind of mistakes it has made in the past with regard to continental diplomacy.[101] To solve this problem, South Africa proposed the Kigali Declaration as an instrument to demonstrate commitment to the AfCFTA without actually signing the AfCFTA Agreement.[102] It also sent a large delegation to Kigali, including the country's new president, Cyril Ramaphosa, and its trade minister, both of whom stressed South Africa's support for the AfCFTA, and the country's intention to sign the Agreement as soon as it was in a position to do so.[103]

South Africa did sign the AfCFTA Agreement during the July 2018 AU Summit in Nouakchott, Mauritania, and has since ratified the Agreement (in December 2018), and indicated that it will deposit its ratification instrument during the AU Summit in February 2019.[104] The country's decision to sign and ratify despite concerns about the unfinished AfCFTA Agreements Annexes reflects a strategic decision. South Africa doesn't want to risk acceding to the AfCFTA once the Agreement is in place.[105] It wants to be involved in determining the unresolved elements of the Agreement, and for that it needs to be at the negotiating table.[106] In this regard, it's relevant to note that Nigeria was asked to stay away from the AfCFTA negotiations following President Buhari's no-show in Kigali, although Nigerian officials have continued to participate in other AfCFTA-related fora.[107]

South Africa has played a prominent role in the AfCFTA negotiations. Many AfCFTA member states lack experience negotiating some of the issues covered by the Agreement, but this is not the case for South

[98] Interview with a UNECA official.
[99] Interview with Minister Rob Davies
[100] Minister Rob Davies quoted in the Economist ' Why Africa's two biggest economies did not sign its landmark trade deal', 29 March 2018.
[101] Interview with a UNECA official.
[102] Parshotam Asmita, 'South Africa, Nigeria and the AfCFTA: 6 key questions answered', 3 May 2018.
[103] Institute for Security Studies, 'South Africa and Nigeria are crucial for continental initiatives', 4 April 2018
[104] See Arnoldi Marleni, 'South Africa's Parliament approves agreement to establish AfCFTA', 5 December 2018
[105] See presentation of the Select Committee on Trade and International Relations, 7 November 2018.
[106] See Gerhard Erasmus, 'South Africa to ratify Tripartite FTA and Continental Free Trade Area Agreements' in tralac, 17 September 2018.
[107] Interview with a UNECA official.

Africa, whose officials have significant experience negotiating trade agreements. This experience has been put to good use during the negotiations, were South Africa has been effective in advocating its positions on, for example, rules of origin and the number of ratifications required for the Agreement to enter into force.[108]

The rest of this section analyses the political economy of regional trade policymaking in South Africa to identify the actors and factors that shape South Africa's positions on the AfCFTA (and on regional trade more generally). In doing so, the section identifies the key actors, institutions and other factors that are likely to influence the role South Africa plays in relation to the AfCFTA and how effectively the country implements the AfCFTA Agreement.

3.1. Structural factors

Two sets of structural factors have had a particularly significant impact on South Africa's approach to regional trade integration. The first includes socioeconomic factors such as the country's high levels of poverty, inequality and unemployment. According to World Bank measurements, South Africa is the most unequal country in the world,[109] with the top 10% receiving a disproportionate share of national income, and 79% of South Africans living in households "where the income per person is less than the minimum wage".[110] Poverty is disproportionately concentrated among the black population, a lasting legacy of apartheid. The country also suffers from incredibly high levels of unemployment. According to recent statistics, 6.2 million people of working age are unemployed, giving an official unemployment rate of 27.5%, one of the highest in the world.[111] However, this figure does not include 'discouraged workers' - those willing to work but not actively looking for a job. Including these people pushes the unemployment rate up to 37.3%.[112]

These factors shape labour relations in South Africa, political debate around economic development and state-citizen relations. They also strongly influence economic policymaking in the country. South Africa's key economic and industrial policies, such as the National Development Plan (NDP), New Growth Path, National Industrial Policy Framework (NIPF) and Industrial Policy Action Plan (IPAP), seek to encourage and promote value-adding, labour absorbing industrial production so as to generate employment and sustainable development.[113]

The second set of relevant structural factors relate to the structure of South Africa's economy. Compared to its neighbours in SADC, and to most African countries, South Africa's economy is larger, more diversified, more technologically advanced and better integrated into the global economy. South Africa has the largest manufacturing sector in Africa, a developed services sector and a sophisticated capital market (Games, 2017). In addition, South Africa's economy plays host to a number of large indigenous multinational firms.

These factors have contributed to large volumes of exports and investment from South Africa to the rest of Africa, especially to SADC countries. Africa has become South Africa's most important export market, particularly for manufactured goods: more than a quarter of South Africa's exports (27%) and almost two-

[108] On the former, South Africa has pushed for the use of product specific rules of origin, while Member States from West and Central Africa argued for a simpler general rule. On ratifications, South Africa opposed the original proposal that 15 ratifications be required for entry into force, as it feared the Agreement entering into force before it was ready to sign and ratify. South Africa argued strongly for a threshold of 29 ratifications, and, ultimately 22 was agreed as a compromise (Interview with a UNECA official).

[109] See 'South Africa is the most unequal country in the world and its poverty is the "enduring legacy of apartheid", says World Bank' in the Independent, 4 April 2018

[110] See Farouk and Leibbrandt, 'Inequality in South Africa: Beyond the 1%' in Daily Maverick, 19 July 2018

[111] See 'SA unemployment rate rises to 27.5% in third quarter' in IOL, 30 October 2018.

[112] See 'South African unemployment rate climbs as the formal sector sheds jobs' in BusinessTech, 30 October 2018.

[113] See Presentation to the Parliamentary Portfolio Committee on Trade and Industry, 15 November 2017.

thirds (64%) of its exports of manufactured goods go to other African countries.[114] South Africa also runs a large trade surplus with both SADC and Africa as a whole.[115] In addition, South Africa has become one of the largest investors in Africa, as its large and comparatively advanced retail, telecommunications and financial services firms, among others, have established their presence in markets across Africa, particularly in Eastern and Southern Africa (Games, 2017). These trends have in turn generated resentment in other African countries about the dominance of South African firms in their domestic markets (ibid.), and concern within South Africa's government about the need to import more from the region.[116]

3.2. Institutions

National trade policy

South Africa's national trade policy is set out in its Trade Policy and Strategy Framework adopted in 2012.[117] The Framework identifies trade-related measures to contribute to the economic development objectives outlined in the NDP and New Growth Path and to respond to the call in these policy frameworks for "'developmental' trade policies to encourage and upgrade value-added, labour absorbing industrial production".[118] The Framework sets out the government's intention to use trade policy as an instrument of industrial policy. Among other things, it recommends a "strategic tariff policy" approach, whereby selective tariffs are used to protect goods produced by industries that are considered strategic from an employment or value-addition perspective (WTO, 2015).

Thus while South Africa's economy is relatively open, the country's manufacturing sector is subject to significantly more tariff protection than other sectors, with industries that supply the domestic market, such as the clothing, textiles, leather and automotive industries, being protected the most (ibid.). The South African government's tendency to use trade policy as a tool of industrial policy makes it very wary of signing trade deals that could limit its domestic policy space.

South Africa's trade policy has also become more Africa-oriented in recent years, reflecting the growing importance of the continent in South Africa's overall trade. In some ways, trading with Africa has become "the key strategic direction in South Africa's trade policy",[119] and the government increasingly emphasises the need to promote intra-African trade.[120] In particular, South Africa pushes its model of 'developmental regionalism' in all its trade engagements at the regional level.[121] This approach seeks to combine market integration efforts with regional cooperation on infrastructure development and a strong focus on industrial development. For South Africa this approach fits nicely with its own policy of using trade policy as a tool of industrial policy. However, this approach does not involve a clear strategy on trade in services.

Regional trade arrangements

South Africa is a member of the Southern African Customs Union (SACU), along with four neighbouring countries: Botswana, Lesotho, Namibia and eSwatini (formerly Swaziland), together commonly referred to as the 'BLNS' (before Swaziland's name change). SACU is a colonial construct. It was established in 1910, making it the world's oldest existing customs union. It is probably also the "most integrated regional

[114] See tralac 'TradesCape: the AfCFTA Agreement is set to enter into force by early 2019', 10 August 2018.
[115] See Fatima Moosa 'Here's Why SA Did Not Sign The Africa Free Trade Deal' in the Daily Vox, 28 March 2018.
[116] Interview with the Executive Director of a South African economic policy think tank.
[117] See presentation to the Parliamentary Portfolio Committee on Trade and Industry on 15 November 2017.
[118] See presentation to the Select Committee on Trade and International Relations on 30 July 2014.
[119] Hilton Zunckel, 'Continental mindset on trade grows', in Cape Times, 28 September 2018.
[120] See e.g. Hilton Zunckel, 'Continental mindset on trade grows', in Cape Times, 28 September 2018.
[121] See presentation to the Parliamentary Portfolio Committee on Trade and Industry on 15 November 2017.

arrangement in Africa", accounting for more than half of all intra-African trade in goods.[122] South Africa dominates trade flows in SACU, as more than 95% of all intra-SACU trade involves South Africa as the importing or exporting country.[123] While the revised (2002) SACU Agreement does not cover trade in services (or other issues typically covered by 'deep' regional integration arrangements), "there is a high degree of de facto integration with regard to trade in services" in SACU, largely due to investment by South African firms in the BLNS, a shared legal system and mutual recognition of qualifications and standards.[124]

South Africa manages the SACU CET, because the regional body which is meant to do so has not been established. This allows the South African government to use SACU tariffs for national industrial policy objectives. SACU's revenue sharing formula provides the BLNS with a disproportionate share of the revenue generated by SACU, partly to compensate them for having their trade policies effectively set by South Africa, and for being a captive market for South African firms. Concerned about the growing cost of this arrangement, South Africa has sought to renegotiate the SACU revenue sharing formula. The BLNS have resisted this, as they have become increasingly dependent on the existing arrangement as a source of government revenue: for Lesotho and eSwatini, SACU revenues account for more than half of total government revenue in some years.[125] As a result, SACU member states have made little progress on discussions to review the SACU revenue sharing arrangement.[126]

As SACU is a customs union, SACU member states are meant to negotiate and sign all trade agreements with third parties as a bloc. While this has not always happened in practice - in 1999, South Africa concluded a bilateral FTA with the EU[127] - SACU member states have generally negotiated regional trade agreements together, despite finding it difficult to consistently maintain common positions. Nonetheless, SACU positions in regional trade negotiations tend to closely reflect South African national interests.

South Africa is also a member of SADC, and has been a "driving force" behind the establishment of the SADC Free Trade Area (SADC FTA) (Hulse, 2016). The 'full realisation' of the SADC FTA in 2012 owes a lot to the fact that South Africa/SACU was willing to offer tariff-free access to the South African/SACU market for almost all SADC goods, while allowing other (non-SACU) SADC member states to maintain tariffs on many South African goods (Sandrey, 2013; Hulse 2016). However, South Africa's leadership on the SADC trade integration agenda is "perceived as self-interested and subject to a significant degree of resentment and resistance from neighboring states" (Hulse, 2016). South Africa dominates intra-SADC trade, and exports significantly more to the region than it imports.

The country's influence on market integration in SADC is reflected in a number of areas. South Africa has supported a shift in focus from deep integration - as envisaged by SADC's roadmap on regional integration, the Regional Indicative Strategic Development Plan - to 'consolidating' the SADC FTA and complementing it with efforts to expand the FTA through the Tripartite Free Trade Area and cooperation on industrialisation and infrastructure development in line with the South African model of developmental regionalism (Woolfrey and Verhaeghe, 2017). For South Africa, a large regional market is attractive, but efforts to deepen SADC integration would reduce domestic policy space for its own industrial policies (ibid.). South Africa's influence is also seen in the restrictive, product-specific, rules of origin used in SADC, which serve to protect South Africa's manufacturing industries from regional competition, and in SADC's conservative approach to trade

[122] See Gerhard Erasmus 'What is a Customs Union like SACU about?' on 14 December 2018.
[123] Ibid.
[124] Ibid.
[125] See Talkmore Chidede 'Revenue sharing in the Southern African Customs Union (SACU)' on 14 December 2018.
[126] Ibid.
[127] This agreement has since been replaced by an EPA between the EU and all SACU Member States (plus Mozambique).

in services,[128] which reflects South Africa's wariness about the impact that opening up its domestic services sector to foreign competition through regional trade agreements might have on its domestic policy space.

South Africa benefits from the larger market that SADC provides, as the region accounts for around a quarter of South Africa's merchandise exports (OECD, 2017). However, tariff liberalisation under the SADC FTA has been offset by the increased use of non-tariff barriers by some SADC member states, including discriminatory charges introduced to support domestic industries and protect them from imports, particularly from South Africa (Hartzenberg and Kalenga, 2015). This has been a source of frustration for some in the South African private sector, who bemoan the absence of SADC enforcement mechanisms to ensure compliance with regional commitments and the unwillingness of the South African government to hold other SADC member states to account.[129]

South Africa is also participating in negotiations to establish the COMESA-EAC-SADC Tripartite Free Trade Area (T-FTA). Twenty-two member states (out of 27), including South Africa, have already signed the T-FTA Agreement, which will enter into force once it has been ratified by fourteen member states.[130] The T-FTA was originally promoted as a way to address the challenge of overlapping REC membership in Eastern and Southern Africa. However, largely due to South Africa's insistence that the T-FTA negotiations not open up what had already been agreed (the 'acquis') at the REC level, the T-FTA has involved a series of bilateral negotiations between countries and customs unions that do not already participate in an FTA with one another. For example, SACU has negotiated market access offers with the EAC and with Egypt.

Reconciling the different rules of origin regimes used in the three RECs has been a key challenge in the T-FTA negotiations. COMESA and EAC both use a relatively simple and liberal general approach for rules of origin, but SADC uses more complex and restrictive product-specific rules, reflecting South Africa's apprehension about its neighbours being used as "conduits for transhipped goods" (Draper et al., 2016). During the T-FTA negotiations, South Africa, negotiating on behalf of SACU, was resolute, on the adoption of SADC-style rules (ibid.). The fact that this approach was eventually adopted, despite the COMESA/EAC approach being considered more appropriate for developing countries, illustrates South Africa's influence and effectiveness in the negotiations (ibid.).

Trade policymaking

The Department of Trade and Industry (DTI) is the government agency responsible for trade policy formulation in South Africa, and for negotiating trade agreements. On trade agreements, the DTI is meant to coordinate with other technical ministries such as the departments in charge of finance, economic development, agriculture, health, mineral resources, and energy (WTO, 2015). Effective coordination is a persistent challenge, not just between government ministries, but even between the various divisions and units within the DTI. The DTI also represents government in consultations with domestic stakeholders (ibid.). The main platform for such engagement is the National Economic Development and Labour Council (NEDLAC), established in 1994 to promote participation in economic decision making and facilitate consensus and agreement between government, business and labour on social and economic policy (Hirsch and Levy, 2018).

NEDLAC's Trade and Industry Chamber (TIC) is the forum for government to update business and labour about recent developments in South Africa's trade negotiations and for the three parties to find consensus

[128] The SADC Protocol on Trade in Services does not contain liberalisation obligations, but "provides for a mandate to progressively negotiate removal of barriers to the free movement of services". See here https://www.sadc.int/themes/economic-development/trade-services/.
[129] Interview with a former representative of BUSA.
[130] Ibid.

on South Africa's positions in trade negotiations.[131] Labour is represented in the TIC by the Congress of South African Trade Unions (COSATU), the largest trade union federation in South Africa, and by other trade unions and trade union federations nominated by the Minister of Trade and Industry.[132] Business, meanwhile, is represented by Business Unity South Africa (BUSA), the most important federation of business associations in South Africa, and a small number of additional industry and sector associations.

According to one former participant in NEDLAC, the influence and effectiveness of the platform has waned since the mid-to-late 1990s.[133] There are also "structural limitations" that prevent it from serving as an "inclusive platform for policy-making" (ibid.). A current NEDLAC participant, notes that the forum is too formal and structured, and tends to focus on "high-level" issues. As a result, it does not provide sufficient space for discussion on the technical or sectoral issues that the private sector in particular, faces in relation to trade.[134] This forces business to address its concerns through other, bilateral, channels outside NEDLAC. The TIC has apparently become a "reporting forum", where government updates business and labour on decisions taken with respect to ongoing negotiations and then invites input.[135] The fact that government negotiators are simultaneously involved in T-FTA and AfCFTA negotiations has also limited their availability for regular and extensive consultation.[136]

Inclusivity is another challenge for NEDLAC, which according to some, does not give enough representation to small and medium enterprises (SMEs).[137] BUSA, as the main voice of business in NEDLAC, is seen by many as representing big business, and particularly "white business and the already empowered" (Hirsch and Levy, 2018), especially since the Black Business Council, a founding member of BUSA, split from the organisation.[138]

Despite these challenges, NEDLAC continues to perform an important function in relation to trade policymaking, by bringing together key public and private stakeholders to engage on important trade-related issues. In the context of the AfCFTA, for instance, government and business have engaged extensively on rules of origin.[139] A representative of business in NEDLAC indicated that they perceived the DTI and the Department of Agriculture Forestry and Fisheries, the two ministries in the lead on the AfCFTA, to be increasingly open and willing to engage on trade negotiations.[140] The DTI, in particular, has apparently adopted a more robust approach to engaging with business, seeking to complement formal NEDLAC processes with, among other things, organising value chain workshops in the context of the AfCFTA. According to a representative from the automotive industry, NEDLAC is "working well" for that industry.[141]

3.3. Actors, interests and agency

The South African government

In recent years the South African government has experienced significant fragmentation, and there is widespread belief that there are too many government departments (ministries) involved in economic

131 Interview with a representative of BUSA and member of NEDLAC technical committees.
132 Interview with a representative of BUSA and member of NEDLAC technical committees.
133 Interview with a former government official and participant in NEDLAC processes.
134 Interview with a representative of BUSA and member of NEDLAC technical committees.
135 Interview with a representative of BUSA South Africa and member of NEDLAC technical committees.
136 Interview with a former government and BUSA official and former participant in NEDLAC processes.
137 Interview with a former government official and participant in NEDLAC processes.
138 See e.g. 'BUSA cuts ties with Black Business Council over junk status conflict' in Fin24 on 22 May 2017.
139 Interview with a representative of BUSA and member of NEDLAC technical committees.
140 Interview with a representative of BUSA and member of NEDLAC technical committees.
141 Interview with a representative of the National Association of Automobile Manufacturers of South Africa (NAAMSA).

policymaking.[142] These departments do not necessarily share the same positions on the importance, benefits and risks of regional trade integration. Nonetheless, as the lead government agency on trade policy and trade negotiations, the position of the DTI best reflects the South African position on regional trade. Among other things, the DTI is "known to favour inward-looking approaches to domestic and regional development", emphasising the use of trade and investment policy to support indigenous (regional) value chains rather than to facilitate integration into global value chains (Draper et al., 2016). It is also believed to have a risk averse approach to services trade liberalisation.[143] Because of South Africa's growing trade surpluses with SADC, and with Africa as a whole, as well as perceptions among its neighbours that regional trade mostly benefits South African firms and industries, the DTI recognises the need to import more from the region and is exploring opportunities to support regional value chain development.[144]

In regional trade negotiations, the DTI promotes the concept of developmental regionalism (as opposed to deep regionalism) to secure support for a form of regional integration that complements national industrial policy. Its position in trade negotiations is informed and shaped by the desire to promote South Africa's industrial policy objectives, a reluctance to agree to anything that limits domestic policy space and the goal of seeking new markets for exports of value-added products. In relation to the AfCFTA specifically, the DTI has pushed for continental market integration to be complemented by cooperation on industrial and infrastructure development, in line with the developmental integration approach.[145] It also sees the potential benefits of securing access to new markets in West and North Africa.

The two major risks the DTI foresees in the AfCFTA is that it opens up the South African market to transhipment from third countries and that other member states do not implement the AfCFTA Agreement, limiting benefits to South African exporters.[146] To mitigate these, the DTI has pushed for strict rules of origin and an appropriate dispute settlement mechanism (South Africa one of the few African countries with significant experience using such mechanisms for global trade disputes).

The private sector

Given the diversified nature of South Africa's economy, the private sector in South Africa includes a wide array of sectors and industries, including a strong services sector, a 'dual' agriculture sector and a number of relatively sophisticated manufacturing industries (WTO, 2015). The South African private sector also comprises many firms that are particularly large by African standards as well as a large number of SMEs. The former have little difficulty finding ways to engage government on economic and trade policymaking, while the latter often struggle to do so.[147] Many industries are well organised and represented in their engagements with government by dedicated industry associations. BUSA is South Africa's apex private sector association. It engages government on trade through NEDLAC and various other formal and informal channels. Given the diversity of its membership, however, BUSA is not always able to advocate for the specific interests of its members.[148]

South Africa's manufacturing industries and their representatives are the most vocal private sector actors in relation to trade policymaking and trade negotiations. They tend to be defensive in relation to regional trade negotiations, focusing in particular on ensuring that government negotiates appropriate rules of origin. South Africa's manufacturing industries are less concerned about competition from other African countries

[142] Interview with a researcher from a South African think tank.
[143] Interview with a trade expert at a South African think tank.
[144] Interview with the executive director of a South African economic policy think tank.
[145] See e.g. presentation to the Select Committee on Trade and International Relations on 7 November 2018.
[146] Ibid.
[147] Interview with a former government official and participant in NEDLAC processes.
[148] Interview with a representative of BUSA and member of NEDLAC technical committees.

(industrial capacity across the continent is rather low), than from globally more competitive producers such as China, who they fear may try to use FTAs such as the AfCFTA to transship products into the South African market. Applying and enforcing restrictive rules of origin is one way to address this risk.

South African services firms and industries tend to be less vocal in relation to regional trade negotiations, despite having a significant footprint on the African continent in areas such as finance, telecommunications and retail. This is likely due to the fact that South African services firms have been able to do business in Africa very successfully, even in the absence of formal agreements governing regional services trade, and because they recognise the government's reluctance to negotiate meaningful services trade liberalisation.

In fact, even beyond the services sector, there is a general scepticism among the private sector as to the value of regional trade agreements. While recognising the potential benefits of improved access to new markets, the South African private sector is wary about these benefits actually materialising. This is because at the REC level, they have experienced many examples of regional commitments not being implemented by member states or of tariffs being replaced by non-tariff barriers. They are also aware that the South African government is unlikely to hold other member states accountable for not enforcing regional trade agreements and that there is generally no recourse when rights and obligations are not respected. This at least partly explains the apparent lack of interest in the AfCFTA among South Africa's private sector.

Other actors

The other key actors in trade policymaking in South Africa are the country's trade (labour) unions, and in particular, the trade union federation, COSATU, which is in a 'ruling alliance' with the governing party, the African National Congress (ANC). The ANC relies on COSATU's "networks, organisational structures and capacity, members and active involvement in electioneering" during election cycles, giving COSATU significant leverage within the ruling alliance (Bhorat et al., 2014). Many current and former South African cabinet members also have their roots in the trade union movement, including the current Minister for Economic Development (previously the General Secretary of Southern African Clothing and Textiles Workers Union - SACTWU), and the new President, Cyril Ramaphosa (a former General Secretary of the National Union of Mineworkers - NUM). South African trade unions have used their political clout to influence the development of national economic policy, and to ensure support and protection for labour-intensive manufacturing industries.

South Africa's trade unions have also influenced how South Africa engages in regional and international trade negotiations (ibid.). For example, South Africa's insistence on more restrictive rules of origin under the SADC FTA was influenced by the interests of the country's clothing and textile industry, one of the country's largest manufacturing industries by employment (Qobo, 2006). In general the trade union movement in South Africa has been opposed to liberalisation under regional or international trade agreements, fearing that this will lead to job losses.[149] This oppositional stance has continued in the context of the AfCFTA, where trade unions have been particularly worried about the government buckling under pressure to accept more liberal rules of origin.[150] This is because, like local manufacturers, they fear the impact of competition from globally competitive producers that they believe may try to use FTAs such as the AfCFTA to transship products into the South African market.

In sum, though South African manufacturers have sought to protect their interests from trade competition as they have in Nigeria, the mechanism has been different. South Africa has followed the initially symbolic signing of the Kigali Declaration with signing the AfCFTA Agreement, but is essentially ensuring its interests

[149] Interview with a former government and BUSA official and former participant in NEDLAC processes.
[150] Interview with the Executive Director of Apparel Manufacturers of South Africa.

are protected through negotiation of the Annexes, most notably in terms of rules of origin, where the T-FTA experience has shown how effective they can be in negotiations.

4. Conclusion

The signing of the AfCFTA Agreement was an important step towards African economic integration, but there is a long way to go before a fully-integrated continent-wide market truly exists. Beyond concluding and ratifying an ambitious deal, the real test of African states' commitment to continental integration will be whether or not they fully implement the AfCFTA. Their record on implementing regional trade agreements is not entirely encouraging. History suggest that domestic political economy dynamics, especially the interests of ruling elites, will be key determinants of how member states approach AfCFTA implementation. Experience in other regional integration arrangements around the world suggests that the roles played by Africa's swing states such will be crucial in shaping AfCFTA outcomes. These lessons warrant an analysis of relevant political economy dynamics in Nigeria and South Africa, arguably Africa's pre-eminent swing states, and a deeper understanding of how such dynamics influence the way these two countries engage with the AfCFTA.

Nigeria's aspirations to a continental leadership role require it to signal its support to African integration, but in practice, the country is wary of opening its large domestic market, even in a regional context. Dependence on oil revenues has led to neglect of Nigeria's other economic sectors, and to an unfavourable domestic business environment. These factors have in turn contributed to the perceived vulnerability of the Nigerian manufacturing industry to competition from imports and have dampened the growth of potential export industries. Nigeria's industrialists lobby the government for protection from imports, playing on fears of deindustrialisation and job losses. In response, the government applies numerous protectionist policies and instruments, often in an unpredictable and ad-hoc fashion, resulting in a trade policy regime that is arbitrary, opaque and highly restrictive.

Nigeria's restrictive trade policy regime undermines regional trade integration and generates rents for certain private and public actors who therefore have a strong incentive to oppose the implementation of regional or international agreements that may lead to the removal of these policies. Those who benefit include powerful, politically well-connected domestic industrialists, who use informal channels to influence policymakers, often bypassing formal structures established to promote inclusive policymaking. Those stakeholders that potentially have more of an interest in trade integration have tended to be less well organised, and less able to influence policymaking. In general, the Nigerian private sector sees potential benefits in regional and continental economic integration, but distrusts the Nigerian government's ability to address its concerns in relation to the domestic business environment and to institutional capacity gaps, and is therefore wary about the impact of liberalisation in the context of regional trade integration.

In South Africa's case, the non-signing of the AfCFTA Agreement in Kigali was a matter of following due process in line with the country's relatively strong formal institutions for policymaking and international negotiations, as evidenced by the later signing and ratification of the Agreement. Nonetheless, discussions and engagement on the AfCFTA illustrate some key political economy dynamics in South Africa in relation to regional trade, at least some of which may have an important bearing on the country's continued engagement with the AfCFTA process. One important dynamic is the South African government's desire to protect domestic manufacturing industries considered crucial to the country's domestic industrial policy objectives. This has led South Africa to take particularly strong positions on, among other things, rules of origin, which in turn have drawn out the process for establishing the AfCFTA.

Another important dynamic is the surprisingly low level of interest in the AfCFTA among the private sector in South Africa. This likely reflects a degree of disillusionment with regional trade integration in Africa and the lack of implementation associated with regional trade agreements on the continent. It may also at least partly stem from the fact that many of South Africa's export-oriented industries, particularly in the services sector, appear to be having great success penetrating other African markets, even in the absence of a continental trade agreement. For such industries, the AfCFTA may even pose a risk to the dominant market positions some South African firms have achieved through investing in small, but fast-growing, African markets.

4.1. Changing dynamics

In Nigeria, The AfCFTA process has generated, or at least contributed to, a number of important dynamics that will be relevant to the AfCFTA specifically, and to Nigeria's participation in regional trade more generally. First, the widespread criticism of the government's lack of consultation prior to the Kigali Summit appears to have generated a *greater emphasis on meaningful consultation and stakeholder engagement*. This is evidenced by the sensitisation and consultation exercise carried out by the NOTN, but also by the fact that the government is now working closely with the major private sector groups in Nigeria to coordinate a joint position on the AfCFTA, including on the country's draft schedule of concessions for trade in goods.[151] Second, criticism of the lack of analysis or evaluation of AfCFTA also seems to have influenced the Nigerian government to take a *more serious approach to impact assessment*. To this end, the government has established an AfCFTA Impact and Readiness Assessment Committee to conduct a full assessment of the costs and risks of the AfCFTA, identify measures to resolve risks and define a roadmap for Nigeria's participation in the AfCFTA.[152]

Third, there are indications that the discussions around the AfCFTA have contributed to efforts to ensure *better organisation of certain stakeholder groups* that have previously not played a significant role in trade policymaking processes. The clearest example of this is the establishment of the Nigerian Coalition of Services Industries to act as a lobby group on trade in services. Finally, and very importantly, the AfCFTA process has highlighted the need to *address institutional gaps in the Nigerian trade policy arena*, for example in relation to the country's ability to enforce rules of origin and apply trade remedies. In particular, the AfCFTA has been identified as one factor that, along with "persistent 'injurious dumping'" has motivated the government to establish a modern trade remedies infrastructure (NOTN, 2018). The government is now in the process of developing and consulting on a basic trade remedies legislation, a crucial element for a country seeking to participate in a rules-based trading regime such as the AfCFTA (ibid.).

In South Africa, the AfCFTA appears to have had less impact in terms of influencing domestic dynamics. This is probably because the country is more experienced in negotiating trade agreements, and has more deeply-established domestic institutions governing trade policymaking and public-private engagement on trade issues. Possibly the most interesting new dynamic introduced by the AfCFTA in South Africa's case is the legitimisation of '21st Century' trade issues. The South African government has long resisted efforts to address issues such as trade in services, investment, competition and intellectual property rights in international or regional trade agreements, despite strong economic logic for doing so in today's global economy. Given the inclusion of these issues in the AfCFTA (and the T-FTA), it appears that South Africa has finally accepted this logic, at least in the context of intra-African trade.

[151] See tralac, 'Nigeria: State of play on the AfCFTA sensitization and consultation exercise', 4 July 2018.
[152] See tralac, 'Nigeria's Technical Work Group of the Presidential Committee on the Impact and Readiness Assessment for the Agreement establishing the AfCFTA meets', 1 November 2018.

4.2. Implications for AfCFTA implementation

Most signs point towards Nigeria eventually signing the AfCFTA Agreement, possibly after the country's general elections in February 2019. However, in order to fully implement the AfCFTA, the Nigerian government will need to address serious institutional shortcomings in areas such as customs administration, enforcement of rules of origin and capacity to use trade remedies. It is encouraging therefore, that progress is already being made on this. The government will also need to better clarify the roles and responsibilities of institutions involved in trade policymaking and the negotiation and implementation of trade agreement and to ensure sufficient coordination between the various agencies that will be tasked with implementing the AfCFTA. The NOTN was established to play this coordinating role, and its work in this regard will be very important. However, questions remain about the NOTN's legitimacy and sustainability, and it's not clear if it will be able to continue to play its role as 'champion' of the AfCFTA in Nigeria if President Buhari is not re-elected in 2019. If it is able to do so, it will need to learn from mistakes made in the run up to the Kigali Summit in relation to stakeholder engagement.

Indeed, it will be important that momentum on stakeholder engagement is maintained beyond the signing of the Agreement, and that the government continues to engage with the private sector to address the trade-related concerns of Nigerian firms and industries. Such engagement will be crucial to ensuring that the private sector plays a constructive role in AfCFTA implementation, as well as in ensuring that Nigerian producers and traders are able to benefit from the AfCFTA. How the Nigerian government responds to the results of its AfCFTA impact assessment will also be important. A thorough assessment of the likely risks and benefits of implementing the AfCFTA may or may not appease those stakeholders who have opposed Nigeria's signing of the AfCFTA, but it will provide a good basis for the government to develop a guiding strategy on regional and international trade.

South Africa, meanwhile, has long been one of the better implementers of regional trade agreements in Africa, and is likely to implement what it agrees under the AfCFTA. Given the country's previous reluctance to address trade in services, investment, competition and intellectual property rights in regional trade agreements, it will be interesting to observe how South Africa approaches the outstanding phase one negotiations on services, as well as the phase two negotiations. It is likely to adopt a rather cautious approach in line with key national policies. In the context of the T-FTA, for example, the South African government has already indicated that its approach on investment will be guided by the core provisions of the country's controversial *Protection of Investment Act*.[153] However, the potential appointment of a new trade minister after the May 2019 elections may provide an opportunity for the development of new strategic approaches to trade in services and to aligning trade and industrial policy. South Africa's influence in regional trade negotiations means that such a development could have a big impact on AfCFTA outcomes.

Given the importance of private sector involvement in the implementation and use of the AfCFTA, the apparent lack of interest and engagement of the South African private sector is somewhat worrying. Certainly, South African firms could play a more prominent role championing the benefits of continental integration. On the other hand, if the AfCFTA is perceived to be mainly benefitting firms and industries from South Africa (and other African swing states), this might weaken political support for implementation in other member states, thereby undermining the AfCFTA. A careful balance will be needed in this regard.

[153] DTI presentation on ratification of T-FTA.

Ideally, Nigeria and South Africa would demonstrate strong leadership on AfCFTA implementation, as they have done for past continental initiatives, and at particular stages of the AfCFTA negotiations. As the analysis above has shown, however, various dynamics within Nigeria and, to a lesser degree, South Africa, complicate their efforts to demonstrate such leadership. More broadly the analysis also suggests that there are likely to be actors and factors within other African states that may hinder or facilitate effective implementation of the AfCFTA in those states. Analysis of the political economy dynamics in those states can provide a deeper understanding of the interests, incentives and agency at play there, and a clearer picture of the room for manoeuvre on AfCFTA implementation in those contexts. This in turn can help inform efforts to support effective implementation by those states.

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