

UNIVERSITY OF NAIROBI

DEPARTMENT OF DIPLOMACY AND INTERNATIONAL STUDIES (DDIS)

**A CRITICAL REVIEW OF THE CHALLENGES FACING THE IMPLEMENTATION
OF THE AFRICAN CONTINENTAL FREE TRADE AREA AGREEMENT (AfCFTA) IN
KENYA**

Saadia Omar Shurie

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Supervisor: Dr. Martine Odhiambo Oleche

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Declaration

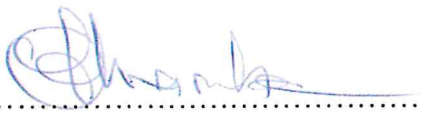
I, Saadia Omar Shurie, hereby declare that this research project is my original work and has not been presented for a degree in any other University.

Signed.......... Date..... 11/11/2021

Saadia Omar Shurie

This research project has been submitted for examination with my approval as University

Supervisor.

Signed.......... Date..... 11/11/2021

Dr. Martine Odhiambo Oleche

Dedication

I wish to dedicate this research project to my amazing mother Habiba Haji Mohamed, continue to rest in perfect peace Hooyo.

Acknowledgement

I wish to acknowledge the assistance and the unwavering support of my family, friends, colleagues, and my supervisor.

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Abbreviations

AfCFTA	African Continental Free Trade Area
AGOA	African Growth and Opportunity Act
AMU	Arab Maghreb Union
AU	African Union
CEN-SAD	Community of Sahel–Saharan States
COMESA	Common Market for Eastern and Southern Africa
COVID-19	Coronavirus Disease 2019
DFTA	Digital Free Trade Area
EAC	East African Community
ECOWAS	Economic Community of West African States
EPA	Environmental Protection Agency
EU	European Union
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
KNCCI	Kenya National Chamber of Commerce and Industry
MoITED	Ministry of Industrialization, Trade and Enterprise Development
OAU	Organization of African Unity
RECs	Regional Economic Communities
SADC	Southern African Development Community
SDG	Sustainable Development Goal

SFA	Sustainable Food and Agriculture
TRALAC	Trade Law Centre for Southern Africa
UNCTAD	United Nations Conference on Trade and Development
UNECA	United Nations Economic Commission for Africa
WTO	World Trade Organization

ABSTRACT

For African countries, the African Continental Free Trade Area (AfCFTA) brings both possibilities and challenges in terms of trade and investment. There is however widespread concern that the advantages of the AfCFTA will not be realized as a result of inadequate implementation capabilities and a lack of support frameworks at both the regional and state levels. Its effective implementation needs adequate and requisite support at the policymaking level and technical framework level. Compared to other countries in Europe and Asia, African states lack the resource capabilities, tools, and capacity to support the effective implementation of trade agreements. For instance, Kenya has not been able to fully maximize current trade agreements, of which it's a member, due to multiple challenges. Therefore, this research project will seek to critically evaluate the challenges facing AfCFTA implementation in Kenya during the first year of the Agreement coming into force.

The research aims to offer recommendations on the steps Kenya should take to overcome implementation hitches. The findings of the study are that the AfCFTA was formed to bring together the African continent, in terms of having a common development trajectory. It was also meant to improve trade relations among the countries; and to increase the GDP of the participating nations. Efforts to coordinate trade efforts on the continent have failed over the years as a result of various challenges; key among them political instability and lack of proper trade aid frameworks. This in turn undermined regional trade which was meant to reduce the trade tariffs between participating states so as to encourage inter-state trade collaborations.

The aspect of sluggish production and manufacturing is also another focus area which undermines the full benefits of creation of a free trade area. Regional trade can only work out if the member states are in a position to up production and meet the scope of the demand. In addition, the member

states are needed to maintain better cross border cooperation, in order to support the growth of regional trade. It is clear that African states should work on a number of factors that will enable them to increase and improve regional trade. Implementation of the AfCFTA will therefore be a win or bust situation for the continent.

CHAPTER ONE

INTRODUCTION AND BACKGROUND TO THE STUDY

1.0 Introduction

The purpose of FTAs is to reduce international trade obstacles which include tariff and non-tariff barriers. Collaborative trade is a significant part of the globalization process which is "the adoption of a series of international economic principles meant to optimize productivity and profitability by universalizing markets and products and getting official approval to make a country's economy increasingly productive and competitive."¹). FTAs therefore form part of the cornerstone of globalization. FTAs first became famous after World War II because they served to reconstruct settlement areas and economies that the war had destroyed. Reconciliations were also evident during the period when FTAs became popular; as such, there was a positive link between FTAs and reconciliation.

Free Trade Agreements have also raised spirited debates globally, especially on the aspect of their benefits and hurdles. However despite the challenges to their operationalization, their ratification and implementation rate shows their popularity among countries. This is mainly because the benefits of FTAs, core among them positive economic development, far outweigh their pitfalls. FTAs have been shown to be critical for regional and international trade collaborations, case in point the success of the European Union (EU).

The benefits of trade agreements can also be seen in the reduction of trade restrictions, thus supporting an increase in the exportation and importation of goods across borders. This in turn significantly boosts international trade. Increased international trade enhances economic growth, thus granting states the opportunity to specialize depending on their ability and capacity. States

¹UNESCO, "Migration and Inclusive Societies", 2021, <<http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/globalisation/>>.

are also able to allocate and utilize resources far more efficiently and increase their national income, leading to more growth and development.² They also get to experience a more dynamic business climate, through their collaborations with other countries and creation of a conducive trading environment. Before the advent of the benefits of FTAs, states were more protective of their domestic industries. These types of protectionism measures in turn made the states stagnant and non-competitive in the international market when it came to trade. Implementation of the FTAs has therefore led states to realize progressive economic growth and become competitors in the global space.³

Thirdly, international trade stimulates flow of foreign direct investment. An increase of investors serves to augment flow of capital to support and nurture domestic industries and revive struggling ones.⁴ Foreign direct investment also results in job creation for the domestic markets of the states that benefit from these capital flow injection, thus improving livelihoods. Fourth, states adopt FTAs to boost international trade through expertise and technology transfer. Multinational companies have the expertise and latest technology to develop resources compared to local companies, especially in manufacturing, mining, and oil drilling. FTAs allow international firms to access new business opportunities, hence developing new methods with advanced technology.⁵ The domestic market in turn benefits from development of their expertise through improvement of key sectors through scientific and technological innovation; and creation of better efficiency in product manufacturing.

²Mercatus Center, "The Benefits of Free Trade: Addressing Key Myths", 2021, <https://www.mercatus.org/system/files/Benefits-of-Free-Trade_EP_110513.pdf>

³Department of Foreign Affairs and Trade, "The Benefits of Free Trade Agreements", 2021, <<https://www.dfat.gov.au/trade/about-ftas/Pages/the-benefits-of-free-trade-agreements>>.

⁴. Ibid.

⁵Mercatus Center, "The Benefits of Free Trade: Addressing Key Myths", 2021, <https://www.mercatus.org/system/files/Benefits-of-Free-Trade_EP_110513.pdf>

AfCFTA implementation is considered to foster a myriad of benefits for the African region. One of AfCFTA's core objectives is to eliminate both tariff and non-tariff barriers in the fifty-four (54) countries that have agreed to trade together.⁶ By joining the bloc, these nations created a single coordinated market for their products and services; thus leading to regional economic development and trade integration. It is anticipated that AfCFTA will enhance intra-African trade by 52.3 % if import taxes and non-tariff barriers are eradicated or significantly reduced. Moreover, recent events such as the COVID-19 pandemic and the severe impact on global trade as a result of air transport bans and border closures have highlighted the trade isolation of the continent. This illustrates the need for the continent to create an opportunity to help African countries in accelerating growth, diversifying their efforts, and attracting international direct investment.⁷ By 2022, AfCFTA implementation is predicted to increase intra-African trade by 52% above 2010 levels. Such a strategy would reduce the margin with intra-regional trade hindrances representing Europe at 67%, North America at 54%, and Asia at 51%. Small and medium-sized businesses, which represent 80% of all businesses worldwide, would be the primary beneficiaries. African citizens would also benefit from the initiative eventually through welfare gain approximated at 16.1 billion dollars. AfCFTA implementation would therefore bolster the continent's place in the global market in general.⁸

⁶Marcia Tavares, "The African Continental Free Trade Area Agreement – What Is Expected Of LDCs In Terms Of Trade Liberalization? By Trudi Hartzenberg, Executive Director, Trade Law Centre (Tralac) and Member of the Committee for Development Policy (CDP) | LDC Portal", 2021, <<https://www.un.org/ldcportal/afcfta-what-is-expected-of-ldcs-in-terms-of-trade-liberalisation-by-trudi-hartzenberg/>>.

⁷Borgen Project, "The Benefits of the AfCFTA for the African Economy | The Borgen Project", 2021, <<https://borgenproject.org/the-afcfta/>>

⁸Andrea, Cofelice, "African Continental Free Trade Area: Opportunities and Challenges", *The Federalist Debate* 31, no. 3 (2018): 32-35, <<https://www.doi.org/10.2478/tfd-2018-0032>>.

The adoption of AfCFTA will also serve the region by creating a single market for its goods and services to boost commerce.⁹ AfCFTA has created protocols to eliminate trade hindrances and establish a uniform platform to provide settlement of disputes, financing and competition plans, cognitive property rights, and other trade-liberating measures.¹⁰

The continent is also expected to enjoy a collaborative structure and enforcement system from the AfCFTA implementation.¹¹ A simple majority vote will determine all AfCFTA institutions' decisions on AfCFTA implementation. There are certain AfCFTA institutions that will oversee different functions. The African Union (AU) Assembly, for example, is tasked with administering, directing and interpreting the Agreement. The individual states, on the other hand, appoint the Council of Ministers, which is in turn accountable to the Assembly. The Council is tasked with making resolutions about the Agreement. In addition, the Committee of Senior Trade Officials implements the Council's decisions and monitors the expansion of AfCFTA provisions. The Secretariat is also created as part of the AfCFTA facilitating mechanism and is a self-sufficient organization, with its task portfolio confirmed by the Council.¹² The assigned roles to different sections of the AU serve to provide a seamless and coordinated AfCFTA implementation process. AfCFTA implementation will also see the continent enjoying an economic boost, trade diversity, and protection of special groups such as women traders, growth of small and medium-sized companies (SMEs), promotion of industrialization, and contribution to sustainable growth. The

⁹Elizabeth Gachuri, "African Continental Free Trade Area Phase II Negotiations: A Space for a Competition Protocol?" *Unctad.Org*, 2020, <https://unctad.org/system/files/official-document/ser-rp-2020d15_en.pdf>.

¹⁰Trade Law Centre, "African Continental Free Trade Area (AfCFTA) Legal Texts and Policy Documents - TRALAC Trade Law Centre", 2021, <https://www.tralac.org/resources/our-resources/6730-continental-free-trade-area-cfta.html>.

¹¹Borgen Project, "The Benefits of the AfCFTA for the African Economy | The Borgen Project", 2021, <<https://borgenproject.org/the-afcfta/>>.

¹²Trade Law Centre, "African Continental Free Trade Area (AfCFTA) Legal Texts and Policy Documents - TRALAC Trade Law Centre", 2021, <<https://www.tralac.org/resources/our-resources/6730-continental-free-trade-area-cfta.html>>.

Agreement also has the capacity to enrich regional competitiveness, thus promoting competition on an international level.¹³

The World Bank Report of 2020 notes that AfCFTA will guide legislators in executing policies that minimize the Agreement's risks while maximizing its potential gains.¹⁴ However, building a continent-wide market requires continued effort by all the member states. Furthermore, the success of this Agreement relies on the ability of governments to design policies that increase the preparedness of the workforce involved in its practical implementation.

1.1 Background to the study

In 2018, the African Continental Free Trade Area (AfCFTA) was established.¹⁵ The African Continental Free Trade Agreement (AfCFTA) was signed by 54 of the 55 AU member countries. The AfCFTA is the biggest trade area, with its Secretariat in Accra, Ghana. In March 2018, the African Union presented the Agreement, which was signed by 44 of its 55 member countries in Rwanda.¹⁶ The accord has linked over 1 billion individuals in 55 countries and has a total GDP of US\$3.4 trillion.¹⁷ The core objective was to remove trade hindrances by 90% to allow easy access to commodities and services. The basic Agreement's objectives include developing a single market for the region; creating a modified market through negotiations; advancing investment through the un-inhibited movement of people and capital; and developing a future continental customs union. Other objectives include stimulating competition in the regional and greater global market;

¹³United States Trade Representative, ""Trade Is Key to Africa's Economic Growth" | United States Trade Representative", 2021, <<https://ustr.gov/about-us/policy-offices/press-office/blog/trade-key-africa%E2%80%99s-economic-growth>>.

¹⁴World Bank, "The African Continental Free Trade Area", 2020, <<https://www.worldbank.org/en/topic/trade/publication/the-african-continental-free-trade-area>>.

¹⁵Elizabeth Gachuri, "African Continental Free Trade Area Phase II Negotiations: A Space for a Competition Protocol?" *Unctad.Org*, 2020, https://unctad.org/system/files/official-document/ser-rp-2020d15_en.pdf.

¹⁶. Theophile Albert, "The African Continental Free Trade Agreement: Opportunities and Challenges", 2019, Geneva: CUTS International, Geneva.

¹⁷World Bank, "The African Continental Free Trade Area", 2020, <<https://www.worldbank.org/en/topic/trade/publication/the-african-continental-free-trade-area>>.

supporting industrial development; sorting out trading challenges; and accomplishing gender equality, socioeconomic development, and infrastructure modification.¹⁸

The AfCFTA and its realization is backed and paved by a long history and numerous efforts on the part of regional stakeholders and organizations. These integration efforts were first commenced by the Organization of African Unity (OAU). In 1963, the autonomous African states developed the Organization of African Unity (OAU), which led to the adoption of a number of plans to nurture cooperation in the African community. OAU also led to the development of other regional cooperation organizations. The African Union (AU) then succeeded the OAU and picked up the mantle of regional trade efforts. The AU summit in 2012 then made substantive efforts towards this by reaching unanimity to develop a new Continental Free Trade Area by the year 2017.

These negotiations started in 2015, utilizing over ten negotiation sessions for three consecutive years until 2018. The 2018 Kigali Summit then saw the signing of the AfCFTA by 44 states; the Protocol on Free Movement of Persons by 30 states; and the Kigali Declaration by 47 states. The Protocol on Free Movement of Persons, in particular, aims to create a visa-free zone across AfCFTA states and encourage the formation of an African Union Passport, which objective will go a long way in aiding free movement of people across borders and support regional integration efforts.

Furthermore, a number of bodies have been created to carry through the AfCFTA's implementation. These include the Assembly of the African Union, the Council of Ministers, the Committee of Senior Trade Officials, the Secretariat, and the Dispute Settlement Mechanism.¹⁹

¹⁸Trade Law Centre, "African Continental Free Trade Area (AfCFTA) Legal Texts and Policy Documents - Tralac Trade Law Centre", 2021, <<https://www.tralac.org/resources/our-resources/6730-continental-free-trade-area-cfta.html>>.

¹⁹Theophile Albert, "The African Continental Free Trade Agreement: Opportunities and Challenges", 2019, Geneva: CUTS International, Geneva.

The African Union Assembly is composed of all AU Heads of State and Government. The institution directs the Agreement implementation and is the final decision maker. The Council of Ministers is made up of trade secretaries as well as other candidates from the signatory states. The institution collaborates with AU organs and other institutions and has decision-making authority. The AU Executive Council is used by the organization to report to the Assembly and suggest different policies and projects.²⁰

Permanent Secretaries or other persons appointed by the State Parties constitute the Committee of Senior Trade Officials. The role of this particular committee is to establish approaches and modes for the Agreement's implementation. It is important to note that the Secretariat is the governing entity established to structure the AfCFTA operationalization. The Secretariat is based in Accra, Ghana, which proposal was consented to by the Ghanaian Parliament in August 2020. Lastly, there is the Dispute Settlement Mechanism which is modelled after the World Trade Organization's (WTO) conflict resolution system. The provisions for this dispute resolution mechanism are quite particular, its guiding theme is that the concepts and methods are outlined in a separate Protocol and; that only Signatories would be permitted to file petitions. Private citizens do not therefore have the authority to lodge private suits before the dispute body.²¹

In addition, the AfCFTA Agreement Protocols developed some technical committees to also aid the Agreement's implementation. Candidates nominated from the Signatory States will serve on these committees. In addition, the activities of the Protocol on Trade in Goods will be promoted by the Committee on Trade in Goods. The committee will also form sub-committees to plan for the implementation of the Trade in Goods Protocol expansion. The Committee on Trade in

²⁰Trade Law Centre, "The African Continental Free Trade Area: A Tralac Guide | 7Th Edition - Tralac Trade Law Centre", 2020, <<https://www.tralac.org/publications/article/13997-african-continental-free-trade-area-a-tralac-guide.html>>.

²¹Ibid

Services, will supplement the efforts of the AfCFTA implementation by boosting the Protocol on Trade in Services' operations.²²

The Agreement has so far completed an estimate of a nine-month trading period, which began at the inception of 2021. Given its size, extent, and possible development consequences, the vast trade area has surprisingly received subdued attention, although it has the capability to impact the operations of existing regional economic communities (RECs) and trade arrangements with other parties. African countries and RECS need to accord the requisite attention to the fulfillment of this pact, noting its projected reverberations on themselves and the region as well.

It is also important to illustrate the different categories of operationalization of this agreement. The implementation process is divided into stages, some of which are still undergoing negotiations and discussions. After the signatories accepted the Phase 1 protocols in early 2018, the process of obtaining the requisite ratifications and approvals proceeded into 2019. Phase 1 was launched in July 2019 and focused on goods and services liberalization. In February 2021, 55 members of the African Union (AU) had joined and ratified the Agreement. This agreement has so far established a presence in many African countries, in one way or another, except in Eritrea. In February 2019, Phase 2 discussions started, which included drafting an investment protocol; implementing a competition strategy; and developing intellectual property rights protection mechanisms.²³ Phase 2 kicked off in January 2020. The third phase of the Agenda is yet to kick off but is intended to ensure the negotiation of an e-commerce protocol. The Agreement, as a whole, targets fulfilling Agenda 2063, a continent-wide policy that seeks to achieve a fully integrated continent that supports all-round growth and sustainable development.

²² Ibid.

²³ Gerhard Erasmus, "How Will Phase II of the AfCFTA Be Negotiated, Ratified and Implemented? - Tralac Trade Law Centre", *Tralac.Org*, 2020, <<https://www.tralac.org/blog/article/14463-how-will-phase-ii-of-the-afcfta-be-negotiated-ratified-and-implemented.html>>.

When it comes to the aspect of ratification of the Agreement, 54 of the 55 AU member states had ratified the treaty by July 2019, with Eritrea being the lone wolf. Twenty seven (27) of the 54 states had also submitted their ratification instruments by then.²⁴ It should be of note that Nigeria was among the last countries to sign the Agreement as it had raised some opposing claims regarding the Agreement. The main ground of opposition was fueled by concern of the Agreement's potential negative impact on the Nigerian business sector and the labour sector. The fear was that the agreement would serve to threaten these sectors; and increase inequality thus putting human rights, particularly economic rights, into jeopardy. The AU however clarified this by stating that the core and the spirit of AfCFTA is battling poverty and inequality; and enhancing the growth of the key economic sectors of its signatories.

Moving onto the operationalization element, the first aspect of the Agreement was putting in place the operational phases and structuring compliance timelines. The first implementation plan, as per the set deadlines, is expected to be complete by 2023, considering that trade will have increased twofold in the continent, as was the case in 2015. In Phase 2 of the plan, more negotiations will continue over time. As trade currently continues in the AfCFTA, the rules of origin and talks of schedules have fueled concern among officials and trade stakeholders, particularly the preferential rules of origin. The main concern among these stakeholders and officials is that the intended impact of preferential rules of origin will be muted if improvements are not seen in an industrial capacity, among other qualifiers.

From a general perspective, it is clear that the full implementation of the AfCFTA might be a game-changer for the continent's commerce development. Trade on and with the continent through

²⁴Marcia Tavares, "The African Continental Free Trade Area Agreement – What Is Expected of LDCs In Terms of Trade Liberalization? By Trudi Hartzenberg, Executive Director, Trade Law Centre (Tralac) and Member of the Committee for Development Policy (CDP) | LDC Portal", UN. Org, 2021, <https://www.un.org/ldcportal/afcfta-what-is-expected-of-ldcs-in-terms-of-trade-liberalisation-by-trudi-hartzenberg/>

trade partners has increased from \$10.5 billion in 2000 to \$40 billion in 2005 to \$166 billion in 2011.²⁵ China is presently the continent's main commercial partner. Between 2015 and 2017, total African commerce on the global space averaged \$760 billion in current prices, contrasted to \$5,140 billion from America, \$481 billion from Oceania, \$6,801 billion from Asia, and \$4,109 billion from Europe. Between 2000 and 2017, Africa's total exports were about 80-90%. In 2017, intra-African exports accounted for 16.6% of overall exports, compared to 68.1%, 59.4 %, 55%, and 7% in Europe, Asia, America, and Oceania, respectively.²⁶ During the 2015-2017 period, intra-African commerce was roughly 2%, compared to 67% in Europe, the most competitive region, and 7% in Oceania.²⁷

African RECs have also contributed to these numbers in terms of trade growth for the continent. In 2016, the Southern African Development Community (SADC), CEN-SAD, and ECOWAS had the most intra-regional economic community trade.²⁸In 2015-2017, the leading intra-African exporters were Eswatini, Namibia, and Zimbabwe. Chad, Guinea, and Eritrea had the least intra-African export proportion. CEN-SAD at 7.4%, ECOWAS at 5.6%, SADC at 3.8%, the Arab Maghreb Union (AMU) at 2.6%, and COMESA at 1.89% were some of the average amounts on applied tariff rates.²⁹

The trade situation and its positive and negative impact on the continent can also be seen from a sub-region perspective. For instance, Sub-Saharan Africa has been characterized by the highest cost of exports and imports.³⁰Certain commodities such as tea and cocoa all have a large influence

²⁵Kingsley Ighobor, "China in the Heart of Africa", *Africa Renewal*, 2013, <<https://www.un.org/africarenewal/magazine/january-2013/china-heart-africa>>

²⁶ Ibid.

²⁷ Ibid.

²⁸UNCTAD, "Facts & Figures", 2021, <<https://unctad.org/press-material/facts-figures-0>>.

²⁹ Ibid.

³⁰Trade Law Centre, "The African Continental Free Trade Area: A Tralac Guide | 7th Edition - Tralac Trade Law Centre", 2020, <<https://www.tralac.org/publications/article/13997-african-continental-free-trade-area-a-tralac-guide.html>>

on economic growth of African commerce particularly as a result of production dominance of these commodities. This has in turn created scenarios where certain African countries, such as Kenya, place heavy reliance on revenue generating items such as tea, coffee , cocoa and flower exportation. For example, in 2015 and 2017, the continent accounted for more than 20% of worldwide tea exports and 12% of global tea exports. In general, the continent accounts for around 25% of intra-African tea exports. Furthermore, from 2015 to 2017, the continent accounted for \$7.8 billion in yearly cocoa exports. Furthermore, the market accounts for 15% of cotton exports and 12% of cotton imports. A further trade analysis illustrates that beverage commodities at 44% and soft drinks at 39% account for the majority of intra-African beverage imports with spirits at 14%. The countries of Namibia, Mozambique, and Uganda were among the biggest exporters of products in this drink category. Finally, automotive accounted for 2% of imports and less than 10% of exports.³¹

It is evident that intra-African commerce has had a significant influence on the continent's economic growth and world trade as well. The economic impact is characterized by increased innovation, improved productivity, high income, increased job availabilities, and increased supply of goods and services.³² Besides, intra-African trade has promoted economic diversification on the continent.³³ A diverse economy is significant as it increases the consumer market share. Various individuals, economies, and nations from divergent backgrounds and experiences undertake collaborative efforts thus improving the market. The intra-African trade has also boosted the African region through inclusion that has expanded better access to the global trading system.

³¹UNCTAD, "Facts & Figures | UNCTAD", 2021, <<https://unctad.org/press-material/facts-figures-0>>

³²World Bank, "Stronger Open Trade Policies Enable Economic Growth for All", 2018, <https://www.worldbank.org/en/results/2018/04/03/stronger-open-trade-policies-enables-economic-growth-for-all>.

³³Vera Songwe, Vera, "Intra-African Trade: A Path to Economic Diversification and Inclusion", *Brookings*, 2019, <<https://www.brookings.edu/research/intra-african-trade-a-path-to-economic-diversification-and-inclusion/>>

From the above it is clear that economic inclusion and enhanced access to the global trade market serves to bolster African and international trade.³⁴

1.2 Statement of the problem

AfCFTA offers the continent positive prospects, as well as challenges. Most stakeholders in the region and beyond believe that the agreement will serve to increase intra-African commerce as well as the region's trade capacity with the rest of the globe by unifying 1.3 billion people across the continent with a total GDP of \$3.4 trillion. According to research by the Institute for Security Studies (ISS Africa), intra-African commerce has historically been low. For example, in 2019, Africa's imports were valued at \$560 billion or a mere 12%, indicating low intra-Africa trade.³⁵ These low numbers are as a result of African states' trade in low-value raw materials due to limited manufacturing capacities. The Agreement is meant to address this gap by stimulating structural change across member countries and seeing growth in the export of more high-value goods and services. The Agreement is also expected to have a significant influence on economic development by stimulating increased innovation, improved productivity, high income capacity, increased job availabilities and increased supply of goods and services.³⁶ Furthermore improved intra-African trade will contribute to boosting economic diversification across Africa³⁷ because a diverse economy has a beneficial impact on consumer market share levels.

However, there are concerns that the benefits of the AfCFTA may not be realized because of poor implementation and lack of support systems at the regional and country level. The activities of the continent's RECs serve as lessons when it comes to this aspect of lack of infrastructure and

³⁴ Ibid.

³⁵ Teniola Tayo, "Africa's Free Trade Agreement: Great Expectations, Tough Questions," ISS Africa, January 5, 2021, <https://issafrica.org/iss-today/africas-free-trade-agreement-great-expectations-tough-questions>.

³⁶ World Bank, "Stronger Open Trade Policies Enable Economic Growth for All", 2018, <<https://www.worldbank.org/en/results/2018/04/03/stronger-open-trade-policies-enables-economic-growth-for-all>>

³⁷ Ibid.

technical and policy capacities. For instance, COMESA has not achieved economic integration as envisioned because some members have been unable to domesticate COMESA instruments through internal laws and policy instruments.³⁸ Therefore this research project will seek to identify and critically evaluate challenges facing AfCFTA implementation in Kenya based on the initial steps towards its implementation and the lessons gleaned from the footprint of existing RECs. Kenya for instance, which will be the main highlight of this research project, engages in several FTAs and RECs apart from the AfCFTA, such as the Common Market for Eastern and Southern Africa (COMESA), World Trade Organization (WTO), Environmental Protection Agency (EPA), East African Community (EAC), African Growth and Opportunity Act (AGOA) among others.³⁹ The research aims to offer recommendations on the steps Kenya should take in the implementation process of AfCFTA to ensure seamless success, and learn from the experience of existing RECs.

AfCFTA has been hailed as a game-changer in terms of promoting intra-African trade and bolstering individual country economies. The number of signatory countries helps make it the largest global free trade deal. The implementation of African FTAs has faced a number of challenges as per available research evidence. While there have been some effective implementation, several common challenges have been identified, and have been indicated to have an important effect on the operationalization process.

Poor implementation of FTAs has been shown to slow down the economic unification process, inducing negative repercussions, and preventing the attainment of the intended goal of increased continental economic development. Failure in implementation has been identified as an area of

³⁸Sindiso Ngwenya et al., "Key Issues in Regional Integration Volume 2" (COMESA, 2013), 2, <<https://www.comesa.int/wp-content/uploads/2021/02/key-issues-on-intergration-ii.pdf>>.

³⁹Nicholas Ngepah, and Maxwell C. Udeagha, "African Regional Trade Agreements and Intra-African Trade", *Journal of Economic Integration* 33, no. 1 (2018): 1176-1199.<<https://doi.org/10.11130/jei.2018.33.1.1176>>.

concern in the realization of trade goals in Africa. Kenya is a party to several FTAs but has failed to achieve the full benefits of these FTAs due to several barriers during the implementation process. Addressing these identified challenges will have practical benefits, help manoeuvre the implementation, and contribute to the realization of the intended AfCFTA's outcomes.

Kenya is among the thirty-six (36) countries that had ratified AfCFTA as of May 2021.⁴⁰ Kenya ratified AfCFTA because she stands to benefit immeasurably from increased export and import of goods and services of African origin. However, policy makers and economists have noted that African countries can only rip the benefits if the AfCFTA is operationalized properly. In 2019, Kenya started developing a comprehensive plan to facilitate AfCFTA adoption with the involvement of the public and private sector entities and stakeholders.⁴¹ It is clear that the effective implementation of the Agreement needs adequate and requisite political goodwill and support at the topmost policymaking levels. However, historically, deficiencies in political willingness, effective policies, farsighted strategies, legal framework tools, and technical expertise have slowed Kenya's adoption and implementation of trade agreements and regional integration efforts. In a statement touching on the Agreement, Rajan Shah, the Vice Chairman of Kenya Association of Manufacturers (KAM) noted that Kenya is not ready for AfCFTA because trade facilitation and logistical barriers continue to affect trade in Kenya. These obstacles include unnecessary delays at the port; and conflicting and bureaucratic procedures and processes on cross border trade.⁴² The

⁴⁰Tralac Trade Law Centre NPC, "Status of AfCFTA Ratification - Tralac Trade Law Centre," 2021, <<https://www.tralac.org/resources/infographic/13795-status-of-afcfta-ratification.html>>

⁴¹Economic Commission for Africa, "National AfCFTA Implementation Strategy to Boost Kenyan Trade and Investment | United Nations Economic Commission for Africa," 2021, <https://www.uneca.org/stories/national-afcfta-implementation-strategy-to-boost-kenyan-trade-and-investment>.

⁴²Rajan Shah, "Is Kenya AfCFTA-Ready?" *Kenya Association of Manufacturers* (blog), February 15, 2021, <<http://kam.co.ke/is-kenya-afcfta-ready/>>.

lack of readiness on Kenya's part has also been observed in other African countries.⁴³ Lack of preparedness is therefore an issue that affects practically every country on the continent.

Trade under AfCFTA commenced on 1 January 2021. It is clear, as highlighted earlier, that Kenya is likely to face challenges implementing the Agreement given past poor records implementing FTAs.⁴⁴ Further, compared to other jurisdictions in Europe and Asia, African countries, including Kenya, lack adequate resources, tools, and capacity to support the effective implementation of trade agreements. African countries and regional economic communities (RECs) have also not been able to maximize the current pacts, including COMESA⁴⁵, AGOA, and ECOWAS, particularly due to regulatory and governance challenges.⁴⁶ For instance, poor understanding of the regional framework, corruption and border bureaucracy have been highlighted as some of the hindrances to trade and economic integration.

While Kenya has undertaken various measures to proactively place itself to enjoy the benefits that AfCFTA brings, like the partial accomplishment of the LAPSSET project, it does have a long path to go to adopt the needed framework. One of the main challenges is that Kenya lacks the required customs systems and infrastructure needed to fully operationalize AfCFTA.⁴⁷ As of March 2021, Kenya was undertaking an AfCFTA implementation strategy review,⁴⁸ thus indicating that Kenya

⁴³David Pilling, "African Countries Not Ready to Implement Free Trade from January," *Financial Times*, December 29, 2020, <<https://www.ft.com/content/bc612590-d38e-4d08-a1e1-0e7f5e19be30>>.

⁴⁴Joe Bavier, "African Free Trade Bloc Opens for Business, but Challenges Remain," World Economic Forum, 2021, <https://www.weforum.org/agenda/2021/01/african-free-trade-bloc-business-challenges/>.

⁴⁵Mzukisi Qobo, "The Challenges of Regional Integration in Africa in the Context of Globalisation and the Prospects for a United States of Africa," ISS Paper 145 (Tshwane (Pretoria), SOUTH AFRICA: Institute for Security Studies, 2007), <https://www.files.ethz.ch/isn/98933/PAPER145H.pdf>.

⁴⁶AFRICAN COALITION FOR TRADE, "Agoa Successes and Challenges: A Look Back at the First Two Years - Agoa.Info - African Growth and Opportunity Act," 2003, <<https://agoa.info/news/article/3205-agoa-successes-and-challenges-look-back-at-the-first-two-years.html>>.

⁴⁷Cynthia Olotch, "African Continental Free Trade Area– Spotlight on Kenya | Afronomicslaw," 2021, <https://www.afronomicslaw.org/category/analysis/african-continental-free-trade-area-spotlight-kenya>.

⁴⁸Economic Commission for Africa, "Kenya Ends AfCFTA Implementation Strategy Review Meeting with Incorporation of Useful Issues | United Nations Economic Commission for Africa," 2021, <<https://www.uneca.org/stories/kenya-ends-afcfta-implementation-strategy-review-meeting-with-incorporation-of-useful-issues>>.

is yet to embrace the proposition that it would need to work at facilitating realization of the Agreement. No past studies have critically reviewed the hurdles Kenya is facing since trading started January 01, 2021. Therefore, in this research, the author seeks to identify and analyze the overarching challenges facing implementation of AfCFTA in the Kenyan context.

1.3 Research questions

What are the challenges facing AfCFTA implementation in Kenya?

1.4 Objectives of the Research Study

1.4.1 General objective

To critically review the challenges facing AfCFTA implementation in Kenya.

1.4.2 Specific objectives

1. To identify the overarching challenges facing AfCFTA implementation in Kenya.
2. To identify measures that Kenya is taking to overcome AfCFTA implementation challenges.

1.5 Literature Review

African countries have always collaborated in seeking their developmental opportunities on a wider scale since the beginning of the 21st century. As such, the continent's intra-regional trade has undergone several cycles of evolution over the years, and the AfCFTA is the latest effort in the trade evolution process. In relation to the number of countries engaged, the establishment of the African Continental Free Trade Area will result in the world's biggest free trade area formation. If implemented properly, AfCFTA has the ability to significantly reduce extreme poverty by 2035 through creating economic integration across 55 states; and improving livelihoods. However, in order for this to materialize, significant strategic changes and trade facilitation measures must be enforced. The extent of the trade agreement is also of note as it addresses the pervasive trade gaps

among member states. For instance, issues concerning the high tariffs among member states is a major trade issue that will need to be critically assessed. The agreement will also address strategic areas like trade aid and services and supervisory evaluations, such as legal, political and technical trade barriers. This indicates that AfCFTA will seek to champion existing sub-regional economic blocs and trade pacts by providing a broad-based supervisory structure and by tracking policy gaps like investment and intellectual property rights protection mechanisms. The agreement will also work towards materially expanding trade, especially sub-regional trade in sectors such as manufacturing. Moreover, it will improve employment availability and remuneration for semi-skilled workers and also ensure that the gender wage gap is narrowed. Even so, at the time when the continent launched the Continental Free Trade Area pact, it was anticipated to nurture inclusive trade between member states and lessen reliance on extractive home-grown goods and intrinsic instabilities of product prices.

Even though the decision to establish AfCFTA was to be achieved by 2017, the target was not met and it was later signed in March 2018, in Kigali Rwanda. In order to fully enjoy the outcome that AfCFTA will provide, states like Kenya ought to buttress their bilateral relations and advance their economic and political amalgamation. Through economic amalgamation efforts, Kenya can execute a single market with neighbour states and as the economic domain matures, political integration will be realized even though it has been elusive across the continent. Although Kenya has made some steps on the implementation of a single market in the East African region through EAC, a lot more needs to be done in order to bolster trade, and realize that objective.

From the time when Kenya gained independence in 1963, it has traded significantly with former colonial masters in Europe and recently with Asia, particularly China compared to African countries. Trading more with former colonial masters is a trend that repeats across the continent.

For instance, evidence shows that less than 20% of African states' exports head to other countries on the continent.⁴⁹ However, the article does not offer substantial proof to support its claim, solely relying on the existence of historical trade ties with former colonizing countries. Armel states that the prevailing intra-continental trade limitations across the region emphasize the scope of lost revenue and growth prospects for states such as Kenya.⁵⁰ As such, without proper implementation of the AfCFTA in states like Kenya, it will be extremely difficult, if not impossible, for the continent to increase intra-African trade and also negotiate from a point of leverage with its well established and chief economic allies such as the USA, China, Russia, Japan, and the EU.

Many scholars have highlighted the significance of regional collaboration and categorized it as an important facet when it comes to nurturing economic development across the region and enhancing intra-regional trade, security initiatives, and bilateral and multilateral deals. However, although AfCFTA is an impressive and thorough pact with far-reaching protocols, the promulgating institution which is the AU has contributed little to encourage development across the region.⁵¹ For instance, challenges in the implementation of continental trade liberalization and strategy differences still persist in states such as Kenya. Additionally, these states have realized sporadic and irregular regional amalgamation efforts when it comes to efforts to improve the free movement of individuals, commodities, and services and coordination of their economic strategies. A major turnaround in terms of opinion and effort is therefore needed to make the AfCFTA a practical reality.

49. Kaze Armel, "Understanding the African Continental Free Trade Area: Beyond "Single Market" to "Africa's Rejuvenation" Analysis." *Education, Society and Human Studies* 1, no. 2 (2020).<<https://doi:10.22158/eshs.v1n2p84>>.

50. Ibid.

51. Ockert Pretorius, Drewes Ernst, and Aswegen Mariske. "Fostering a resilient regional economy in the SADC through regional integration." *Regional Science Association International*, (2017).<<https://doi:10.1111/rsp3.12102>>.

1.5.1 General Idea of the AfCFTA

Over the years, Africa has been experimenting with continental integration that has led to the birth of AfCFTA based on the aspirations of the pan-Africanists and their philosophies for an Africa that is economically autonomous and solid. This pact establishes one of the objectives on the continuum towards an African Economic Community, as visualized by the Treaty Establishing the African Economic Community.⁵² The success of this African Economic Community concept was based on the ideals and objectives of existing regional economic communities such as COMESA and ECOWAS. Remarkably, at the center of the AfCFTA is the facilitation of Africa's development by structuring regional economic communities, which highlights that the AfCFTA is not a freestanding scheme, as it will rely on collaboration with existing RECs.

The Agreement also stands on the Africa Union's foundation to establish Africa's growth for purposes of the accomplishment of beneficial development objectives for all members. This pact entered into force in May 2019 when the inception for operationalizing the treaty was arrived at. African leaders unveiled five additional actions to facilitate the implementation of the AfCFTA at the 2019 Niamey Summit.⁵³ Unfortunately, owing to difficulties induced by the COVID-19 pandemic, trade which was originally slated to commence in July 2020, was pushed to January 2021.⁵⁴ When it comes to the intended impact of AfCFTA, Kenyan stakeholders concluded a national review summit of the AfCFTA execution method in Naivasha on March 5, 2021, after including additional elements with far-reaching economic implications. The stakeholders made a

52. Frimpong Oppong Richard. "The African Union, the African Economic Community and Africa's Regional Economic Communities: Untangling a Complex Web." *African Journal of International and Comparative Law*, (2010) pp. 92-103.

53. Sanne Wass. "Africa's continent-wide payment and settlement system launched." *Global Trade Review*, 2019. Accessed June 1, 2021, <<https://www.gtreview.com/news/africa/africas-continent-wide-payment-and-settlement-system-launched>>.

54. UNECA. African Union approves start of trading under AfCFTA on 1 January next year as earlier agreed, 2020. Accessed June 1, 2021. <https://www.uneca.org/stories/african-union-approves-start-trading-under-afcfta-1-january-next-year-earlier-agreed>>.

move to identify critical sectors, markets, and important action points to keep the treaty's implementation trajectory alive, with the support of the Economic Commission for Africa (ECA). Nonetheless, difficulties in the Agreement's implementation still persist on a larger scale. COVID-19, for example, has led to a decrease in cross-border commerce as a result of border closures.

Significant planning will therefore be needed considering the complexity and depth of the pact. Its scope is wide as it addresses a wide category of trade items including commodities and services trade, investment, intellectual property rights, and competition policy. It is seeking to establish a common market for commodities, services, people, and investments. It is also seeking to create a commodity market via negotiations, paving the groundwork for the establishment of a Continental Customs Union, and boost the competitiveness of African governments' markets both regionally and globally. The accord also strives for socioeconomic growth, equality of the sexes, and structural reform among its signatories. Its framework intends to influence members to gradually abolish tariff and non-tariff trade obstacles in products and to facilitate trade in services. As a result, a coordinated regional and individual state effort is needed to bolster implementation efforts particularly on capital investment deployment and infrastructure development capacities. These efforts also require the sharing and circulation of an official agenda for the AfCFTA's adoption and administration, that is aligned for the most part with the objectives of the signatories.

Even while the goals that underlie this Agreement are obvious, it is unclear how they'll be realized. Primary requirements for trade liberalization, such as detailed agreements on the commodities; which trade duties need to be cut or how much further they ought to be slashed; and when similar measures, comprising rules of origin, have still to be created. Again, negotiating and agreeing on origin rules is a crucial requirement for the functioning of any trade agreement. Inadequate origin standards provide a gap that third-country manufacturers may exploit. As a consequence, the

outcomes of the stakeholder meetings in Kenya are critical to the success prospects of the Agreement's implementation, as they will provide clarity on key issues such as the rules of origin.

1.5.2 Gaps in the literature review

Even though intra-African trading blocs have enabled an important reduction in tariffs on goods over time, trade barriers still exist on the continent. These trade barriers have led to the creation of trading gaps on the continent over the years. These gaps can be viewed in three expansive categories, which include, infrastructure, trade-related transaction expenditure, and non-tariff trade measures. With non-tariff trade measures, technical and policy gaps are the two most prevalent on the continent. The prevailing infrastructural gaps and the existing trade-related transaction expenditures also contribute to bigger trade gaps on the continent.

Moreover, the continent is grappling with inefficient trade logistics that have impacted its intraregional trade. Also, lack of an enabling business environment, credit accessibility, and availability of human capital are practically non-existent in many African states despite these elements being key to the growth of intraregional trade. AfCFTA's operational aims and primary institutional aspects will enable it to reduce these identified gaps through a number of measures. These include progressively eliminating tariffs and non-tariff restrictions on trade in goods and services; collaborating on matters of financing, proprietary rights protection; collaborating in every trade-related field; collaborating on customs issues and the formation of cooperation strategies; developing techniques for resolving matters regarding stakeholders' duties and privileges; developing and regulating an institutional framework for the enactment and enforcement of trade facilitation measures; and developing and regulating a legal structure for the enactment and enforcement of these highlighted aspects.

1.5.3 Empirical Review

1.5.3.1 Institutional Framework for its Implementation in Kenya

The majority of Africa's regional economic groups are associated with a broad spectrum of diversity.⁵⁵ Even so, the lack of actual performance is a common factor that they all share. Trade deals require well-functioning organizations to mastermind, encourage and regulate the implementation of a beneficial trade pact. The review of the performance of existing trade pacts portends great challenges in implementing AfCFTA in Kenya. There is the risk of repeating the failures of previous and existing trade pacts and RECs.

Avoiding a repeat of these mistakes and failures is first and foremost of the obligation of the bodies tasked with the implementation aspect. For example, the Assembly, the Council of Ministers, the commission of high-ranking trade officials, and the Secretariat are the main bodies tasked with this objective as they comprise the formal framework for the AfCFTA's implementation, administration, acceleration, and evaluation.⁵⁶ As such, the Assembly of the Africa Union is at the top of the chain. It, therefore, is tasked with offering guidance and planned leadership concerning the AfCFTA, including the boosting intra-African trade action plan. The Assembly has exclusive authority to implement clarifications of the AfCFTA as per the approval of the Council of Ministers. The intervention of the Assembly ensures that the members are strictly operating within the track of the Africa Union establishment and under the guidance of the Assembly. The Committee of Ministers, on the other hand, is required to ensure the coherent execution of the pact and, if needed, implement initiatives to nurture the aims of the AfCFTA and its supplementary

55. Deaton Angus. "Commodity Prices and Growth in Africa." *Journal of Economic Perspectives*, (1999) pp. 23-40. <<https://doi: 10.1257/jep.13.3.23>>.

56. UNECA. African Union approves start of trading under AfCFTA on 1 January next year as earlier agreed, 2020. Accessed June 1, 2021. <<https://www.uneca.org/stories/african-union-approves-start-trading-under-afcfta-1-january-next-year-earlier-agreed>>.

instruments. The Committee is also tasked with collaborating with the appropriate structures and organizations of the Africa Union and encourage the synchronization of suitable strategies, guidelines, and methods for the efficient realization of the Agreement. According to *Article 11.5* of the AfCFTA, resolutions undertaken by the Committee, while following the mandate, are to be adhered to by the members. This implies that resolutions concerning legal, structural, and monetary consequences will be obligatory as soon as they are adopted by the Assembly, mainly for purposes of ensuring uniformity and avoiding confusion in the implementation framework.

AfCFTA's Secretariat is also structured to be an operationally autonomous organizational organ contained within the African Union. As such, the responsibility of this body ought to be determined by the Committee of Ministers of Trade. This rests upon the office of the Secretary-General who offers management and practical sustenance to the AfCFTA. Additionally, this office is assigned tasks related to the implementation of the AfCFTA as well as tactical partnerships, shareholder commitment, and resource use plans.

Other than the authority mechanism, AfCFTA has a *modus operandi* to resolve disagreements among its members.⁵⁷ In Africa, numerous official disagreement resolution organizations like courts do exist. However, most African states do not seek the services of these sub-regional disagreement resolution organizations. This documented reluctance in seeking the intervention of these dispute-resolution mechanisms makes it hard for states like Kenya to acknowledge the significance of such dispute settlement mechanisms of the AfCFTA. Part of the implementation of the AfCFTA is therefore encouraging utilization of all created mechanisms including the dispute resolution systems.

57. UNCTAD, *Economic Development in Africa*, United Nations, (2019).

Achieving the desired impact of a single market economy of the Agreement also seems to be unrealistic. This position is informed by the identified failures and mistakes of existing RECs in realizing a single market economy as well. The failure to realize creation of a common market has transformed most RECs on the continent to performing the role of mere diplomatic organizations unlike their equivalents in other parts of the globe. The powers of these equivalent RECs such as the European Union for example, can be seen through their independence in policymaking, the dominance of regional regulations and exclusion of allies from endorsing opposing rules, the organizational independence of an institution from its allied members, and the straight obligatory impact of rules originating from regional establishments on normal and lawful individuals in allied nations. African RECs will therefore need to undertake collaborative efforts with the AU in order to reach the influential positions of other RECs and for purposes of realizing regional economic dominance. The current atmosphere on the continent towards these collaborative efforts is positive and the hope is that there is a need to kick up these efforts a notch higher.

Another element that needs consideration is the respect for the sovereignty of states and due consideration being given to the decisions and objectives. There is therefore a need to strike a balance between regional trade goals and goals of member states in order for the implementation process to run without hiccups. This will involve creation and implementation of economic strategies that has the support and input of signatories, key development partners and support bodies. This is critical for the working of the single market and economic growth ambitions of the Agreement. The current organizations of the AfCFTA also need to supplement the efforts of and collaborate with different regional economic communities. The rollout of the implementation process is heavily reliant on the practical success of each phase, and as such keenness and seriousness has to be observed. Determining if the structured implementation phases will be

successful will therefore vary based on the gains realized in the first phase of implementation. Nonetheless, instituting an integrated new trade framework union amid the lax continental standards and trading difficulties will be key to providing the success yardsticks for the implementation process.

There is also the need to develop an implementation strategy that ensures the interests of economically superior countries such as South Africa are aligned with the growth objectives of economically-suppressed African countries such as South Sudan. A balance of interests is therefore required to ensure the trade needs of all signatories are met regardless of their economic size. What this speaks to is the need to harmonize the economic welfare and growth of all African states.⁵⁸

In addition, there is also the aspect of perfect planning in order to target the required conditions to call for the re-structuring of the technical and infrastructure frameworks of individual states that are needed for the Agreement's implementation. Therefore, to efficiently achieve trade growth and liberalization by the AfCFTA, considering when and how these low infrastructure capacities present in most signatories can be improved in order to aid the continent's intended regional economic incorporation is fundamental.⁵⁹

1.5.3.2 Implementation amid Varied Regional Trade Administration

The implementation of the AfCFTA also depends on the varied domestic trade administration regims of the continent's countries. The contrasting individual frameworks and functioning of the different countries creates a hurdle that will need to be overcome. Decentralization through adoption of common policies and technical frameworks is one solution that has been presented for

58. Oteng Kufuor Kofi, *The Institutional Transformation of the Economic Community of West African States*. (Routledge 2006).

59. Daron Acemoglu and Johnson Simon. "Unbundling Institutions." *Journal of Political Economy* 113, no. 5 (2005). doi: 10.1086/432166.

overcoming this hurdle of varied and complex domestic frameworks. Although contrasting domestic regimes can be seen to be a hindrance to regional economic consolidation, it is also clear that individual domestic trade regimes have also thrived in their individual capacities. Non-economic integration seems to be prosperous, as individual states are in full control of their domestic policies and infrastructure set-up. There is no obligation for them to compromise on their domestic trade policies. This therefore calls for comprehensive deliberations on the African Union, the AfCTA bodies and individual countries to align both domestic and regional trade objectives, in order to realize the eventual raft of benefits that the Agreement portends.

Some of the known regional economic communities which Kenya is part of are the East African Community (EAC) and the Common Market for Eastern and Southern Africa (COMESA). The EAC and COMESA, for instance, have opted for diverse trade agendas in their regional alliances. And so, this places them at dissimilar phases of economic incorporation. The challenges faced in regional trade incorporation include strategies uniquely informed by domestic welfares, geopolitical competition, social struggles, sluggish elimination of national trade barriers, under-commitment to the liberalization of cross-border movement, and poor infrastructure that adds to trade costs. Even so, other factors including colonial and post-colonial circumstances have also immensely contributed over the years to suppressed development.

In this sense, it can be argued that African states find themselves in a system of global market disparity that impoverishes them economically through market strategy procedures approved in the international economic administration. The circumstances of African countries are not granted due consideration or at times are disregarded during the decision making process at the global levels. African states unfortunately have not had a voice, proper leverage and representation at the international decision making levels, thus leading to wide economic development gaps. For

instance, the position of Kenya primarily as an agricultural goods provider and greatly susceptible to instabilities in the global economies has contributed to the assertion of international arrangements of disparity.⁶⁰ These discrepancies in the economic system continue to exist even in the post-colonial era. For Kenya, infrastructure problems, inefficient regional trade policies, and a lack of political will have also contributed to the erosion of regional trade growth. Owing to the impact of these challenges and for purposes of economic comfort, Kenya has opted to trade more with international allies rather than intra-regional partners. The decision to limit trading with international allies and post colonial masters is repeated across Africa among most of the signatory members of AfCFTA.

Moreover, the current organization of regional structures is a confirmation that African states prioritize local economic growth strategies as compared to regional ones. Due to the sluggish or inadequate compartmentalization of regional obligations, Kenya and its allies have regularly undermined the progress of regional trade. However, the promptness in the ratification of the AfCFTA by the Kenyan parliament provides some hope in dealing with this issue and bodes well for the collaborative implementation of the Agreement. Even so, steering an enhanced economic incorporation program that is based on the continent's entire welfare is a massive undertaking and foreshadows more intimidating governmental, economic, political and organizational capacity difficulties.⁶¹

A serious meeting of the minds is needed across the board in order to realize the fruits of this Agreement. Therefore, the AfCFTA's suggestion to shape the regional economic communities while not offering any strategy on how to go about it is unrealistic. As such, unraveling the intricate

60. Deaton Angus. "Commodity Prices and Growth in Africa." *Journal of Economic Perspectives*, (1999) pp. 23-40. <<https://doi: 10.1257/jep.13.3.23>>.

61. UNCTAD, *Economic Development in Africa*, United Nations, (2019).

system of the regional economic communities in the continent to enable the enactment of the AfCFTA is a risk to the achievement of the Agreement itself. The inadequacy of trust and colonial divisions between Kenya and other African nations, particularly the Anglophone and francophone divide, might also add on to the difficulties already being faced by the AfCFTA enactment procedure. As a result, the likelihood of replicating the challenges that the regional economic communities have gone through is extremely high.

AfCFTA is also expected to positively reduce the economic growth challenges of member states through facilitating a fundamental economic stimulation program. This expectation is widely supported by trade stakeholders across the region and globally as well.. As such, the win-win nature of the treaty has always been highlighted. However, the level at which a trade pact matches the policies of all its signatories is close to impossible. The continent is composed of developing and least developed nations. And so, the possibility that Kenya will derive any substantial benefit from the AfCFTA is not clear. Nevertheless, developed African nations can profit from the prospects of an expansive regional market for their manufactured commodities, while the less developed originate their gains from connecting to the regional value chains and accessing capital inflows to aid their domestic development. This however is a far fetched dream if we are to look at the gains and losses made by RECs so far. An example is the EAC which is yet to manage to transform this capacity into increased regional trade and economic growth, for its developing and least developed member states.

Furthermore for AfCFTA to realize its full potential the possible challenges of regional trade pacts and collaborations on the continent must be given due consideration. This will necessitate dealing with shortages in practical capability, monetary defficiencies, physical infrastructure, abolition of non-tariff processes, and creation of dependable remedies systems. This will serve to improve

trading in commodities and the provision of services. Highly emphasized is therefore reviewing the potential of the AfCFTA to solve or at best mitigate the challenges of the least developed nations across the continent which is a huge undertaking on the part of AfCFTA.

There is however the aspect of managing expectations of the positive impact of the Agreement, once its rollout is complete. Development expectations should be reasonable and manageable. AfCFTA is not capable of resolving all economic challenges that have affected and continue to affect the African global trade position, these challenges being inclusive of underdeveloped infrastructure, political instability and minimal production and productivity.⁶² Members need to put in the effort domestically in order to support the Agreement's intended objectives. Members like Kenya, for instance, must employ effective and collaborating trading plans, domestic economic strategies, and capitalize on infrastructure development in order to open up new prospects for the country itself and the continent.

In addition, the Agreement as currently formulated is also not clear on how the disparities and distributional effects, especially as it relates to the relaxed economy and underdeveloped nations are to be addressed. If the benefits are professed to be directed towards a few nations, a counterattack for the AfCFTA in the enactment stage will occur in countries such as Kenya, who will feel sidelined. Exercising due care and delicately balancing the interests of its signatories is therefore an important agenda item for the implementation of the Agreement.

There is also the aspect that the AfCFTA also incorporates the principle of special and differential treatment and flexibility.⁶³ While utilizing these principles in resolving challenges, leaders ought

62. Murendere Chaponda, Ndonga Dennis and Laryea Emmanuel. "Assessing the Potential Impact of the African Continental Free Trade Area on Least Developed Countries: A Case Study of Malawi." *Journal of Southern African Studies*, (2020). <[https://doi: 10.13140/RG.2.2.27327.74400](https://doi.org/10.13140/RG.2.2.27327.74400)>.

63. Ibid.

to be keen on the plight of the most susceptible members. Certain key developmental items must take precedence, noting their importance to the continent's growth. These include prioritization of promotion of job opportunities of the citizens who work in the informal cross-border trade in the continent and advocating for a conducive political environment, that supports growth of trade.

For Kenya in particular, the government must recognize that to steer AfCFTA enactment, it will be critical to align local welfare needs with regional development objectives. However, the biggest difficulty that the potential laws-based relaxed trade administration governed by the AfCFTA will have to overcome is the enactment weariness of member states. The element of weariness should be afforded the importance it deserves because the success of the implementation of the Agreement is entirely dependent on the motivation of member states to enact supporting domestic policies and legal frameworks. If this weariness issue is not prioritized, AfCFTA might go the way of many unsuccessful RECs on the continent.

1.5.3.2 The Impact of the Pandemic on the Implementation of AfCFTA

COVID-19 was declared a pandemic by the World Health Organization on 11 March 2020. It has greatly affected the continent and even exposed her to international economic instability. And so, regional economic integration has been a focus as far as the pandemic and the interventions to it by African nations is concerned. However, the underlying principles of dealing with the pandemic have also presented several challenges to nations like Kenya in the AfCFTA implementation. Even so, the continent was almost at its knees in the global economic administration before the pandemic. Thus, the vulnerability condition of the marginalized nations in the global economic rule cannot be blamed on the pandemic, the pandemic merely heightened the inadequacies that

already existed.⁶⁴ Therefore, these inadequacies which include past development disparities, supremacy wars, power imbalances, and its replication in the global economic rule administration must be shifted. The pandemic laid bare these issues in a more stark manner as it emphasized Africa's low position in the global economic order. In Kenya, for instance, the pandemic has contributed to the sluggishness in trade, investment inflows, tourism, and deterioration of several service segments. As such, the pandemic has left the nation in a position of economic turmoil and surging debt, a breakdown in social services, mistrust, and worsened disparity. Kenya also rushed into an unexpected socio-economic disaster occasioned by the lockdowns issued by the government, forcing many businesses to shut down, lay off workers and scale down services.

In the East African Community, the pandemic has slowed down the pace of the AfCFTA's implementation stage.⁶⁵ It contributed to the postponement of the beginning of trading for six months. The lockdowns imposed particularly by the Kenyan government derailed the continuing discussions connecting to the laws of origin and national trade barriers that were significant for the AfCFTA to begin. The pandemic has therefore had a fair share in slowing down formal economic incorporation and the Agreement's implementation in Kenya. Similarly, the health-associated implications of the pandemic and vaccine inadequacy have also affected the economy, as it has slowed down return to work mechanisms and dried up business revenue generation.

1.5.4 Summary

The enactment of successful trade pacts, especially those with economic growth ventures embedded in them needs an understanding of the intricate socio-political, economic, and organizational aspects in action. For the AfCFTA to work, a unique understanding of the

64. UNECA, African Union approves start of trading under AfCFTA on 1 January next year as earlier agreed, 2020. Accessed June 1, 2021, <<https://www.uneca.org/storys/african-union-approves-start-trading-under-afcfta-1-january-next-year-earlier-agreed>>.

65. Ibid.

underlying intricacies and unique contributions of its members is needed. The continent is badly in need of measures to boost its development, however, these can only be done by appreciating existing conditions of member states and working together to address them effectively, when called upon to do so.

1.6 Justification of the Study

Trade under the AfCFTA began on January 1, 2021. Many of the states that ratified the Agreement are in the process of setting up and implementing the Agreement frameworks and schedules. Due to different problems that impact the implementation process, it is possible that most members do not have the required capacities in place to facilitate the FTA's implementation. Historically, the implementation of FTAs in Africa has been fraught with difficulties due to Africa's inadequate infrastructure, political differences, excessive border bureaucracy, corruption, and an absence of appropriate legal and regulatory frameworks to govern implementation.

These challenges will not disappear overnight. Moreover, past experiences with the implementation of FTAs in the Western world and Asia shows that FTA implementation is a multi-decade process and is filled with challenges that countries address along the way and few countries have gotten the implementation of FTAs perfectly from the start. While some of the challenges affecting the implementation of FTAs are known, the AfCFTA presents new ones and calls for increased need for commitment given its scope and risks of 'revenue squeeze' given that it calls for significant tariffs' reduction, which will reduce governments' revenue pools. Further, the AfCFTA calls for improved capacity creation from members, given that it demands a change in

customs and administrative entry procedures and trade policies that will aid regional and continental integration.⁶⁶

1.6.1 Policy Justification

This research project is significant because Kenya is in the implementation phase of the AfCFTA. Through a thorough evaluation of AfCFTA, the researcher will be able to illustrate how the existing challenges and new obstacles affect its implementation in Kenya with an aim of offering recommendations on how Kenya can ease the implementation process.

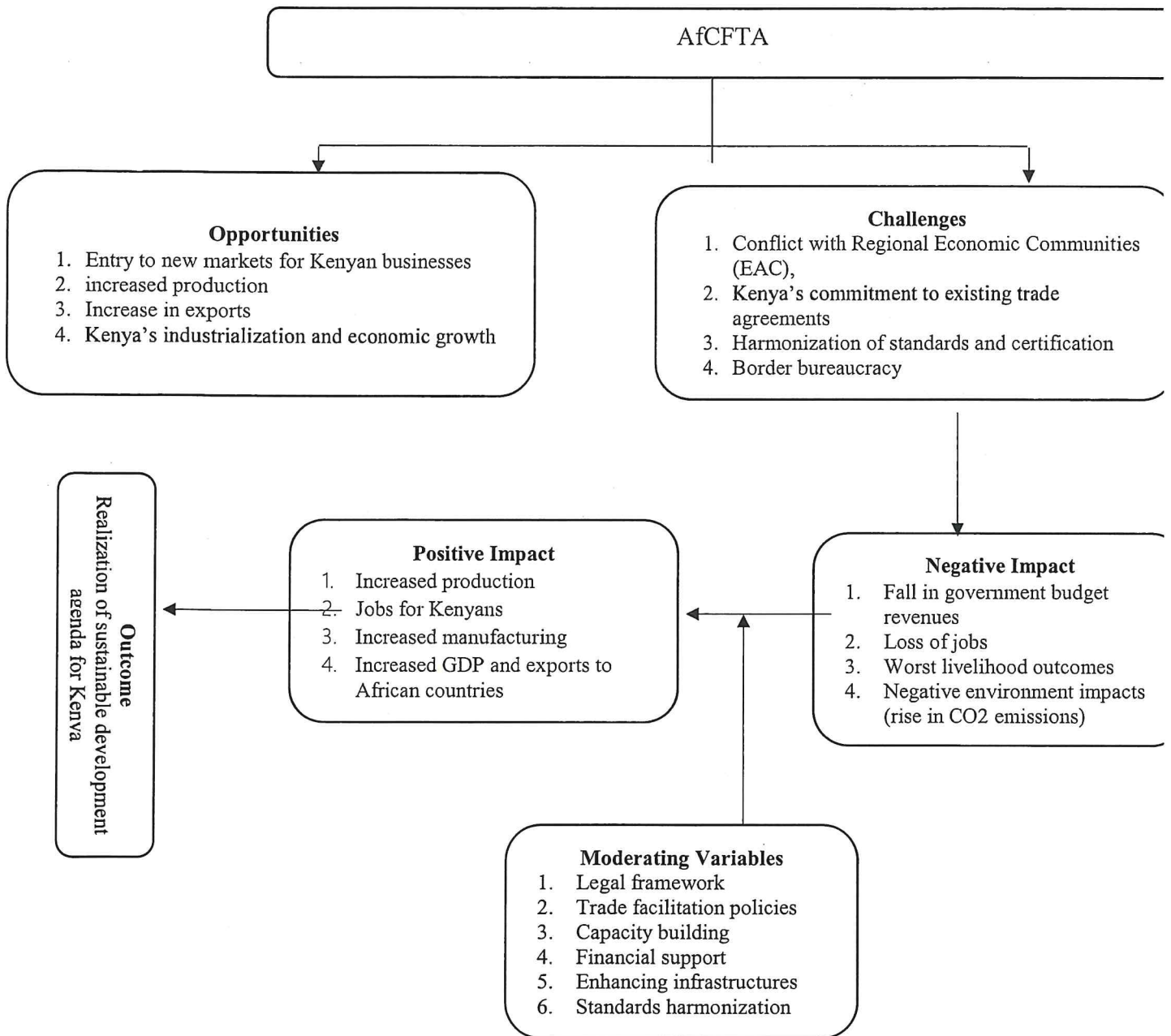
1.6.2 Academic Justification

This research project seeks to understand the challenges that face the implementation of AfCFTA in Kenya. No study has critically analyzed Kenya's challenges facing the implementation of AfCFTA. Therefore, the study findings will aim to fill this gap. The goal of this research is to pinpoint these obstacles and provide solutions for improving the implementation process.

1.8 Conceptual Framework

A conceptual framework is a pictorial representation of interlinked concepts, ideas, and principles that together provide a comprehensive understanding of a phenomenon. The independent variables will be the impact of AfCFTA, the opportunities of AfCFTA, and the challenges of AfCFTA while the dependent variable is the implementation of AfCFTA.

⁶⁶Isabella MASSA and Christopher STEVENS, "Addressing Developing Countries' Challenges in Free Trade Implementation," European Union Policy Department, Directorate-General for External Policies, 2017, 1-35, <<https://doi.org/10.2861/393935>>.



Source: Author

1.9 Study Hypothesis

Kenya is experiencing financial, infrastructure capacity, and socio-economic challenges that will likely encumber the AfCFTA implementation.

1.10 Research Methodology

This section of the research includes the research design, data collecting technique, population of the study, research sample size, and sampling process.

1.10.1 Study Design

A careful evaluation of the existing literature was conducted. Initially, a justification of the need for the review based on the formulated specific objectives and the research question was set forth. Extant literature was searched to determine the suitability of materials to be applied in the review. The coverage used in this process may be exhaustive, presenting materials that entail research done in other fields, and also using previous research that has been central to the topic being tackled. An evaluation of the applicability of the materials identified in the extant literature search has also been done through screening for inclusion. Additionally, evaluating the quality of primary studies is crucial, after which data is extracted, analyzed, and synthesized.

1.10.2 Sampling

Purposeful sampling was used to identify respondents for interviews as per the interview guides, google forms and questionnaires as well. The objective, in this case, was to focus on certain elements of AfCFTA which have thwarted its implementation in Kenya. In that case, all elements that do not fit the context of AfCFTA implementation in Kenya were rejected when creating the sample. Nonetheless, various approaches were employed during sampling based on the specific objectives of this study.

1.10.3 Target Population

The Kenya Association of Manufacturers, the Africa Continental Free Trade Area-Kenya Secretariat, and the Ministry of Industrialization, Trade, and Enterprise Development (MoITED) were among the target informants. These respondents were carefully selected as they are intimately engaged in or affected by the AfCFTA implementation and are hence likely to give detailed information.

1.10.4 Data Collection Method

The research used both primary and secondary data sources. The research is a critical review of the challenges facing AfCFTA implementation in Kenya. Data collection involved analysis of AfCFTA documents, reports, and publications from UNCTAD, World Bank, the African Union, and the Trade Law Centre for Southern Africa (TRALAC). The interview guides were used to acquire primary data. These were set and provided a guidance structure and afforded an explanation of the purpose of the primary data collection modes, why the respondent has been selected and seeking of informed consent. If the respondent consents, the data collection modes were engaged to allow data summary and review of the responses.

Additionally, the research utilized questionnaires as a main source of data to identify the level of problems that impact the implementation of AfCFTA in Kenya. Sources of secondary data included publications such as books, personal sources, journals, and newspapers. Moreover, the study also reviewed websites and government records to acquire insights into the topic.

1.10.5 Analysis of Primary and Secondary Data

Primary data evaluation was the original analysis of data collected from the generated google forms, interview guides and questionnaires. The analysis process entailed making sense of the collected data to provide answers for the research questions, support, or reject the research

hypothesis that this study is initially designed to evaluate. The study adopted the inductive and deductive approaches to analyze the interview and questionnaire transcripts. Based on the inductive approaches, the study applied thematic content evaluation to eliminate biases and establish the overarching impressions of the data. The objective entailed establishing common patterns across the data set. In addition, in this inductive approach, a narrative evaluation was applied to conclude on the respondent's notions. This method of analyzing the interviews and questionnaires emphasized significant elements of the interviews and questionnaires that best resonated with the objectives of the research. The deductive approaches of questionnaire and interview analysis called for a structured or predefined methodology. This implies that the study established categories before analysis to facilitate the mapping of groupings within the data to those particular groupings. This enabled the research to acknowledge crucial themes that are necessary for the implementation of AfCFTA in Kenya.

Secondary data evaluation and review entailed the collection and assessment of an enormous amount of information from various publications. The purpose of the study guided this process. Secondary sources analysis entailed a systematic review of available literature to provide answers to the original research questions.

1.10.6 Measurements of Variables Used

Variables used in this study were dependent and independent. The independent variables included trade in goods and services, investments, intellectual property rights, impact on Vision 2030, and competition policies among others. The study mapped trade in goods and services to indicate how value-added trade has a direct influence on development and sustainability. Investment manipulations can be done through effective and efficient use of tax incentives to facilitate trade between Kenya and other African countries. However, good governance of the incentives is crucial

for realization of their effectiveness and efficiency. Even so, the proliferation of tax incentives is a critical manifestation of international tax, which AfCFTA can help mitigate. Through policies laid down by AfCFTA, the rights of intellectual property owners are outlined in the law. In the case that another country infringes on these rights, Kenya is able to take steps against them. The main aim of competition policy, on the other hand, is to improve consumer welfare by encouraging competition and regulating practices that could restrict it.

On the other hand, the dependent variable to be measured in the study is the cost and time required for trade transactions between Kenya and other African countries. To calculate the data, the study measures the cost and time associated with trading goods and services, that is, both exports and imports. To maintain the reliability of the pointers, cost and time to trade are measured by a consistent, theoretical cargo of broadly traded products transported between Kenya and other African countries. Trade costs which is a major challenge to the implementation of AfCFTA in Kenya are measured by the charges levied on transportation containers. In this case, custom duties, ocean transport time, and tariffs will be included.

Table 1: Operationalization of variables used in the study

Variable	Measurement	Description
Dependent		
Cost and time to trade	The fee levied on the transportation of containers. Time is measured by the duration taken to move goods from the port to the capital city.	Time constraints imply the duration required to carry out business activities. Cost constraints on the other hand show the budgeted amount for trading.

Independent		
Investments	Standard deviation, Value at Risk (VaR), and the Bottom line.	Assets developed with an intention of facilitating the growth of money.
Trade-in goods and services	Implement value-added trade to enhance development and sustainability.	Transactions in goods and services between Kenya and other African nations.
Intellectual property rights	Time to complete the invention disclosure procedure. Patent application expenses. Quality of invention disclosures.	The rights that Kenya will enjoy over what it produces and creates.
Competition policy	The four-firm concentration ratio. Concentration in the industry.	The structures that AfCFTA has put in place for the regulation of markets and monopolies.

1.10.7 Measurements of Objectives

A comparative case study approach was used to assess the main challenges facing AfCFTA implementation in Kenya. This approach consisted of looking at the factors that have facilitated the successful implementation of a multilateral trade agreement in another closely similar jurisdiction in a developing economy setting. The focus will be on the country or region's legal framework, trade preparedness (trade tariff tools and facilities), and political goodwill.

The implementation will be measured by looking at the processes that Kenya has initiated towards AfCFTA realization. The process stages were used to define the implementation stages compared to baseline (pre-AfCFTA stage). The implementation was also measured by looking at the individual activities and perceived support, collective readiness and support, and stakeholders' perceptions of the AfCFTA. A survey was used to achieve this goal.

1.10.8 Validity of the Questionnaire

To ensure the validity of the questionnaire, pre-testing of the questionnaire was carried out to determine if it will collect the intended data.

1.10.9 Reliability of the Questionnaire

The degree to which quantification of an occurrence results in production of consistent results is known as its reliability.⁶⁷ In this study, primary data was collected using interview guides and questionnaires; hence, probing and seeking clarity helped illuminate any unclear responses.

1.10.10 Data Analysis and Presentation

The analysis involved identifying the short-term and long-term challenges facing the AfCFTA implementation in Kenya. The study utilized qualitative methods. The researcher analyzed statements according to responses that were received and recorded. The data will be presented in the form of a discussion of themes and responses.

1.11 Ethical Consideration

Ethical consideration was observed in the research process. Participation was voluntary, the collected data was only be used for academic purposes, any identifying information/data was kept private and confidential. The anonymity of the participants involved in the study was maintained through the use of codes.

⁶⁷ Carmines, E.G, and Zeller, R.A. 1979. Reliability and Validity Assessment, Newbury Park, CA SA GE.

1.11.1 Scope and Limitation

The study exclusively focused on AfCFTA documents. The data collection was primarily through desktop research. The limitations of the research are that Kenya started trading under AfCFTA from January 1, 2021, as such limited information is available about the FTA's implementation process.

1.11.2 Chapter Outline

This paper chapter contains the identification of the research problem, introduction, background to the research, statement of the problem, justification of the study, objectives (broad and specific), literature review, the conceptual framework, the methodology, and the scope and limitations of the study. This chapter give a summary of the proposal.

CHAPTER TWO

ROLE AND IMPACT OF THE AFRICAN CONTINENTAL FREE TRADE AREA AGREEMENT

2.1 Introduction

In January 2012, the African Union purposed to accelerate the creation of the Continental Free Commerce Area (CFTA), with the intent to bolster intra-African trade. The CFTA is considered as a critical step toward establishing a thriving African Economic Community in the near future and is in line with the needs of African nations who have highlighted the necessity of integration in their development goals since their independence. This research conducts a literature evaluation on the AfCFTA's potential in the coming years, particularly for Kenya. It covers the primary possibilities and advantages of the AfCFTA, in the industrial, agriculture, services, and e-commerce sectors. Each of these primary possibilities has a myriad set of expectations which need to be explored comprehensively to determine its efficacy when it comes to the Agreement's implementation. It is evident that the realization of the intended goals of the Agreement which include economic diversification and industrialization are achievable. However, the requisite for this realization is that certain ideal conditions have to be met and certain hurdles overcome.

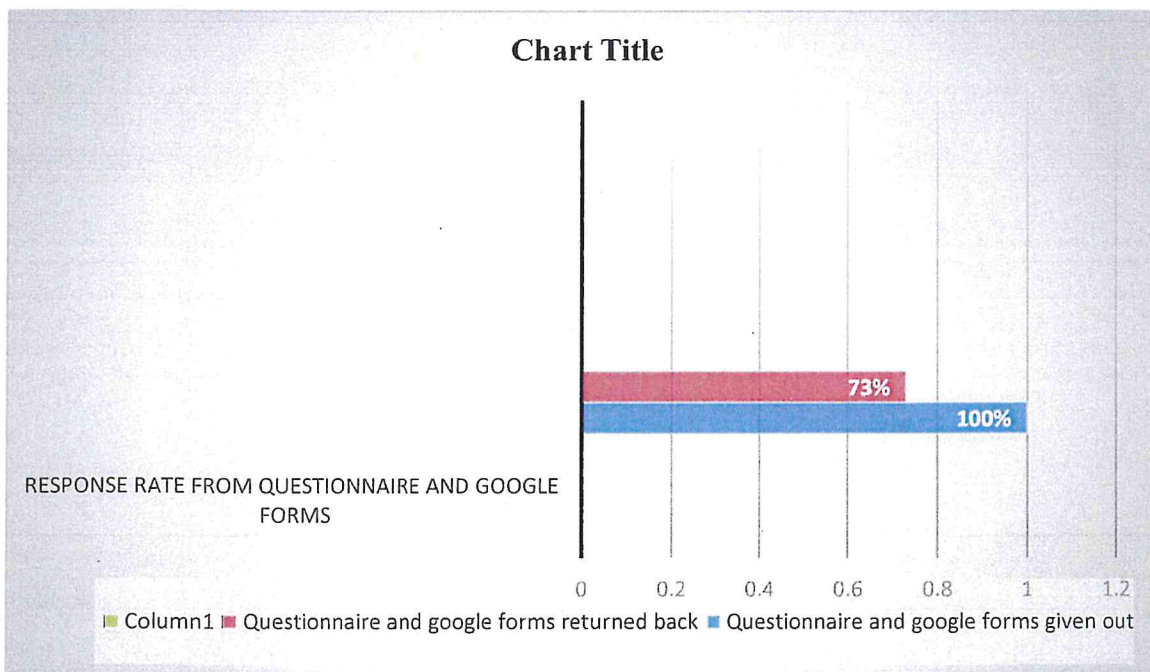
2.2 Data collection pre-requisites

When it comes to the aspect of data collection, certain aspects had to be highlighted and documented for purposes of proper identification of the respondents. This was important as it provided proper placement for the acquired information in the data collection and analysis process, to follow, once the process of data collection was completed.

2.2.1 Response rate

Out of the 200 questionnaires and google forms sent out, the response rate was 73% with 146 questionnaires and google forms being returned to the researcher. Mugenda and Mugenda affirm that if the rate of response is 50% then it is considered acceptable for data analysis. In addition, a response rate of 60% is considered good for data analysis, whereas over 70% response rate is excellent for data analysis. In this study, the response rate was 73% from the questionnaires, Interview guides, and google forms. This rate was good enough for data analysis as it gave a good representation of the study's respondents and hence fulfilled the aspect of processing fairly accurate data.

Figure 2.1: Response rate (73%)

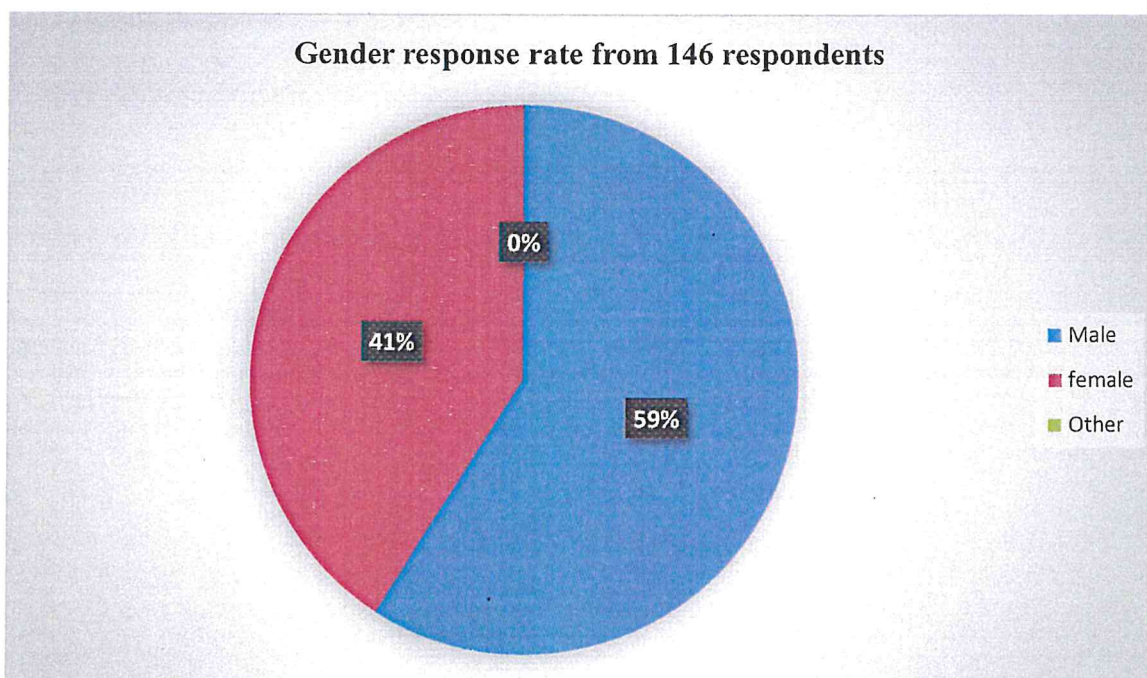


Source: Primary data. (2021)

2.2.2 Gender response rate

The majority of the respondents, at 59% were male given that the Kenyan society is male-dominated. The male respondents were more agreeable, willing and prepared to respond to the physical questionnaire, compared to the female respondents. The female category respondents at 41%, were more comfortable and preferred providing responses through the automated google forms. The highlighting of the varied reaction to the different forms of the questionnaire is important because the gender factor is important in the study. This is because the study ascertained how the respondents were represented based on their gender categorization.

Figure 2.2: Gender of the respondents



Source: Primary data. (2021)

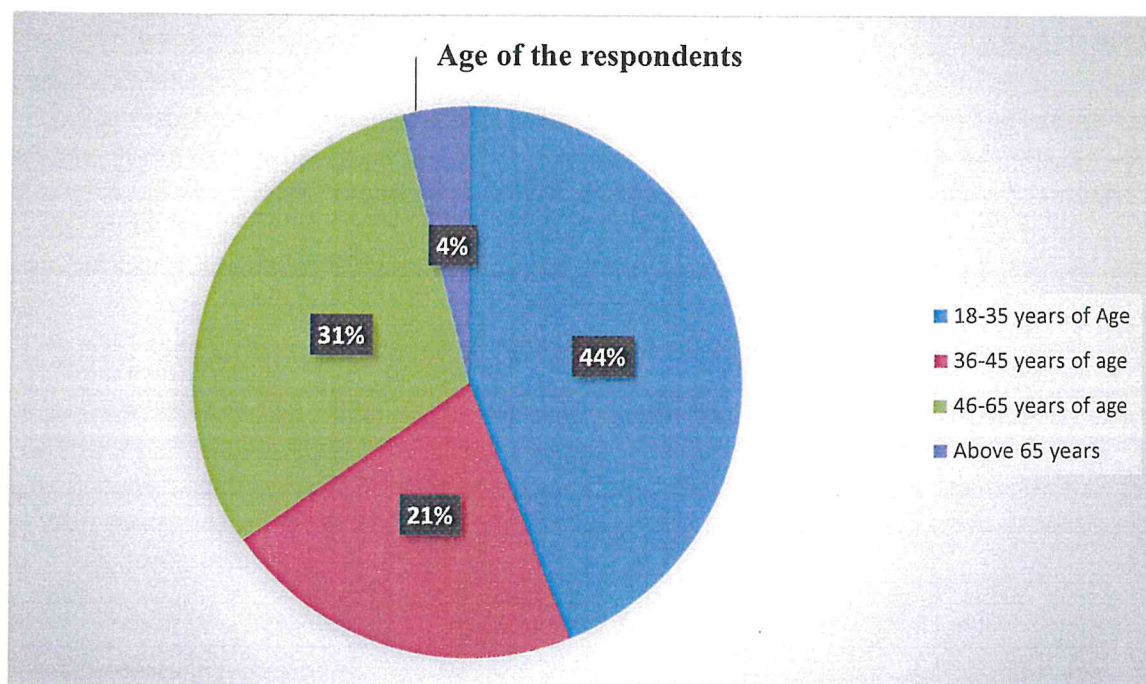
2.2.3 Age of the respondents

Young people, classified under the popular category of the youth, aged between 18-35 were the majority, at 44% . The youth category was the main focus of the study as it is the main category impacted by the socio-economic conditions prevailing on the continent, and which the AfCFTA seeks to address. The second age category was the 46-65 age bracket at 31% who were mostly government officials from the target population, whose perspectives and expertise, were also of keen interest to this study.

The age factor was significant to the study given the fact that this study mostly targeted the youth who are aged between 18-35 years. The youth category therefore formed the majority of the respondents for this particular study. The age category of 46-65 years were mostly senior employees and officials of various organizations and institutions including the Kenya Association of Manufacturers, Ministry of Trade and Industrialization, that were targeted by the study. They were targeted and approached for their knowledge and nuanced perspectives on the expected impact of the AfCFTA implementation process, gleaned from their professional and career expertise. They therefore gave their experienced opinion of the subject of the study, which was important for the data collection process.

The age variance, gleaned from the information on the respondents, is as highlighted in the below chart identified as Figure 2.3.

Figure 2.3: Age of the respondents



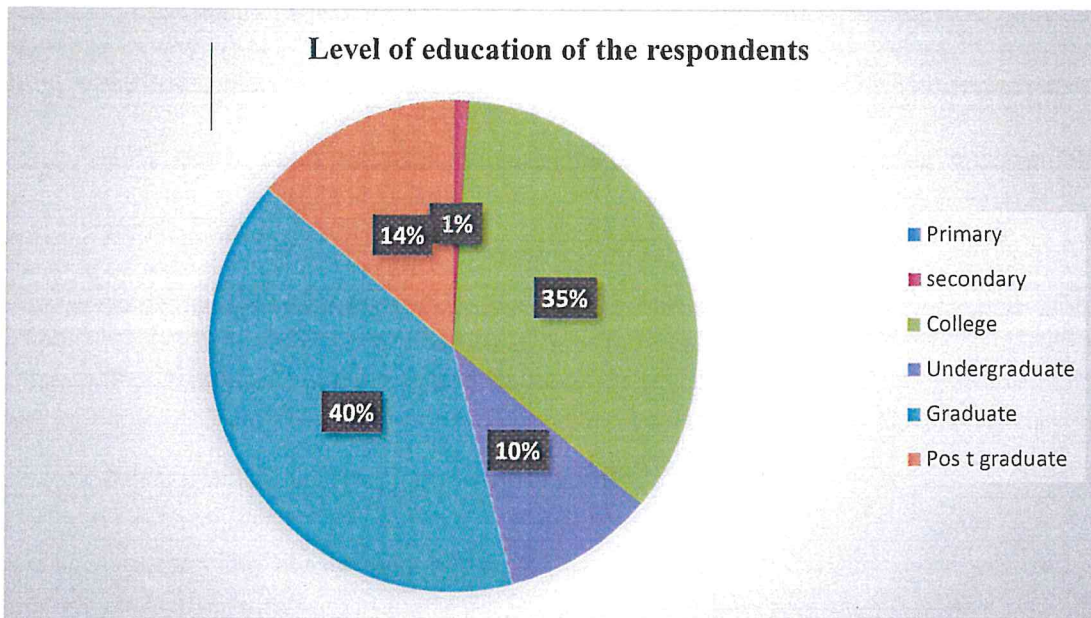
Source: Primary data. (2021)

2.2.4 Level of education

In terms of the level of education, the majority of the respondents were graduate and college-educated respondents. We can therefore glean from the data that the majority of the respondents were literate and fully aware of the intricacies of the Agreement's implementation on the continent and locally as well. In addition, as a result of their education level, the respondents were highly informed and aware of the research topic area.

The breakdown of the level of education of the respondents is as highlighted below in Figure 2.4.

Figure 2.4: Level of education



Source: Primary data. (2021)

2.3 The implementation of AfCFTA

The study set out to examine the implementation of the AfCFTA, particularly for Kenya. The African Continental Free Trade Agreement (AfCFTA) is a treaty passed unanimously by African Union (AU) member states to produce a unified common African market. Having a populace of 1.3 billion individuals, the collective GDP of the 55 members is valued at USD3.4 trillion, with the youth and women forming the population majority.

The CFTA negotiations began in July 2015, with the very first set of negotiations concluded in October 2017. The CFTA visualized the formation of a unified market with free flow of labour, services, capital, and goods as a way of bolstering social and economic development throughout Africa. Its adoption is intended to result in the removal of tariffs and non-tariff obstacles. This

Agreement consolidates 55 countries with a population of over one billion people and a combined GDP of more than USD 1.2 trillion.⁶⁸

The Agreement talks were initially categorized into two stages that dissected a broad spectrum of issues facing economic integration of the continent. These categorizations were further classified into phases. Phase I, for example addressed trade-in goods and services; reduction of duties and removal of non-tariff impediments; establishment of the aspect of rules of origin; border control collaboration measures; and removal of technological trade barriers. The second phase, on the other hand, deals with the issue of investment flows; competition law and policy; proprietary rights; and economic entity mobility.⁶⁹

The establishment of the African Continental Free Trade Area on 30 May 2019 with the coming into effect of the Agreement creating the AfCFTA provides valuable prospects for growing intra-African trade and fostering socially economically and environmentally sustainable development.⁷⁰ This Agreement is critical for realization of continental amalgamation as highlighted in the provisions of the Treaty Establishing the African Economic Community (Abuja Treaty) of both the Organization for African Unity and the AU's Agenda 2063. The primary purpose of the CFTA is to buttress the continent's economic might. Other issues the Agreement seeks to tackle include ironing out supply-and-demand bottlenecks, restricted production capability, and infrastructural hindrances. Many individuals perceive the CFTA as a groundbreaking free trade area establishment as it is seen as a base that will lead to the improvement of the economic prospects of the continent. It is also seen as being aligned with the objectives outlined

⁶⁸Kidane, A. T. (2021). The Possible Contribution of the African Continental Free Trade Area to the Economy of Eritrea. *International Journal of Research and Innovation in Social Science*, 82-90.

⁶⁹Luke, D., & Sommer, L. (2017). *The Continental Free Trade Area (CFTA) in Africa –A Human Rights Perspective*. Geneva : United Nation Economic Commission for Africa.

⁷⁰Masunda, S. (2020). *The Implications of the African Continental Free Trade Area on Intra-COMESA Trade*. Lilongwe, Malawi: COMESA

in Africa's Agenda 2063 goal and the achievement of the milestones listed in the Sustainable Development Goals. If implemented well, the positive impact of this Agreement on the continent's economic landscape will be massive.⁷¹

It is clear that there will be implementation obstacles when it comes to this Agreement. This is mainly because of the numerous issues that individually plague each African country, and the issues that plague the region as a whole. These encompass matters of political unrest, weak infrastructure support, and security threats which are clearly obstacles that will require overcoming. Another key issue that will require patience and an informed strategy is financial and monetary structures that vary from country to country and sub-region to sub-region. Tackling of this issue is key as it has implications for any finance-related capability including exchange rate determination, cost pricing, financial efficiency and financial borrowing requirements which in turn lead to huge economic gaps and imbalances among countries. Critical evaluation of this aspect particularly monetary and exchange rate policy is therefore needed to ensure implementation of AfCTA does not become a white elephant.⁷²

Another point that this Agreement addresses is the continents' underdog status within the global economic system. This status is exacerbated by biased international trade organizations such as the WTO and repressive multilateral and bilateral trade agreements, that are detrimental to the positive growth trajectory for the country. If implemented seamlessly and aggressively, the AfCFTA has the capacity to change this trade imbalance scenario. This can be undertaken through bolstering regional economic integration, practical poverty reduction measures and aligning the

⁷¹Sakyi, D., & Afesorgbo, K. (2019). The Effects of Trade Facilitation on Trade Performance in Africa. *Journal of African Trade*, 3-8.

⁷²Saygili, M., Peters, R., & Knebel, C. (2018). *African Continental Free Trade Area: Challenges and Opportunities of tariffs Reduction*. GENEVA : UNCTAD .

Agreement's policies with the domestic policies of its signatories.⁷³

It is of note that the final hurdle to operationalization of the Agreement was overcome in May 2019. The expedited pace at which the Agreement was passed signals the urgency to address trade disparities for the continent globally and to create consolidated economic development for the continent. The fast pace was also informed by the urgent need to lower intra-African trade barriers for purposes of realizing economic benefits through effective cross border trading. While existing research proposes that reducing trade obstacles will likely improve trading conditions, there are opposing opinions that illustrate that trade agreements can bring societal disturbance and economic volatility, mainly because elimination of trade barriers signals generation of less domestic revenue for member countries.⁷⁴

In order to overcome these highlighted hiccups, member states first and foremost require certainty particularly on the most pressing challenges to the implementation. Part of acquiring that certainty includes provision of evidence-based insights to member states to help them negotiate the challenges of implementation, such as recognizing and handling trade-offs, that also do not work towards negatively impacting their current revenue generating processes. Better-informed member states will play an important role in the effective implementation of the AfCFTA and the eventual realization of regional economic consolidation and achievement of the objectives in Agenda 2063, providing their views are given the importance they deserve.⁷⁵

Another important facet when it comes to the pact's implementation is technological innovation, whose use will be key to the roll out of improvement measures and capabilities particularly in the

⁷³Albert, T. (2019). The African Continental Free Trade Agreement: Opportunities and Challenges. *Geneva: CUTS International, Geneva*, 18-23.

⁷⁴Armel, D. K. (2020). Understanding the African Continental Free Trade Area: Beyond "Single Market" to "Africa's Rejuvenation" Analysis. *Education, Society and Human Studies*, 85- 100.

⁷⁵CAZARES, J. (2020, APRIL 9). *The Africa Continental Free Trade Area: Benefits, Costs and Implications*. Retrieved from INFORMINEO:< <https://infomineo.com/africa-continental-free-trade-area/>>.

manufacturing sectors, general infrastructure capabilities, transport logistics and digital connectivity. Technology innovation is a goldmine that is yet to be fully utilized by most African countries and the region as a whole. It has the capacity to transform all sectors of the regional economy and hasten the realization of the development goals envisioned under the Agreement. Furthermore, technology has the capacity to provide efficiencies across the board, which can result in tailor made innovative commodities and manufacturing processes, that can be relied on and capitalized in the continent's quest for economic development.⁷⁶

The recent worldwide COVID-19 pandemic has also laid bare the economic vulnerabilities of the continent and highlighted the urgent need to address the continent's economic disparities. Border closures, travel bans and lack of access to vaccines and treatment options during the pandemic resulted in the economic isolation of many African countries. Despite the negative impact of the pandemic on the continent, it also forced the rethinking of labour modalities and migration of business operations to digital channels.

The increased consumption of technology and shift to e-commerce for many businesses, particularly in Kenya, highlighted the importance of the need for adaptability to keep up with changing economic circumstances. The pandemic in this regard, has therefore been an eye opener to the African continent in terms of the need to innovate and come up with novel ways to realize better economic development and regional integration. Creation of a single common market and improving productivity and unrestricted movement of people will definitely require adoption of technological innovation. In addition considering the youth category is the main population set on the continent, it is critical for technological innovation to be a key part of the successful rollout of

⁷⁶Centre, I. T. (2018). *A business guide to the African Continental Free Trade Area Agreement*. Geneva: International Trade Centre.

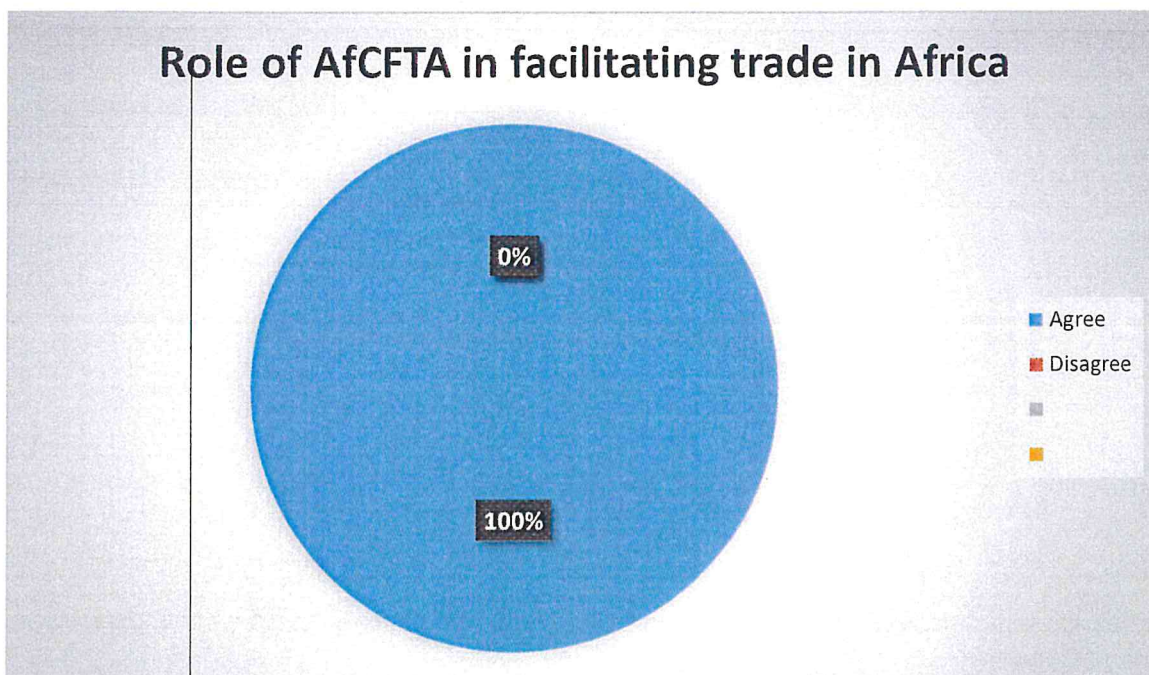
AfCFTA. Africa has the world's youngest demographic, representing around 20% of the world's young people, and is projected to continue to grow in the near future.⁷⁷ Due importance should therefore be afforded to this age category as it is the future of the continent and therefore critical to its growth.

2.3.1 Role of AfCFTA in facilitating trade in Africa

When it came to the data collection exercise, the general consensus from the respondents was that the core role of AfCFTA is to bolster the continent's trading capacity globally and also enhance intra-African trade.

The unanimous consensus on the aspect of facilitation of the Agreement and its expected positive impact on intra-African trade development is as highlighted in the figure below.

Figure 2.5 Role of AfCFTA in facilitating trade in Africa



Source: Primary data. (2021)

⁷⁷Cofelice, A. (2018), African Continental Free Trade Area: Opportunities and Challenges, The Federalist Debate, pg 32-45.

In 2017, intra-African trade amounted to just 17% of overall African trade, whereas intra-regional trade in Europe and Asia topped 50%. This is a shockingly significant variance. It is expected that the implementation of the Agreement will assist in ameliorating intra-African trade by 52% by the year 2022. This intra-trade enhancement will involve providing new and increasing existing trade opportunities and capacities for the region. This is particularly important for the region's 15 landlocked states, which account for 17% of the continent's people but contribute an anaemic 7% contribution to the regional GDP, as a result of trade constraints. Overcoming these constraints or mitigating their general impact will definitely have a positive impact on the trade capabilities of the region and its individual members.⁷⁸

The continent's growth projections have looked promising over the years, as a result of its vast resources and trading potential. For instance, trade growth on the continent was anticipated to grow to an estimate of 3.6% in the period 2019-2020, if expected conditions had been met. The region is also home to budding and growing markets, which provide the perfect canvas for economic growth if the required capacities are in place.

However the dismal practical trade performance clearly shows that a lot needs to be done to put in place the needed capacities for the continent to realize continued and improved economic development. An aspect that should be addressed here to tackle this issue is the over-reliance on commodity and agricultural exports. This is particularly true for Kenya which heavily relies on exports of tea, coffee and flowers. Reliance on proved methods of revenue generation such as agricultural exports should be supplemented with other diversified commodities and services in order to avoid the trade pitfalls when markets are down or the markets are flooded with similar goods. There is therefore a need to undertake export diversification and improvement of

⁷⁸ Ibid.

manufacturing capacities.⁷⁹ Another issue that needs addressing is the over-dependence on foreign imported capital goods and food products. There is also the need to work towards enforcing trade enhancement tools that are tailored uniquely to the region, to allow for this diversification.⁸⁰ The continent currently constitutes less than 3% of global commerce, which is disappointing.

The AfCFTA also provides an arena to encourage better trade representation globally and regionally. This can be achieved through application of the concept of "Trade Integrity" which serves to ensure the continent has better leverage to advocate for its trade interests on global platforms. This concept is defined as "legitimate, credible, and accurately priced international trade transactions to ensure the validity of the global trading system." With a 1.26 billion population estimate and a \$2.14 trillion GDP of \$2.14 trillion, the continent has the ability to influence global trading frameworks. The intended creation of a single market for intra-regional goods and services, is a testament to the goldmine that the continent is sitting on; and the immense negotiating power a unified regional bloc will wield on the global trade front.

Another facet of the implementation is the trade liberalization structures. How trade liberalization is enabled will have significant ramifications on the successful rollout of the Agreement phases. Trade facilitation should target amelioration of trade and customs procedures; and the connectivity between enterprises and regulatory agencies at the border in order to create harmonized procedures and reduce trade costs. Through the harmonization and modernization of trade and customs processes, trade facilitation could aid in the elimination of non-tariff barriers to trade (NTBs). This harmonization also has the capacity to reduce trade and customs hindrances by eliminating bureaucratic bottlenecks, streamlining compliance documentation and creating awareness and

⁷⁹Fofack, H. (2020). *Making the AfCFTA work for 'The Africa We Want*. Accra : Africa Growth Initiative .

⁸⁰Geda, A., & Yimer, A. (2019). The Trade Effects of the African Continental Free Trade Area (AfCFTA): An Empirical Analysis. *International Economics* , 55-77.

education on the applicable trading and custom procedures.⁸¹

The eradication of tariff and non-tariff barriers (NTBs) and the creation of a regional structure for the movement of goods and services, are predicted to be the likely direct benefits of the AfCFTA. The Agreement also affords an opportunity to create unified legislation for critical policy segments including capital creation, competition policies, proprietary rights, and e-commerce platforms. There is also the fact that most of these policy segments are still at the nascent stage and the region has the opportunity to establish and harmonize enabling legislation to guide the implementation.⁸² According to the research done by Mold. A in 2020, "trade and investment policies, for instance, establish the extent of economic cooperation; create competition regulations that impact economic productivity; and create intellectual rights protection systems that spur innovation." The Preamble to the Agreement also acknowledges the significance of taking into consideration global security, civil dignity, democratization, equality of the sexes, and democracy in the growth of global trade and economic cooperation, highlighting that these non-trade policy goals might be tackled during the Agreement's initial implementation stage.⁸³

The expectation with the Agreement is that it will bolster general intra-African trade by 81% and overall commodity shipments by 29% by the year 2035.⁸⁴ It is also expected to prop up the continent's structural change by increasing intra-African trade and building regional value chains and industrial network systems. There is also the expectation that it will serve to improve wages by about 10%, with the benefit going mostly to low-skilled labour and women.⁸⁵ In addition, the

⁸¹Group, W. B. (2020). *Continental Free Trade Area*. H Street NW, Washington: International Bank for Reconstruction and Development-The World Bank.

⁸²Mold, A. (2020, October 20). *The countdown to implementing the African continental free trade area in East Africa*. Brookings. <<https://www.brookings.edu/blog/africa-in-focus/2020/10/20/the-countdown-to-implementing-the-african-continental-free-trade-area-in-east-africa/>>

⁸³Supra n81.

⁸⁴ Ibid.

⁸⁵ Ibid.

intent is to also significantly reduce the region's gender inequality by expanding women's job access and reducing biased remuneration obstacles, which currently exist. The Agreement is also being seen as the savior to rescue the continent from the adverse impact of the pandemic on the regional economy.⁸⁶

It is important to note that the implementation process will require massive financial resources. The implementation will be capital intensive and will require long term financial support and backing from member states, financial institutions and development partners. There have been steps made by the AU in this regard. For instance, The African Export-Import Bank (Afreximbank) has already partnered with the African Union (AU) and the Secretariat to ensure the agreement's implementation. Afrximbank, which had already spent up to \$20 billion for intra-African trade over the previous four years, has voiced its intention to expand that amount in the coming years to solve Africa's annual trade financing deficit, which the International Chamber of Commerce placed at around \$110 billion to \$120 billion.⁸⁷

Apart from the above, there is also the issue of non-tariff trade barriers and how to tackle the issue. NTBs in the Agreement are provided for in an appendix to the Agreement, which has guidelines for the private sector to identify specific trade hindrances, as well as a reporting, monitoring, and eradication mechanism. The AU, in conjunction with the United Nations Conference on Trade and Development (UNCTAD), has created an online portal for businesses to report and address non-tariff obstacles to intra-African trade. This is expected to streamline the identification of these barriers with a view to comprehensively addressing them. The Agreement also has the capability

⁸⁶Diop, A. (n.d.). *SheTrades policy brief standards in AfCFTA*. Connect and Trade with Women Owned Businesses | SheTrades. <https://www.shetrades.com/application/files/afCFTA_pub/shetrades-policy-brief-standards-in-afcfta-english.pdf>

⁸⁷Kidane, A. T. (2021). The Possible Contribution of the African Continental Free Trade Area to the Economy of Eritrea. *International Journal of Research and Innovation in Social Science*, 82-90.

to reduce trade costs associated with NTBs by creating harmonized sets of regulations for participating states in areas such as technical restrictions on trade (TBT) and sanitary and phytosanitary standards.⁸⁸

Addressing expected revenue loss for members when it comes to reduction or removal of trade barriers is another aspect of addressing the NTBs issue. The initial revenue losses associated with trade tariff reductions are expected to be about \$4.1 billion.⁸⁹ Revenue loss is a key issue for signatories and the AU has collaborated with its development partners to cushion member countries against this loss. Afreximbank, for instance is working with the AU to come up with a \$5 billion AfCFTA Adjustment Facility which is a compensation mechanism to assist member countries better adapt to the agreement's fiscal impact. The Facility will also work towards mitigating against short-term financial deficits and assist medium-to-long-term reforms in the industrial activities of member countries, affording them the opportunity to fully benefit from the possibilities of the AfCFTA.⁹⁰

2.4 Impact of AfCFTA

The Agreement is expected to have a great effect in Africa, and particularly in Kenya, which is the focus of this research. The study therefore worked towards in-depth examination of the expected ramifications of this Agreement on the continent on Kenya.

⁸⁸Luke, D., & Sommer, L. (2017). *The Continental Free Trade Area (CFTA) in Africa –A Human Rights Perspective*. Geneva : United Nation Economic Commission for Africa.

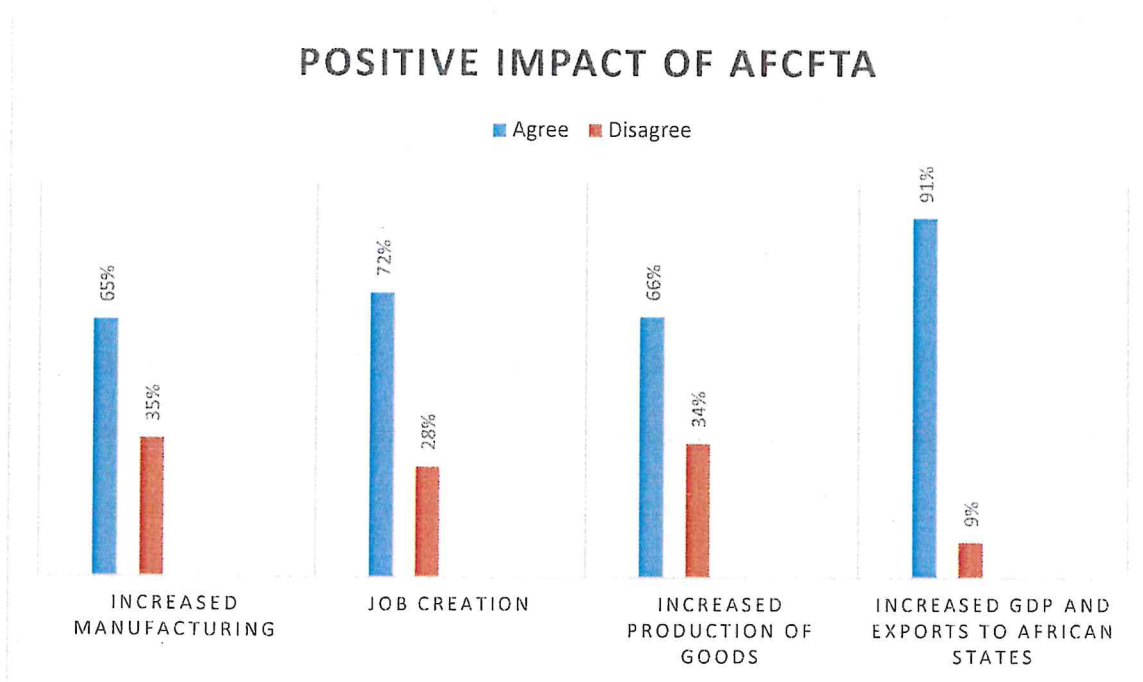
⁸⁹ Ibid.

⁹⁰ Ibid.

2.4.1 Positive impact

The study examined the positive impact of AfCFTA and the responses gleaned from the data collection process, touching on job creation, increased manufacturing, increased commodity production and improved GDP figures are as indicated in figure 2.6. below.

Figure 2.6 Positive impact of AfCFTA



Source: Primary data. (2021)

2.4.1.1 Increased production of goods and services

The Agreement, if implemented effectively, will improve the production of commodities and services, according to 66% of the respondents. By the year 2022, the Agreement is predicted to increase intra-continental trade by 52.3%.⁹¹ Small and medium enterprises (SMEs) will also occupy a vantage point that will enable them to increase their commercial capacity and reach a

⁹¹ Ibid.

bigger regional customer base. Foreign Direct Investment (FDI) and partnerships with prospective international investors wishing to create a trade footprint on the continent will also work to the benefit of the improvement of the trading environment for SMEs. Improving of business conditions for SMEs is an important subject for African countries. An example we can look at is the Nigerian government which has imposed various restrictions on imported manufactured products to attract foreign direct investment in the local manufacturing sector in order to boost manufacturing capacities of its local SMEs and improve profitability and revenue generation. The Nigerian policy should therefore be a benchmark for the Agreement's implementation in order to boost trade revenue for SMEs and aid in the transfer of skills, expertise and technological innovation to the continent.⁹²

The Agreement will also enhance export diversification in respect of categories of commodities. Africa is a continent blessed with resource abundance, the only negative aspect being lacking the capability to transform and benefit from them. The absence of appropriate instruments to transform these natural resources into valuable industrial commodities impedes export diversification and development. Most African countries have a market advantage, notably in the mining and agro-industries, however lack of strategic transformation measures impacts their exploitation. For instance, limited capacity in the manufacturing sector hinders many African countries from gaining a comparative advantage in the regional and global economies as well.⁹³ An example is Ethiopia, a nation whose main agricultural commodities comprise cows, sheep, and cattle, and only exports 7% of live animals, 3% of raw leather goods, and 3% of meat products because of lack of the required processing capacities. By addressing this critical issue of lack of

⁹²Geda, A., & Yimer, A. (2019). The Trade Effects of the African Continental Free Trade Area (AfCFTA): An Empirical Analysis. *International Economics*, pg 55-77.

⁹³Masunda, S. (2020), *The Implications of the African Continental Free Trade Area on Intra-COMESA Trade*, Lilongwe, Malawi: COMESA.

transformational measures and enabling infrastructure and market proximity, the AfCFTA will make it simpler to diversify exports. More effort is therefore needed on the part of member countries and the AU organs as well to provide these needed tools, particularly through collaborations and initiatives with other trading partners, such as China. Chinese investors, for instance, have contributed to infrastructure development through construction of a railway that will link Nairobi and Mombasa in Kenya, with ambitions to expand it to Kampala, Uganda, and Kigali, Rwanda⁹⁴ which is a clear boon for expanding logistical capabilities for the region.

2.4.1.2 Jobs for Kenyans

The majority of the respondents, at 72%, believe that Agreement's implementation will result in employment development in Kenya and across the region. According to the findings of the Ministry of Industrialization, Trade, and Enterprise Development, as per its analysis of the Agreement in its National Implementation Strategy, Kenya stands to benefit significantly from AfCFTA implementation. The National Implementation Strategy, a collaboration with the United Nations Economic Commission for Africa (ECA), is actually a framework established by the Industrialization Ministry to capitalize on the agreement's opportunities.⁹⁵ The analysis touches on the expected growth in job availability.

The AfCFTA, in tandem with Agenda 2063, also seeks to correct Africa's untimely economic decline and capitalize on the potential of manufacturing prospects that exists, including in software and technology development; auto component development; industrial machinery development;

⁹⁴ Ibid.

⁹⁵ Melo, J. D. (2019, MARCH 4). *The Africa Continental Free Trade Area: An opportunity to deepen cooperation on regional public goods*. Retrieved from BROOKINGS <<https://www.brookings.edu/blog/future-development/2019/03/04/the-africa-continental-free-trade-area-an-opportunity-to-deepen-cooperation-on-regional-public-goods/>>

improvement in chemicals and agro-processing; and clothing and footwear production segments. The Agreement will also work towards creating collaboration platforms with members who already have a competitive edge in these key subsectors. Kenya, for example, has emerged as the primary assembler and distributor of automobiles to East African markets, with its relatively strong industrial manufacturing segment. This segment is responsible for around 20% of the nation's economic activity and 12.5% of all formal employment for the country, which is no mean feat.⁹⁶ Because of Kenya's high-quality human resource skills, the Africa Continental Free Trade Agreement (AfCFTA) is expected to produce 2 million job possibilities for East Africans, with Kenyans expected to take up majority of these positions. To supplement the job creation efforts, the Agreement is expected to ease the movement of goods and people throughout Africa, enabling Kenyans to easily access better employment opportunities in other African countries where foreign labour is now barred, or is frustrated by restrictive visa and work permit requirements.⁹⁷

2.4.1.3 Increased manufacturing

When it came to the aspect of manufacturing, 65% of the respondents were of the opinion that increased manufacturing will be realized from the increased trade that will result from the AfCFTA's operationalization. Kenya, for example, might gain from the AfCFTA by greatly increasing its export potential to other COMESA members. These expected gains are estimated to be around 26% at the intra-COMESA stage, and by 54% with the rest of the continent.⁹⁸

Regionally tea and other developed agricultural products and segments are currently projected as the subsectors with the highest export potential for Africa, at the early stages of the regional

⁹⁶Mishra A. (2018). The African continental free trade area and its implications for India-Africa trade. *Occasional Paper*, 10- 33

⁹⁷ Ibid.

⁹⁸Sakyi, D., & Afesorgbo, K. (2019). The Effects of Trade Facilitation on Trade Performance in Africa. *Journal of African Trade*, 3-8.

economic integration process. This is according to research undertaken by the International Trade Centre (ITC) in 2018- 2019 and published in the Report “ A Business Guide to the African Continental Free Trade Area Agreement”. When it comes to Kenya for instance, the ITC research states that exports of black tea and an herbal derivative identified as mate in packets of more than 3kg at \$123.2 million are expected to expand by \$19.4 million.⁹⁹ The growth projections of processed and preserved food is estimated at \$249.1 million and ferrous metals at \$228.8 million. These have been identified as the segments with the biggest export potential for Kenya, in the coming years. The ITC research also emphasizes that a large portion of the export potential to other African countries remains untapped in the above named market and product segments.¹⁰⁰ The Report also highlights other products with export potential as being chewing gum at \$35.5 million; sugar confectionery not containing cocoa at \$18.1 million; and food preparations not otherwise specified at \$17 million in the processed and preserved food subsector. Additional identified products, particularly in the ferrous metals market segment, include flat or flat-rolled goods and as iron or non-alloy steel bars and rods.¹⁰¹

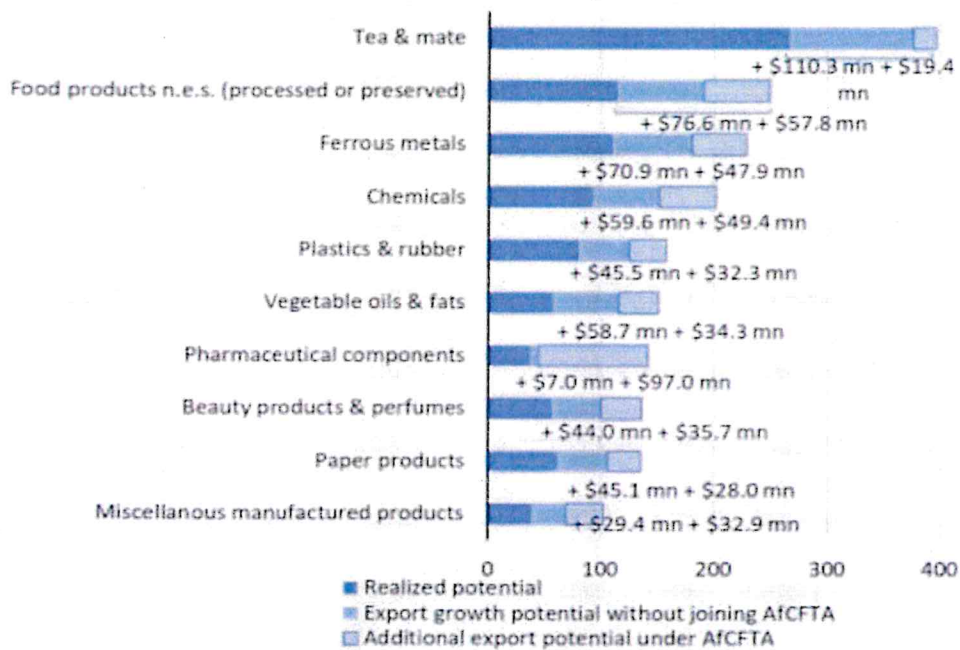
These export potential findings are highlighted in more detail as per the figure below.

⁹⁹ Ibid.

¹⁰⁰ Abrego, L., Zamaróczy, M. D., Gursoy, T., Issoufou, S., Issoufou, G. P., Perez-Saiz, H., & Rosas, J. N. (2020, May 14). (PDF) *The African continental free trade area: Potential economic impact and challenges*. ResearchGate. <https://www.researchgate.net/publication/341385341_The_African_Continental_Free_Trade_Area_Potential_Economic_Impact_and_Challenges>

¹⁰¹ Armel, K. (2020, July 12). (PDF) *Understanding the African continental free trade area: Beyond “Single market” to “Africa’s rejuvenation” analysis*. ResearchGate. <https://www.researchgate.net/publication/342882227_Understanding_the_African_Continental_Free_Trade_Area_Beyond_Single_Market_to_Africa%27s_Rejuvenation_Analysis>

Figure 2.7: Export potential for Africa



Source: World Trade Organization and International Trade Centre data.

2.4.1.4 Increased GDP and exports to African countries

When asked about the aspect of GDP, 66% of the respondents had positive expectations that AfCFTA will lead to improved GDP and increased intra Africa exports for Kenya. This clearly demonstrates the general hope among Kenyan people that the Agreements portends great development for the country and will usher in a new era of prosperity and sustainable development for the region as well.

Whereas the AfCFTA will increase intra-regional trade, it is however unlikely to have a significant influence on the overall trade balance since increased intra-regional exports suggest increased intra-regional imports. Development of of one area will therefore not be possible without the support of other sectors or areas. Comprehensive development efforts that touch on all sectors, enhancing efficiency and competition, is therefore needed for the Agreement to realize any

sustainable gains for the continent as a whole and for its member states individually.

Another key factor that will keep recurring is loss of revenue for members, that will result from mitigation or removal of trade barriers. Signatories stand to suffer revenue loss from tariff lowering or eradication and fewer taxes paid by consumers and producers across the continent. Sustainable avenues to claw back the revenue loss and cushioning members from it is an important agenda item for the AU and its secondary bodies when it comes to implementation of the Agreement.¹⁰²

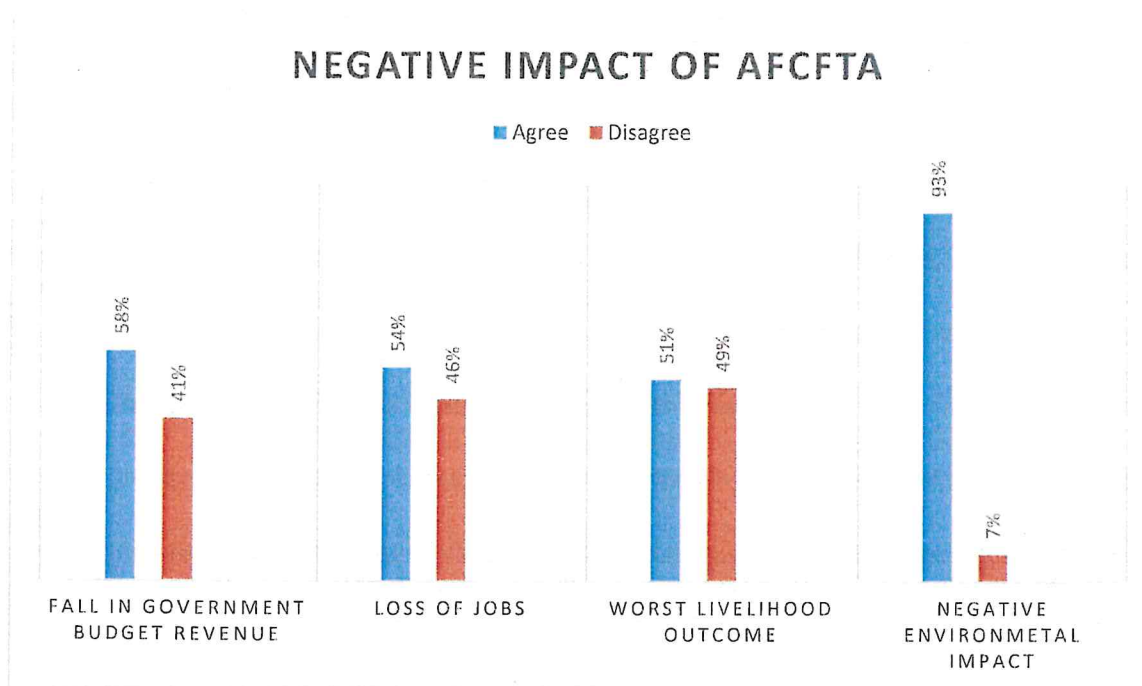
In terms of GDP, the analysis provided by the data collection analysis and the World Trade Organization research indicate that implementing the AfCFTA is expected to result in a 0.07% drop in GDP in the COMESA region, as seen in the graph on negative impact provided in Figure 2.8 below. This minor decline can be attributable to a higher increase in imports compared to the increase in exports in the region. Kenya is a key member of this REC, and this expected loss should be factored in when it comes to its local AfCFTA implementation plan. This discovery corresponds to the findings of the study. However, this finding has the capacity to change considering the dynamic nature of trading conditions and the expected impact of unforeseeable events in the future.

2.4.2 Negative impact

The respondents also stated that AfCFTA despite being positive can also have its adverse side. These negative impact issues include revenue loss, job loss, lowered livelihood rates and adverse environmental impact. This is highlighted in detail as shown below.

¹⁰²International Trade Centre (2018-2019), *A Business Guide to the African Continental Free Trade Area Agreement*, Geneva: International Trade Centre.

Figure 2.8 Negative impact of AfCFTA



Source: Primary data. (2021)

2.4.2.1 Fall in government budget revenue

The majority of the respondents at 58% stated that AfCFTA will have an instantaneous impact on the revenue collection of the government, an issue that has been covered in depth in the preceding section of this research project. The Agreement's lowering in trade barriers is expected to have a varied impact on tax collection, which is the core revenue generating mechanism for all countries. An example of this expected impact we can look at is the removal of tariffs on intra-continental imports which will result in a direct hit on tax revenue generation. Secondly, trade divergence as a result of lower tariffs will result and force as countries to fill the revenue shortfall by creating new avenues for revenue creation. Thirdly, increasing GDP will result in more income as a result of increased efficiency and the diversification realized from closing the revenue gap resulting from lowering of trade barriers. Fourth, greater consumption will in turn boost revenue due to increased

imports and income. All the above canvassed reactions to removal or lowering trade barriers explore the options available to the AfCFTA signatories, and expected reactions, to plug revenue shortfall. To summarize, the AfCFTA's net impact on tax collections will be determined by the reactions of the members and the revenue strategies they implement on the ground.¹⁰³ It is clear however that for there to be an all-around positive development to lowering of trade barriers, the input and guidance of the AU and its appointed AfCFTA bodies is needed.

The majority of research on trade barriers and impact of their lowering use CGE models to calculate AfCFTA-induced tax revenue depletion. Tax revenue losses from tariff cutbacks are often the focus of these research approximations. For the region, these losses are expected to vary from 0.03% to 0.22% of GDP which is about \$1 billion to \$7 billion.¹⁰⁴ These low forecasts reflect Africa's already anaemic intraregional tariffs and low intraregional trade capacities. Limited trade diversion is also shown in these research results that have been cited.¹⁰⁵

Revenue increases usually correspond with welfare gains, and these in turn vary widely across the region, depending on a signatory's economic might. Some member countries, might be severely impacted by the revenue shortfall compared to other signatories. This adverse impact runs the risk of being compounded by the fact that income gains may take years to manifest. This might in turn roll back any significant economic development these countries might have gained before the implementation. Utmost care is therefore needed to ensure sufficient compensation mechanisms are set up to cushion the domestic markets of economically fragile AfCFTA members that depend

¹⁰³Diop, A. (n.d.). *SheTrades policy brief standards in AfCFTA*. Connect and Trade with Women Owned Businesses | SheTrades. <https://www.shetrades.com/application/files/afCFTA_pub/shetrades-policy-brief-standards-in-afcfta-english.pdf>

¹⁰⁴ Ibid.

¹⁰⁵Felbermayr, G., Teti, F., & Yalcin, E. (2019, November). *Rules of origin and the profitability of trade deflection*. ScienceDirect.com | Science, health and medical journals, full text articles and books. <<https://www.sciencedirect.com/science/article/abs/pii/S0022199619300662>>

majorly on tariffs for government revenue generation. revenue increases may not be sufficient to compensate for tariff removal losses in the near term. Sufficient revenue mobilization measures need to be employed in the AfCFTA implementation framework.¹⁰⁶

2.4.2.2 Loss of jobs

54% of the respondents were fearful that AfCFTA might lead to job losses in Kenya. They noted that Kenya is already experiencing high unemployment levels, further exacerbated by the impact of the pandemic. A factor that compounds these high unemployment levels in the country is lack of economic development opportunities which impedes the growth of Africa's human capital. These frustrating circumstances are what lead to brain drain and is a major driving force for African migration. The most affected age category is the young educated African populace, which is crucial for Africa's development. The lack of opportunities is a strong agenda item whose resolution should be given utmost importance and attention. This is because the continent has seen first hand the desperation that has made young people join terrorist organizations such as Boko Haram and Al-Shabaab in their quest to find purpose and channel their frustrations. Noting the importance of the youth to realization of the AfCFTA goals, provision of developmental and employment opportunities, should be the basis of any trade reform efforts.

These trade reform efforts should also work towards bettering poor working conditions as well. The exploitation of poor workers and poor compensation systems need to be prioritized as part of the implementation process of the Agreement. Proper labour regulation mechanisms are needed in

¹⁰⁶Keyser, J. (2012, July), World Bank: *Africa trade policy notes*. https://documents1.worldbank.org/curated/ar/357541468192844868/pdf/728540BR10Box30onal0Standards0FINA_L.pdf

order to improve livelihoods.¹⁰⁷ Concerns relating to labour rights is exactly what prompted Nigeria's delayed ratification of the Agreement and the Nigerian Labour Congress' continued refusal to embrace the trade deal.

2.4.2.3 Worst livelihood outcomes

A slight majority of respondents at 51%, believe that the Agreement's implementation will result in poorer livelihood outcomes owing to unequal resource allocation among the member countries. Trepidation about significant tariff revenue losses and uneven cost-benefit allocation will clearly be hurdles to the creation of the unified regional market, as discussed in the preceding chapters of this research. Replacement of NTBs with non-tariff measures (NTMs) that are not aligned across the continent or are too expensive to implement may also significantly inhibit effective and robust market activity, thus decreasing member countries' ability to benefit economically and socially from trade activities.¹⁰⁸

Further to the above nascent domestic economies and the lower developed signatories may also face major fiscal revenue losses and pronounced risks to local industry as a consequence of the AfCFTA implementation. Countries with more developed manufacturing capabilities, on the other hand, might experience the opposite and realize growth and welfare enhancement. An unbalanced apportionment of benefits and disadvantages across member states runs the risk of derailing the implementation process of the Agreement, as countries with the highest risk of adverse economic impact may decide to pull out of the implementation process. The AU and the bodies specially

¹⁰⁷Mold, A. (2020, October 20). *The countdown to implementing the African continental free trade area in East Africa*. Brookings, <<https://www.brookings.edu/blog/africa-in-focus/2020/10/20/the-countdown-to-implementing-the-african-continental-free-trade-area-in-east-africa/>>

¹⁰⁸Mutunga, J. M. (2017). (PDF) *Economic integration: The impact of conflict on economic development of Africa*. ResearchGate<https://www.researchgate.net/publication/324602024_Economic_Integration_The_Impact_of_Conflict_on_Economic_Development_of_Africa>

created for the AfCFTA implementation process should therefore be hyper aware of these risk factors and serve to mitigate or put in sound strategies to address these expected economic imbalances that might result from the operationalization process.¹⁰⁹

2.4.2.4 Negative environment impact due to increased industrialization

A significant majority of the respondents at 93% strongly agreed that AfCFTA will have negative environmental consequences as a result of expanded industrialization capacities, that will be needed for development. Protection of the environment and climate change mitigation are priority items currently at the forefront of global and regional issues. Unlike the WTO Agreement, the AfCFTA Agreement has no in-built sustainable development strategies or mutual support mechanisms for environmental safeguards. This key issue is only afforded a mere mention in the AfCFTA preamble which states that member countries are tasked with the responsibility of overseeing accomplishment of justifiable policy goals in areas of public health, safety and the environment.

The Preamble further states that signatories have the duty to uphold standing rights and privileges provided under earlier accords and the AU's foundational preamble as well.¹¹⁰ The contents of the Preamble clearly illustrate that sustainable and environmentally-sound strategies are to be tackled at the domestic level, rather than it being a concerted AfCFTA effort. The decision making process as regards climate change and environmental protection has therefore been deemed an individual state responsibility, under the AfCFTA. The onus is therefore on signatories to abide by environmental protection accords they have ratified.

¹⁰⁹ Ibid.

¹¹⁰ World Bank Report 2020, *Africa trade policy notes*.
<<https://documents1.worldbank.org/curated/ar/357541468192844868/pdf/728540BRI0Box30onal0Standards0FINA L.pdf>>

According to a recent climate report published by the Guardian, the continent will experience severe rainfall incidents over the next eight decades (The Guardian 2019). These heavy rains will in turn result in severe floods and storms, adversely impacting agricultural production and food security. In addition, these occurrences are predicted to be linked to severe droughts during the planting season, thus affecting agricultural productivity and threatening food sustainability methods. The Report also stated that carbon dioxide emissions have continued to rise to dangerous levels, threatening the capacity of the world to sustain itself. The levels of emissions have also reached 415 parts per million, and scientists caution that these levels will continue to rise.¹¹¹

From the above, it is clear importance to deployment of sustainable ways to achieve regional economic development should be adhered to in the AfCFTA implementation process. Environmental protection is a critical issue that should inform all developmental strategies in order to ensure adverse effects of industrialization are mitigated against.

2.5 Conclusion

The trade pact is an important initiative with the ability to reshape the continent. The AfCFTA aims to promote economic integration on the African continent by building on the success of existing RECs. Various models in the research literature demonstrate that the Agreement might result in improved revenue generation and welfare advancement, the chunk of which is expected to result from NTBs reductions. Increasing the extent of improvements by lowering NTBs beyond the levels commonly expected can result in a significant shift in the trading sphere. Furthermore, the economic restructuring that the Agreement heralds could bring about the possibility of deeper and enhanced integration in global value chain frameworks. This will turn affect the payment

¹¹¹Luke, D., & Sommer, L. (2017). *The Continental Free Trade Area (CFTA) in Africa –A Human Rights Perspective*. Geneva : United Nation Economic Commission for Africa.

systems and livelihoods of African human capital in a positive manner.

In conclusion, it is noteworthy that African countries participate in significantly more economic integration than the AfCFTA, particularly through RECs and bilateral and multilateral trade agreements with other trade partners. This scenario is mainly informed by the fact that FTAs are the most basic kind of multilateral trade agreement, that portend realization of economic policy goals. It will take quite a bit of incentivization and lobbying to convince member countries to lend more prioritization to the AfCFTA. For example, the majority of SADC and EAC members were already functioning at this economic amalgamation level before the signing of the AfCFTA.

The uncertainty and the risk for these countries to shift gears to accommodate the AfCFTA's implementation and integrate existing value chains realized from the existing RECs to the AfCFTA is significant. This is because they run the risk of suffering initial economic loss resulting from undertaking a large scale integration process to operationalize the AfCFTA and link it to their RECs. Although the resulting enriched degrees of integration, such as shared markets and economic unions, will later result in realization of economic advantages, the expected short term losses of revenue are still discouraging. A lot more therefore needs to be done to ensure seamless integration is realized in the quickest time possible to ensure revenue generation gaps are plugged and member countries continue to enjoy the benefits they currently derive from existing RECs, while awaiting the expected economic windfall from consolidation with AfCFTA implementation systems and creation of a single market.

CHAPTER THREE

THE OVERARCHING CHALLENGES FACING AfCFTA IMPLEMENTATION IN KENYA

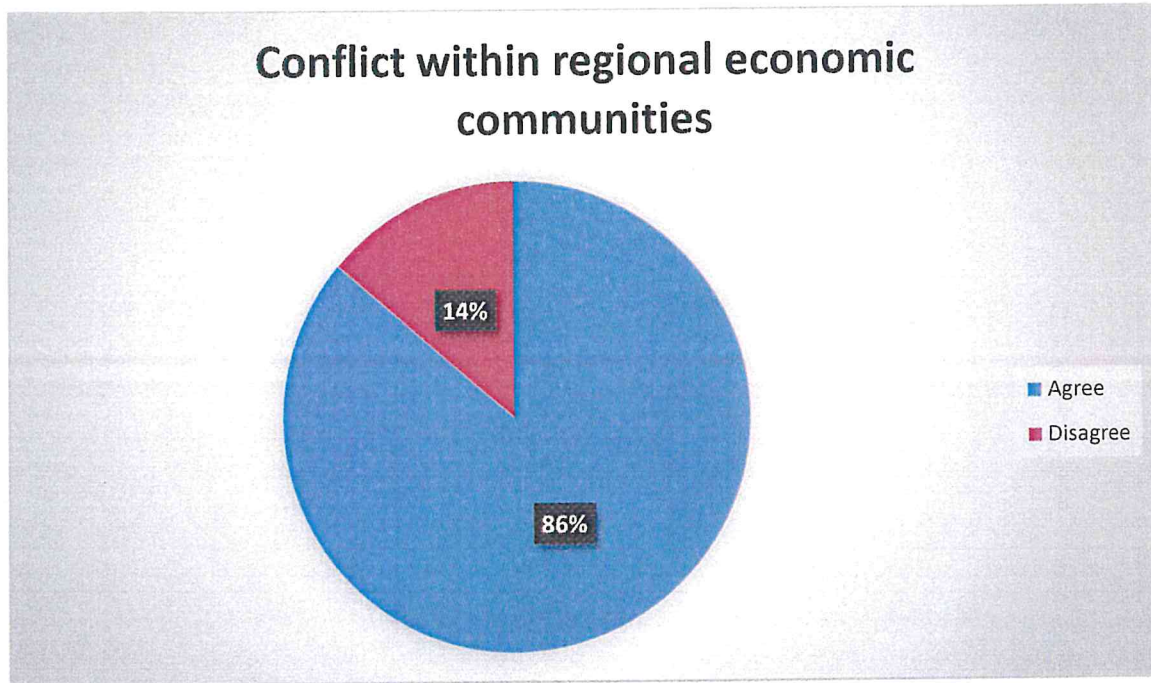
3.1 Introduction

This Chapter seeks to undertake an in-depth analysis of the possible challenges facing the implementation of the Agreement in Kenya specifically. According to the variables outlined in the conceptual framework of the study, the challenges that this study will focus on are; conflict with regional economic communities (RECs) of which Kenya is a part of including COMESA and EAC; Kenya's commitment to the existing trade agreements it has; harmonization of standards and certification in trade goods and services; and border bureaucracy with neighbouring states. There is also the impact of the rules of origin (RoO) on the implementation of objectives of Agreement, which will also be analyzed. The identification of these challenges in this chapter will seek to answer the first objective set forth for this study.

3.2 Conflict within existing Regional Economic Communities (RECs)

The study sought to identify the overarching challenges presented by the conflicts that already exist within the many different regional economic communities that Kenya is a member of, and the Agreement's implementation needs. The findings from this are presented in figure 3.1 below.

Figure 3.1 Conflict within the regional economic communities



Source: Primary data. (2021)

Figure 3.1 above indicates that the data revealed that 86% of the respondents believe that conflict within the regional economic communities that Kenya is a member of present a serious challenge in the implementation of the AfCFTA objectives in Kenya. Only 14% of the respondents believe that conflicts will not affect the implementation of AfCFTA objectives. These data findings clearly illustrate that there is concern that the conflicts within RECs of which Kenya is a member of including COMESA and EAC, might bode negatively for the Agreement's operationalization. The unique set of conditions including geographical location and political instability will work towards stalling the seamless implementation of the Agreement. These types of discord are also informed by deeply rooted factors including political unrest, presence of rebel and secessionist groups, ethnic

strife, presence of terrorist groups, and even post-colonial volatility in the governance issues.¹¹²

Conflict is a serious issue that disrupts and even inhibits continuous economic development on the continent. Full economic potential for many African countries is not realized as a result of unending conflict locally or in neighbouring countries, whose effects then reverberate across sub-regions. The conflict within the RECs is the focus because it provides a comprehensive overview of the impact of conflict to realization of economic objectives and its capacity to paralyze trade activities. The myriad of conflicts present in the existing RECs are a microcosm of what the AfCFTA will have to deal with on a region-wide basis. It therefore provides a window into the expected hurdles that will need to be cleared in order for AfCFTA to become a success. An example we can look at is the constant flaring of fighting between government and rebel forces in South Sudan which has negatively impacted the Kenya-South Sudan transportation corridor that has been vital for transfer of commodities by Kenyan importers and exporters. Both Kenya and Sudan are members of the EAC, and the continued flare up of strife in South Sudan has only worked towards significant revenue loss for Kenyan businesses.

Although the establishment of RECs has been proved to be beneficial to economic development, African RECs have fared negatively compared to their global equivalents. Conflict is directly linked to poor economic performance (Mutunga, 2017). This is mainly because available resources are diverted to conflict efforts, to the detriment of development efforts. In addition, instability also forces businesses and individuals to hoard commodities and resources in order to cushion themselves against economic uncertainty. The impact of this conflict is not contained within the borders of a country; their adverse impact is like a chain reaction as it spreads to neighbouring

¹¹²Mutunga, J. M. (2017, August 25), *Economic integration: The impact of conflict on economic development of Africa*. ResearchGate.

countries.¹¹³

In addition, there is also the serious impact of conflict on human resources. The loss of productive labour, displacement and migration to escape the strife are some of the outcomes of conflict and war; which do not bode well for the country in question, either socially or economically. An example we can look at is the repercussions of the 1994 Rwandan genocide, which adversely affected skilled human resource. The loss of skilled labour stood at 19.4% compared to unskilled human resources.¹¹⁴ A further example of the negative economic impact of conflict we can look at is Somalia and the fall of the Siad Barre regime in 1991. The loss of life, the continued conflicts spun from it including proliferation of terrorist groups such as Al-Shabaab; the secession of territory to Puntland and Somaliland; have all served to negatively affect the economic development capabilities of Somalia. Migration and movement of its people, as a result of the conflict, cost Somalia significantly in terms economic growth. Furthermore the spillover of the Somalia conflict and instability has also adversely affected its neighbours particularly Kenya, especially when it comes to transport of commodities and attracting foreign direct investment. There is also the matter of little coordination among the RECs. Progress toward integration and multilateralism is limited in most African countries because states are embroiled in long-running conflicts and politicians are afraid of ceding sovereignty. The Arab Maghreb Union and the Economic Community of Central African States, for example, show little interest in

¹¹³Dunne J. 2013, 'Armed conflicts', in Bjorn Lomborg (ed) Global Problems, Smart Solutions. Costs and Benefits, Cambridge University Press, Cambridge, pp.5-21.

¹¹⁴Jorge M. and Muhammad F. 2014, 'War and the Destruction of Human Capital', HiCN Working Paper 163, < <https://www.hicn.org/wordpress/wp-content/uploads/2012/06/HiCN-WP-163.pdf> seen 18/04/201>

democratization or peacebuilding.¹¹⁵ In the furtherance of conflict in African countries, political parties and even leaders who wish to remain in power often perpetuate ethnic conflict by pitting two or more communities against each other. A good example of this was seen in the post-election violence witnessed in Kenya in the year 2007. The effect of these ethnic wars was the loss of valuable human capital eventually destabilizing the country's economic standing.

Another outcome rooted in the issue of conflict and its effect on the furtherance of goals of AFCFTA is the issue of refugees otherwise known as a spillover effect of war on neighboring countries. The occurrence of war in a country leads the people in these war-torn areas to flee to other neighboring countries in search of refuge and safety. This spillover of refugees presents an issue of the existence of foreign skilled labor who may threaten the already existing available job opportunities for the local population. Burundi's violence, for example, spilled to Rwanda and then to the Democratic Republic of Congo. In terms of actors and prevailing issues, the conflicts in Sierra Leone and Liberia were also linked.¹¹⁶ The spillover of refugees also brings into play issues of ethnic conflict between the existing communities and the refugees which may also perpetuate conflict in the neighbouring country.

It is evident that these conflicts, whether localized or not, have adverse consequences for economic development and intra-African trade increase prospects. Even though intra-African trade has enormous potential to provide more job opportunities; accelerate capital inflow; and foster growth in Africa, it unfortunately constitutes 11% of total trade, contrasted with an estimate of 70% for the EU, 52% for the Asian region, 50% for the North American region, and 26% for South American

¹¹⁵Khadiagala, G. M. (2018, March 19), *Regional cooperation on democratization and conflict management in Africa*. Carnegie Endowment for International Peace

¹¹⁶Atim, G. 2013, 'The impact of refugees on conflicts in Africa', *IOSR Journal of Humanities and Social Science*, Vol.14, Issue 2, p 5

countries.¹¹⁷ Many African countries belong to multiple RECs, including Kenya. This is mainly for purposes of increasing their trade competitiveness and accessing diverse avenues to enhance economic growth. The economic effect of conflict within the RECs therefore becomes more pronounced because majority of African countries belong to either one or two RECs. This is therefore an issue that should be handled delicately by the AfCFTA implementation brass to ensure impact of these conflicts are handled or mitigated against. The Agreement should also be implemented with the background knowledge that conflict and instability incidences can flare up at a moment's notice, throwing the implementation process into disarray.¹¹⁸

3.3 Kenya's commitment to existing trade agreements

As Kenya is a member of not just one trade agreement it is critical to assess the impact of the AfCFTA implementation on its existing obligations under other trade agreements. Kenya has a duty to fulfill its commitments under pre-existing free trade agreements. This study therefore sought to identify whether Kenya's commitment to existing trade agreements will be a challenge that affects the implementation of the goals and objectives of the African Continental Free Trade Area (AfCFTA). The findings are indicated in figure 3.2 below.

¹¹⁷Economic Development in Africa Report 2013, Intra-African Trade: Unlocking Private Sector Dynamism <https://unctad.org/en/PublicationsLibrary/aldcafrica2013_en.pdf seen> 28/05/2015

¹¹⁸ Ibid.

Figure 3.2 Kenya's commitment to existing trade agreements



Source: Primary data. (2021)

According to the above chart, the findings from the responses indicate that out of the collected responses, a majority of the respondents at 69% agree that Kenya's commitment to other trade agreements creates a hindrance to the fulfillment of the expectations of AfCFTA. The remaining 31% believe that existing commitments to other trade agreements will augment and serve to promote the successful implementation of the objectives of AfCFTA, mainly because of shared economic objectives. It is of note that a majority of African countries are parties to multiple trade agreements. These agreements in turn vary in terms of their scope of objectives and the unique hurdles they face when it comes to realization of these objectives.

Over 15 regional trade pacts exist throughout Africa. Although these pacts have profited from the development of intra-African trade, the International Monetary Fund (IMF) believes that they have

yielded hardly any benefits as previously forecasted ¹¹⁹(International Trade Centre, 2018). The current obligations that Kenya holds relating to existing trade agreements may result in restricting the implementation process of AfCFTA in the long run, if these inhibiting factors are not addressed at the outset. The AfCFTA members need to review their trade commitments under existing trade agreements to ensure there is congruence when it comes to these o first ensure that the commitments they set for themselves are not in direct conflict with the trade agreements that are already in place. There will therefore be a need to address competing objectives under existing trade commitments of members, with a view to establishing common objectives.

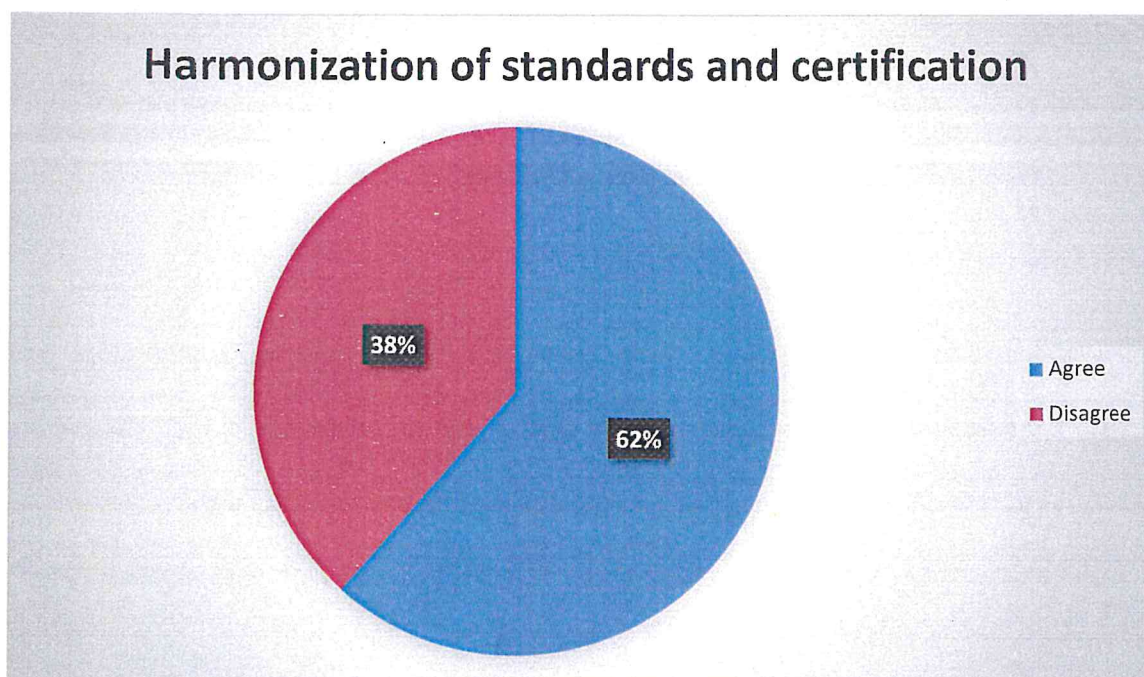
In general, trade pacts serve to enhance trade activities on a larger scale among member states. It also serves to provide a wider more diversified market, common to the members, for export and import purposes. The certainty of access to a common market; the ability to access imports and other commodities at subsidized rates; enhancement of free movement; and access to better job opportunities are the motivating factors that underlie any and all trade pacts. This in turn serve to aid trade enhancement and development (Barone, 2020). Kenya, for instance, might be reluctant to re-align its development goals under already tried and tested existing trade pacts, such as the EAC and COMESA, and shift towards dedication to AfCFTA, which is new and whose implementation is still at the infancy stage. It is clear a lot will need to be done to either harmonize the existing objectives under various RECs and trade pacts AfCFTA members already belong to, or areas which AfCFTA might need to cede to these existing trade pacts. The end goal is to achieve some sort of harmony or congruence in order to create a clear path for the seamless regional integration of the continent.

¹¹⁹ Economic Development in Africa Report 2013, Intra-African Trade: Unlocking Private Sector Dynamism< http://unctad.org/en/PublicationsLibrary/aldcafrica2013_en.pdf seen> 28/05/2015

3.4 Harmonization of standards and certification

The study also sought to analyze the effect that harmonization and certification have on the implementation of AfCFTA goals and objectives. The findings from the data collected are provided in the figure below.

Figure 3.3 Harmonization of standards and certification



Source: Primary data. (2021)

The chart above indicates that from the respondents surveyed the majority believe that harmonization of product standards, accreditation and certification will be a challenge to the successful implementation of the goals of AfCFTA at a 62% response rate. The remaining 38% of the respondents disagree that the aspect of harmonization of product standards, accreditation and certification will mount a serious challenge to the implementation process.

Existing RECs such as COMESA and the EAC, have set up harmonized standards to govern quality of traded commodities, which in turn enhances quality and consumer safety. The objective is to create establish uniformity of traded commodities and ensure certain set requirements are

adhered to. Members already have the obligation and duty to abide by these harmonized standards. The members RECs including Kenya have successfully benefited from the standardization process. When it comes particularly to the EAC, the positive harmonization consequences for traders include certainty of trading their commodities. The EAC provides for these harmonization requisites through the enactment of the East African Standard Quality Assurance Metrology and Testing Act (EAC SQMT Act), backed by the EAC Customs Union Protocol.¹²⁰ Regulators, on the other hand, benefit from reduction of commodity identification and custom clearance processing timelines. Additionally the EAC Partner States have gained through provision of enhanced trade facilitation through reduced trading overheads and shorter customs clearance schedules.

Frustrating NTBs which provided technical obstacles in the EAC trade bloc were significantly reduced as a result of this harmonization process. This has in turn positively impacted the free movement of commodities, bolstered regional trade, and increased general trading efficiency. It has also resulted in reduced manufacturing costs via eradication of a varied product line, for purposes of compliance with different and complex individual standardization needs of individual member countries of the trade bloc.¹²¹ Maintenance of a varied product line by business entities in order to compete in different markets is a capital and labour intensive process, that is eliminated or reduced significantly through product standardization processes.¹²² ECOWAS is a second example of a REC that has introduced harmonization through the ECOWAS Standard Harmonisation Procedures (ECOSHAM). Harmonization is clearly important, in order for

¹²⁰ Article 13, the EAC Customs Union Protocol.

¹²¹ Trade Mark East Africa. (2019, October 1). *Contribution of standards harmonisation and certification towards reduction in the conformity assessment clearance time and testing cost-the case of the EAC*. TradeMark East Africa

¹²² Kawabata, Y., & Takarada, Y. (2021, March 11). *Deep trade agreements and harmonization of standards*. Wiley Online Library.

collaborative trade efforts to flourish. The hurdle presented by the non-harmonization of standards is that it makes market access significantly difficult for countries that are non-compliant.¹²³

It is therefore evident that harmonization will play a huge factor in the AfCFTA rollout. In the quest to establish a common market by AfCFTA, harmonization of standards and certification of commodities will be key. The hurdle here for AfCFTA will be how to go about the harmonization mechanisms already in place in trade blocs such as ECOWAS and EAC. Establishment of commonality with these existing standardization systems will be a significant undertaking when it comes to operationalization of AfCFTA.

The aspect of harmonization of standards when it comes to AfCFTA was discussed at length during the meeting of the Committee on Technical Barriers to Trade held in February 2020. There was a significant motivation to tackle the issues of standards, technical regulations, conformity assessment and accreditation. This quest by the AfCFTA, which has a longer term-accomplishment window, affords member countries the opportunity to plan sufficiently for the realization of removal of technical trade barriers.¹²⁴ The primary body tasked with the AfCFTA harmonization framework is the Africa Regional Standards Organization (ARSO). This body's main purpose is to harmonize regional commodity standards, accreditation requirements and conformity assessment methods. It is expected that ARSO will utilize global benchmarks and international best practice to come up with an informed harmonization structure, that supports the economic commitments of AfCFTA. Borrowing from international best practice is informed by the need to maintain quality systems, that have been tried, tested and recommended on a global level.

¹²³Diop, A. (n.d.). *SheTrades policy brief standards in AfCFTA*. Connect and Trade with Women Owned Businesses | SheTrades

¹²⁴World Trade Organization. (2020, April 20), *Recent activities by ARSO*. Docs.wto.org. <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/TBT/GEN289.pdf&Open=True>>

Although harmonization has its advantages, there are also pitfalls to watch out for. One of the pitfalls is the increase in inspection, clearance and certification costs, that will in turn significantly contribute to exorbitant trading costs for participating member countries.¹²⁵ Increase in trading costs might not bode well for many AfCFTA members, who are either currently struggling economically; or are heavily dependent on certain commodities such as agricultural products. The benefits expected from trade participation in AfCFTA will significantly be rolled back if the disadvantages of harmonization result in excessive costs resulting from the need to standardization requirements. The economic capacities and limits of AfCFTA members should be taken into consideration before these harmonization frameworks are either commenced or completed.¹²⁶

It is therefore clear that standardization is an area of concern when it comes to the AfCFTA implementation process. The numerous standards mechanisms that already exist and the extensive one that will be needed eventually for AfCFTA need a rethink and a well-researched criteria mechanism, to ensure any expected adverse impact is handled, particularly when it comes to the issue of denial of market access for participating members. Blanket imposition of standardization and accreditation requisites without members' input or consideration of prevailing economic conditions.

The capacity to meet commodity standards has become a key determinant of market access and therefore hold sway over a country's capability to export, especially for vulnerable trade groups such as small-scale farmers competing in commercial supply chains ¹¹(Keyser, 2012). Another aspect to this standardization issue is the need to align public sector and private sector

¹²⁵Keyser, J. (2012, July). *Africa trade policy notes*.
<<https://documents1.worldbank.org/curated/ar/357541468192844868/pdf/728540BRI0Box30onal0Standards0FINAL.pdf>>

¹²⁶Economic Development in Africa Report 2013, Intra-African Trade: Unlocking Private Sector Dynamism http://unctad.org/en/PublicationsLibrary/aldcafrica2013_en.pdf seen 28/05/2015

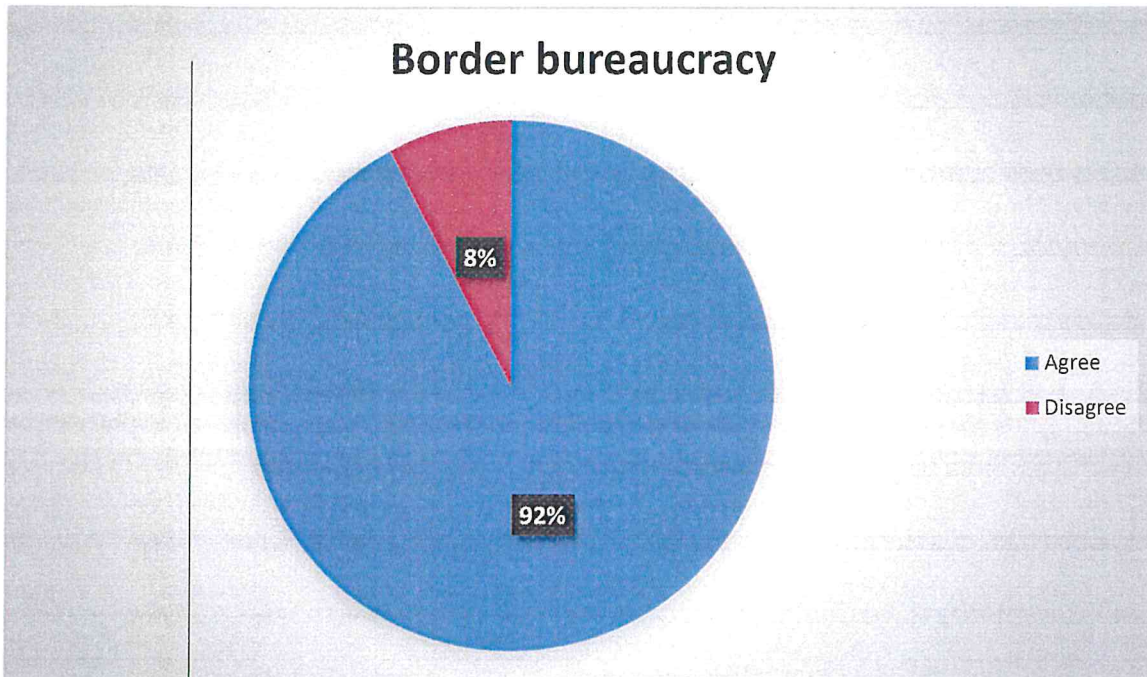
standardization objectives. Governments create these regulations with the motivation of preserving public health and consumer safety; while the private sector is profit-driven in terms of its standardization motivations which seeks quality and profit is needed. All of these concerns regarding harmonization need to be explored in an in-depth manner to ensure the economic targets of AfCFTA are met for purposes of aiding regional economic development, that is also cognizant of the peculiarities and conditions present among its members.¹²⁷

3.5 Border bureaucracy

Border bureaucracy is the prevalent conditions at a country's points of entry and exit situated at its borders. Border points are an important facet when it comes to trade as they affect the movement of people and goods across countries and regions. This study sought to investigate the effect that border bureaucracy will have on the implementation of AfCFTA in Kenya. The findings were as presented in figure 3.4 below.

¹²⁷Sakyi, D., & Afesorgbo, K. (2019), The Effects of Trade Facilitation on Trade Performance in Africa. *Journal of African Trade*, pg 3-8.

Figure 3.4 Border bureaucracy



Source: Primary data. (2021)

From the figure above, the findings from the responses indicate that a staggering 92% of the respondents are of the view that border bureaucracy will be a serious challenge to the Agreement's operationalization in Kenya. The remaining 8% believe that border bureaucracy will have no effect on the AfCFTA process. In considering the issues of border bureaucracy it is inevitable to consider the modes of entry and the modes of transportation of commodities and services. For many African countries, roads are the main transportation form that is used. According to the World Bank Enterprise Survey, transportation costs are the highest in the Sub-Saharan Africa area, mainly because of the poor quality road infrastructure and border crossing frustrations. According to UNCTAD, the transportation costs as a percentage of the imported value stands at an estimated

11% for North African countries, 111% higher than industrialized countries.¹²⁸ Border crossing frustrations coupled with inadequate transport infrastructure serve as prohibitive factors to the development of trade on the continent.

An example we can look at is the impact of border bureaucracy and transport barriers in the West African region. According to Sakyi these obstacle include excessively high road charges, unnecessary road blocks and border checks, transportation costs, and bureaucratic hurdles. These in turn lead to protracted delays and unexpected trade costs, including payment of bribes to gain access approval. African customs clearance at border points has been highlighted as a main bottleneck that impedes trading efficiency. Another example we can look at is the customs clearance process at the Victoria Falls border station on the North-South Corridor from Zambia to Zimbabwe that takes an estimate of 36 hours. Such identified bottlenecks at border points only serve to frustrate trade activities and lead to revenue loss for traders and governments.¹²⁹ There is an urgent need to addresss these hurdles in order to aid an improved implementation process for the AfCFTA.

An example in the East African region we can look at is the numerous, constituting around 27 police checkpoints between the Ugandan border and the Kenyan port of Mombasa. These types of unnecessary checkpoints only serve to hinder intra-African trade between the neighbouring countries. Such checkpoints are prone to corruption with many of the policemen demanding for bribes to let truckers pass. A lot more effort is needed both domestically for Kenya and the region at large in order to eradicate these trade frustrations that hurt economic development prospects.

¹²⁸Sakyi, D., & Afesorgbor, S. K. (2019, December 17). *The effects of trade facilitation on trade performance in Africa*. Atlantis Press | Atlantis Press Open Access Publisher Scientific Technical Medical Proceedings Journals Books.< <https://www.atlantis-press.com/journals/jat/125926068/view>>

¹²⁹Sakyi, D., & Afesorgbo, K. (2019), The Effects of Trade Facilitation on Trade Performance in Africa. *Journal of African Trade*,pg 3-8.

Another angle to this border bureaucracy nightmare is regulatory frameworks that provide guidelines on customs procedures, axle loads, vehicle dimensions, carrier's license, and insurance requirements. These regulatory frameworks might have the un-intended consequence of complicating clearance procedures and frustrating trade, if the input and concerns of stakeholders is not factored in.

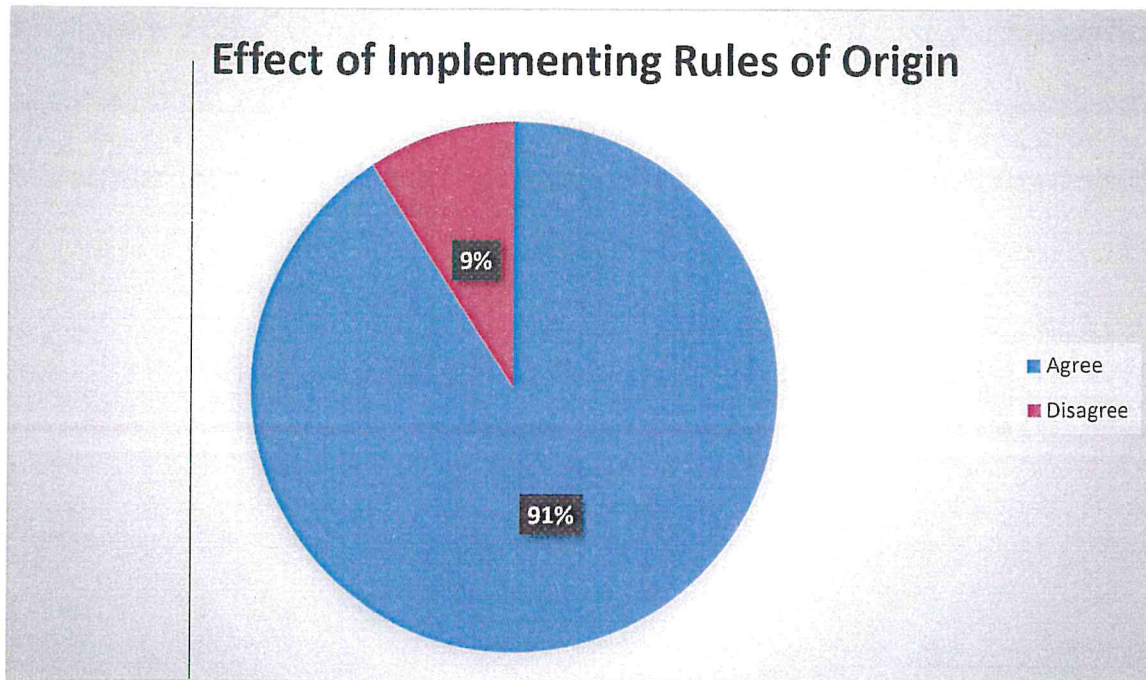
All of the above highlighted issues on border bureaucracy should serve as a learning point for the AfCFTA implementation process. There is a need for the Agreement's implementation mechanisms and bodies to craft a way of navigating around the pitfalls or finding ways to mitigate against the adverse impact. Border bureaucracy is an issue that should be addressed, while taking into consideration the uniqueness of each African sub-region to ensure it supports market access.¹³⁰

3.6 Rules of Origin (RoO)

Rules of origin serve to create determination criteria for identification of source of commodities or raw materials. They are in essence the standards for assigning a country of origin to a commodity in order to identify its "economic rationality" ("Rules of origin-handbook," 2019). Their necessity is seen in the need to make informed decisions on trade preferences, quotas and non-preferential rules of origin, among other requisites. This study investigated the effect of rules of origin on the implementation of AfCFTA objectives in Kenya. The findings are presented in figure 3.5 below.

¹³⁰Signé, Landry. "How can the new African free trade agreement unlock Africa's potential?" OECD Development Matters. October 22, 2018. <<https://oecd-development-matters.org/2018/10/22/how-can-the-new-africanfree-trade-agreement-unlock-africas-potential/>>.

Figure 3.5 Rules of Origin



Source: Primary data. (2021)

From the responses an overall 91% of the respondents believe that the implementation of rules of origin will inevitably challenge the implementation efforts of AfCFTA in Kenya. The remaining 9% of the target population believe that Rules of origin will be beneficial to bolstering the development goals envisioned under AfCFTA for Kenya.¹³¹The results correspond with existing research articles that advise that despite Rules of Origin (RoO) being set up with the intention to promote local industries and provide economic protectionism to avoid flooding of the market with foreign goods, their expected benefits are yet to fully materialize. This is especially true for the African region. There is also the aspect that governments vastly vary in the application of rules of origin. For example, some countries administer the change of tariff classification criteria while others impose the ad valorem percentage criterion. Further to this variance, other countries are

¹³¹Willemien Viljoen, 2019 The intra-Africa non-tariff barrier dilemma – the challenges facing the AfCFTA approach, TRALAC Researcher.

known to employ the manufacturing or processing activity criterion. From the foregoing examples, it is therefore critical for some uniformity to be adopted when it comes to rules of origin, especially for the AfCFTA's implementation process.¹³²

In research conducted on alteration of the rules of origin for apparel commodities under the European Union's generalized system of preferences by Sytsma (2021),¹³³ it was realized that rules of origin act as a serious hindrance to least developed countries (LDCs) access to global markets and trade opportunities. When the EU's rules of origin varied, it was noted that not that there was an imbalance as not all LDCs benefited equally. The findings also curiously stated that altering the origin criteria for LDCs may not be a cure-all for the identified hurdles plaguing the rules of origin criteria. The only functional remedy that was proposed was the easing of type of trade restrictions experienced by exporters in LDCs.¹³⁴

As per the rules of origin requisites provided in AfCFTA, only commodities made using local materials in member nations can be exported to other countries in the same market, in order to benefit from a tariff-free arrangement. Regrettably, most African countries, with the exception of South Africa, Algeria, and Morocco, lack developed industrial capacities to generate commodities for local consumption that also eliminated the need to import from foreign markets¹³⁵ (Armel, 2020). This example clearly illustrates the need for the Secretariat to critically review the Rules of Origin that they have established to be able to address all concerns before full implementation of the Agreement is realized.¹³⁶

¹³²World Trade Organization. (n.d.). *WTO | Rules of origin - Technical information*. World Trade Organization - Global trade. <https://www.wto.org/english/tratop_e/roi_e/roi_info_e.htm>

¹³³Sytsma, T. (2021, March 18). *Rules of origin and trade preference utilization among Least Developed Countries*. Wiley Online Library. <<https://onlinelibrary.wiley.com/doi/full/10.1111/coep.12529>>

¹³⁴ Ibid.

¹³⁵Armel, K. (2020, July 12). (PDF) *Understanding the African continental free trade area: Beyond "Single market" to "Africa's rejuvenation" analysis*. ResearchGate

¹³⁶Willemien Viljoen, 2019, The intra-Africa non-tariff barrier dilemma – the challenges facing the AfCFTA approach, TRALAC Researcher.

According to UNCTAD statistics from 2015 to 2017, intra-African trade is barely averaging 15%, if you compare it with estimates of about 47% in America, 61% in Asia, and 67% in Europe. The onus is therefore on AfCFTA to change these dismal rates of intra-African trade for the better. According to the UNCTAD study, a digital intra-African commerce portal acting as a library for AfCFTA rules of origin in several local dialects might be useful in making the AfCFTA rules of origin accessible across the region. This will in turn make it easier to identify any incidents of origin fraud.

When it comes to Kenya specifically, there is a need to ensure AfCFTA's rules of origin serve to augment the growth of trade, and not frustrate the process. A comprehensive review of these rules and their expected impact is needed to ensure any identified frustrations are highlighted and addressed sufficiently. These rules need to be favourable to the realization of the economic objectives of AfCFTA. A robust rules of origin framework that serves to promote regional development goals will also serve to weed out predatory foreign market players who are known to take advantage of gaps and lax rules on the continent to make profits that they fully repatriate to their home countries.¹³⁷

3.7 Conclusion

This chapter has conclusively reviewed findings from the research data collection. The identified obstacles to the implementation of AfCFTA have been critically reviewed and discussed from the responses gathered through the data collection procedures. The challenges identified are conflict within regional economic communities; Kenya's commitment to existing trade agreements with other countries; harmonization of standards and certification of goods and services in the country; the numerous existing border bureaucracies that limit intra-African trade between Kenya and other

¹³⁷ Ibid.

member countries;and the rules of origin that have been set to regulate the production of goods. The responses indicate that all these issues stated will have an impact on the implementation process of AfCTA in Kenya. Therefore, there is a need for stakeholders to come up with more durable solutions to these challenges before the successful implementation of AfCFTA can be achieved.

CHAPTER FOUR

MEASURES THAT KENYA IS TAKING TO OVERCOME AfCFTA

IMPLEMENTATION CHALLENGES

4.1 Introduction

The notion of regional trade consolidation has been in the minds of Africans for a long time. The concept is seen as a mode to unite and conquer the rest of the world in terms of trade might. The African Continental Free Trade Area was formed to open up borders to other African countries in order to encourage free movement of people and commodities; and to positively affect economic development. A further objective of the regional integration process is to improve the local economies of member countries for purposes of improvement of livelihoods and the overall domestic GDP figures. Furthermore, it was also formed to ensure removal or significant reduction of trading hindrances. The end goal was meant to encourage more trading activities and promote an entrepreneurial spirit, among the African populace.

So far, the African Continental Free Trade Area has been the continent's most progressive trade arrangement. On March 21, 2018, 55 African countries signed the accord in Kigali, Rwanda and the implementation process commenced on 30th of May, 2019. The majority of member countries have already submitted their ratification documents to the AU. The Agreement has set the ambitious goal of increasing intra-African trade by 60% by 2022. The Agreement is however expected to face certain hindrances when it comes to the operationalization process. These challenges have been discussed in an indepth manner in the preceding chapters of this study.

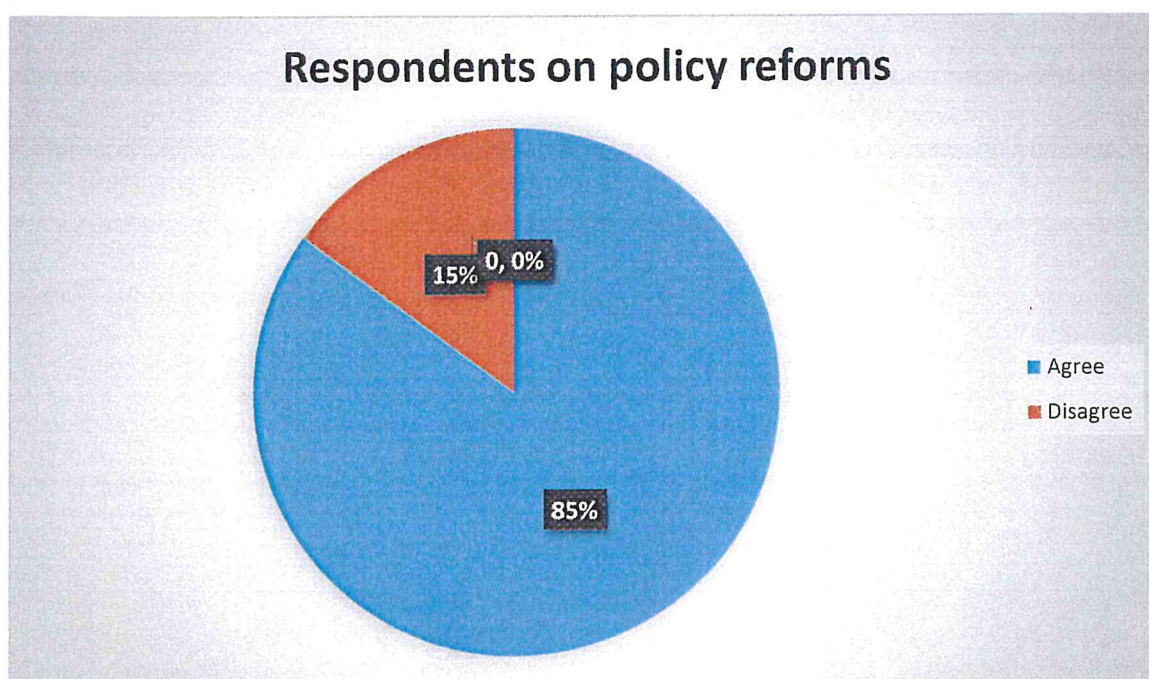
In general the Agreement's ultimate goals include creating a liberalized market for products and services via repeated successful rounds of negotiation among members; bolstering and promoting sustainable and inclusive socio-economic growth; and increasing trade competitiveness among

member countries. Additional goals of the Agreement include aiding industrial growth through creation of diversification; aiding regional value chain development; protection of food security through encouragement of sustainable methods of production; and enhancement of regional economic consolidation through creation of a common market for products and services.

4.2 Policy reforms to aid AfCFTA implementation

The study sought to examine the required policy reforms that will need to take place in order to overcome challenges of implementing AfCFTA. The responses are as highlighted below.

Figure 4.1 Policy reforms to aid implementation



Source: Primary data. (2021)

Figure 4.1 above illustrates that 85% of the respondents agree that policy reform measures are needed for purposes of assisting the seamless operationalization of the Agreement. 15% of the respondents on the other hand, are of the contrary opinion.

The trade pact seeks to bring together around 1.5 billion citizens across 55 member countries with a combined Gross Domestic Product valued at 3.4 trillion dollars. The agreement shoulders the expectation of improving the livelihoods of about 30 million people by lifting them from economic destitution.¹³⁸ Achieving this AfCFTA vision is however entirely dependent on strategic policy reforms to facilitate its implementation across the region. These proposed reform areas include measures to aid removal of unnecessary red tape; trade facilitation services including tariff liberalization efforts¹³⁹; and regulatory measures to aid integration mechanisms. The policy implementers should ensure the threshold for positive impact of these reforms far outweigh any expected negative effects.¹⁴⁰

An indepth look at these proposed reforms include trade facilitation measures that simplify the customs processes and spur the growth of trade rates. The 2020 World Bank Report on AfCFTA estimates that easing complex border clearance processes will result in about 292 billion dollars of income potential for the AfCFTA, a boon for the regional integration objective. Supplemental reform measures include tariff reduction which is expected to boost trade income by about 0.2%.¹⁴¹ Additionally, putting in place measures to reduce red tape, simplifying customs procedures, and making it easier for African businesses to integrate into global supply chains will also bolster the continent's net gains, which benefits will in turn enrich member countries.¹⁴² It is clear that the implementation process is in need of supportive reform measures, on a domestic level from its signatories in order to be able to achieve its long term goal of continuous economic development for the region.¹⁴³

¹³⁸ The World Bank, The African Continental Free Trade Area, July 2020, <<https://www.worldbank.org>>

¹³⁹ Ibid.

¹⁴⁰ Diop, A. (n.d.). *SheTrades policy brief standards in AfCFTA*. Connect and Trade with Women Owned Businesses | SheTrades.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Atim, G. 2013, The impact of refugees on conflicts in Africa', IOSR Journal of Humanities and Social Sciences,

Additionally the pact is expected to increase Africa's exports by about 560 billion dollars, achieved mostly through putting in strategies that support improvement of manufacturing capabilities.

It is evident that the Agreement is an incredible undertaking that will need concerted support from all stakeholders, including from members and development partners. Short term sacrifices, such as removal or reduction of tariff barriers, will be required at the domestic front by members in order to benefit economically in the long term. Policy and legislative reform will therefore be required in plenty so as to aid free flow of goods and services; aid intense capital deployment; and encourage investment inflows and outflows within the region among the countries involved.¹⁴⁴

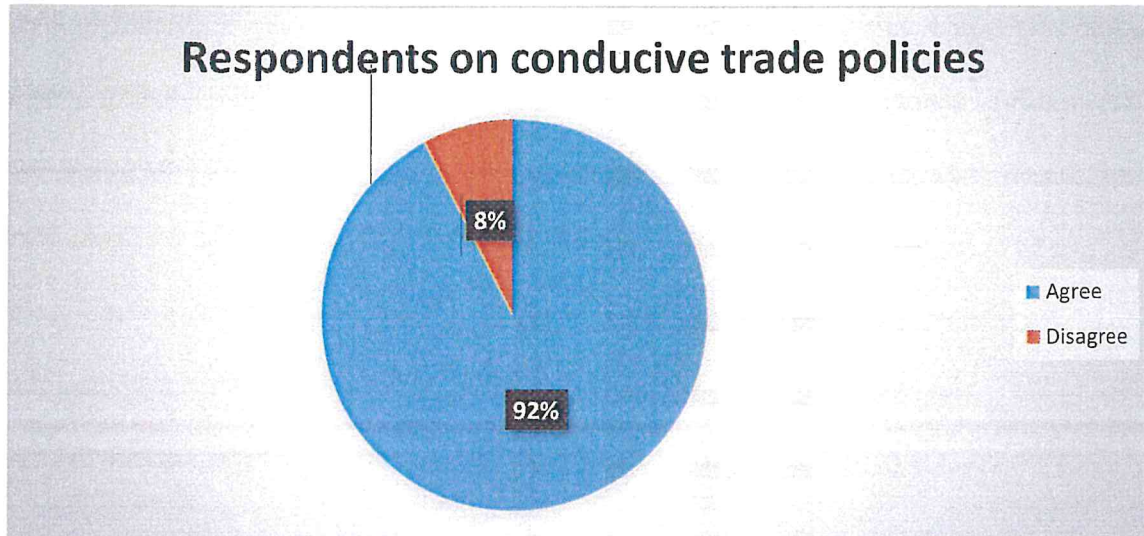
4.2.1 Instrumental trade policy establishment

The study also examined formulation of better trade policies as a mode of overcoming challenges of implementing AfCFTA and Figure 4.2 below shows the response.

Vol.14, Issue 2, p 5.

¹⁴⁴Centre, I. T. (2018). *A business guide to the African Continental Free Trade Area Agreement*, Geneva: International Trade Centre.

Figure 4.2 Conducive trade policies



Source: Primary data. (2021)

Figure 4.2 above indicates that 92% of the respondents are of the view that better formulated trade policies are critical to the success of AfCFTA's operationalization. 8% of the respondents were of the contrary opinion. The AfCFTA aims to boost intra-African trade through numerous ways including by steadily eliminating the tariffs and non-tariff barriers among trading nations. Conducive trade policies will help ease the process and smooth over any expected hurdles. For instance when it comes to achievement of the tariff reduction goal, the agreement seeks to enhance efficiency in customs procedures, trade facilitation, and the transit of commodities. The intended outcome of these established processes will be efficient procedures that will be essential for promotion of regional value chains, diversification of trade and industrialization across Africa, and socioeconomic development among the signatories.¹⁴⁵

When it comes to the formulation of more conducive tariff policy proposals, the member countries should focus on sustainability to ensure creation of tariff frameworks that actually work and

¹⁴⁵Barone, A. (2020, January 29). *How a Free Trade Agreement (FTA) works*. Investopedia. <<https://www.investopedia.com/terms/f/free-trade.asp>>

provide enrichment to value chain creation and diversification. High levels of cooperation and collaboration between member states to harmonize their tariff and non-tariff policies to contribute to coordinated removal of reduction of barriers to trade is also critical. The trade facilitation measures and conducive policy framework creation should also include simplification of trade procedures and capacity building to support intra-African trade improvement efforts. The end objective should be establishment of sustainable regional value chains which in turn support enhanced socioeconomic development and regional integration across the AfCTFA member countries.¹⁴⁶

Furthermore, better trade policies are expected to generally improve economic activities across member nations since as a result of the anticipated value rise in Africa's gross domestic product (GDP). The liberalization of trade services such as banking and cross-border financial support services will also serve to provide integrated services that will improve expedited payment services for commodities trade. All AfCFTA signatories, including Kenya, should therefore work on improvement and diversification of their trade offerings, in terms of products and services, to ensure reaping of maximum benefits from the implementation process in due course. While the Agreement creates a firm foundation for capacity-building efforts for members, the responsibility to come up with accompanying domestic policies that will support local capacity creation and diversification lies with the member countries.¹⁴⁷

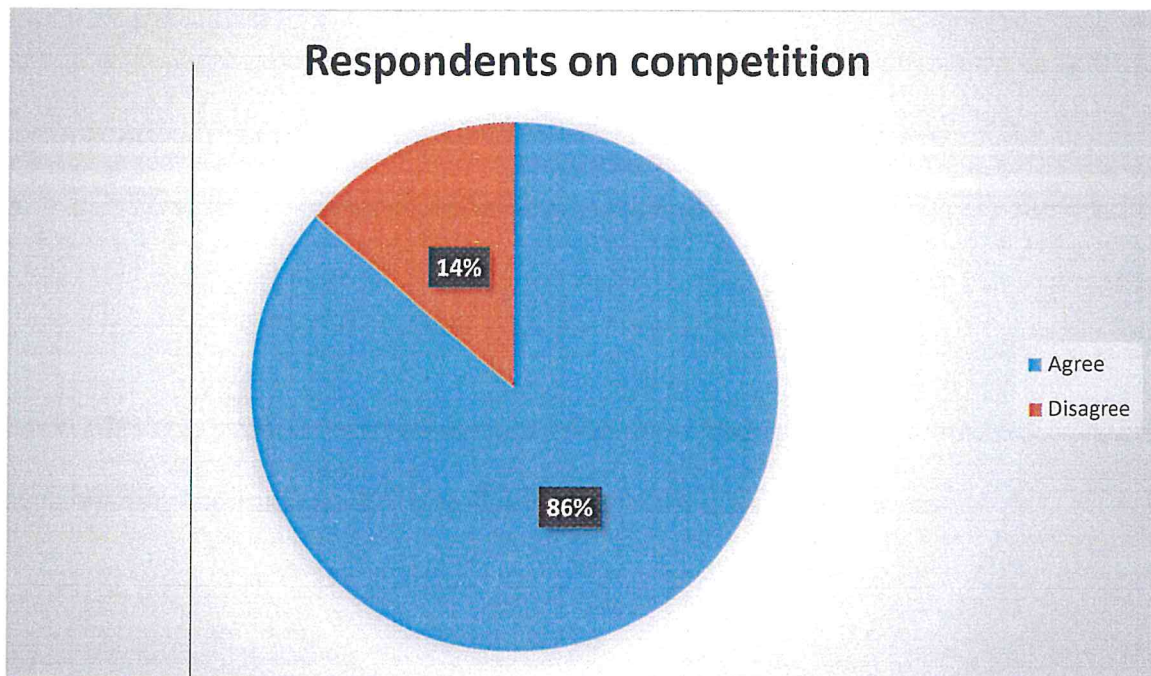
¹⁴⁶ Saygili, M., Peters, R., & Knebel, C. (2018). *African Continental Free Trade Area: Challenges and Opportunities of tariffs Reduction*, Geneva : UNCTAD

¹⁴⁷ Melo, J. D. (2019, MARCH 4). *The Africa Continental Free Trade Area: An opportunity to deepen cooperation on regional public goods*. Retrieved from BROOKINGS <<https://www.brookings.edu/blog/future-development/2019/03/04/the-africa-continental-free-trade-area-an-opportunity-to-deepen-cooperation-on-regional-public-goods/>>.

4.2.2 Creation of a Progressive Competition Policy

The study further looked at the enhancement of competition policy under AfCFTA. The findings are as provided in the below figure.

Figure 4.3 Competition Policy



Source: Primary data. (2021)

The figure shows that 86% of the respondents believe that through AfCFTA implementation there will be enhanced competition among members, in a manner that is instrumental to trade facilitation. 14% of the respondents however, believe that it will only lead to unhealthy competition and economic sabotage between member states.

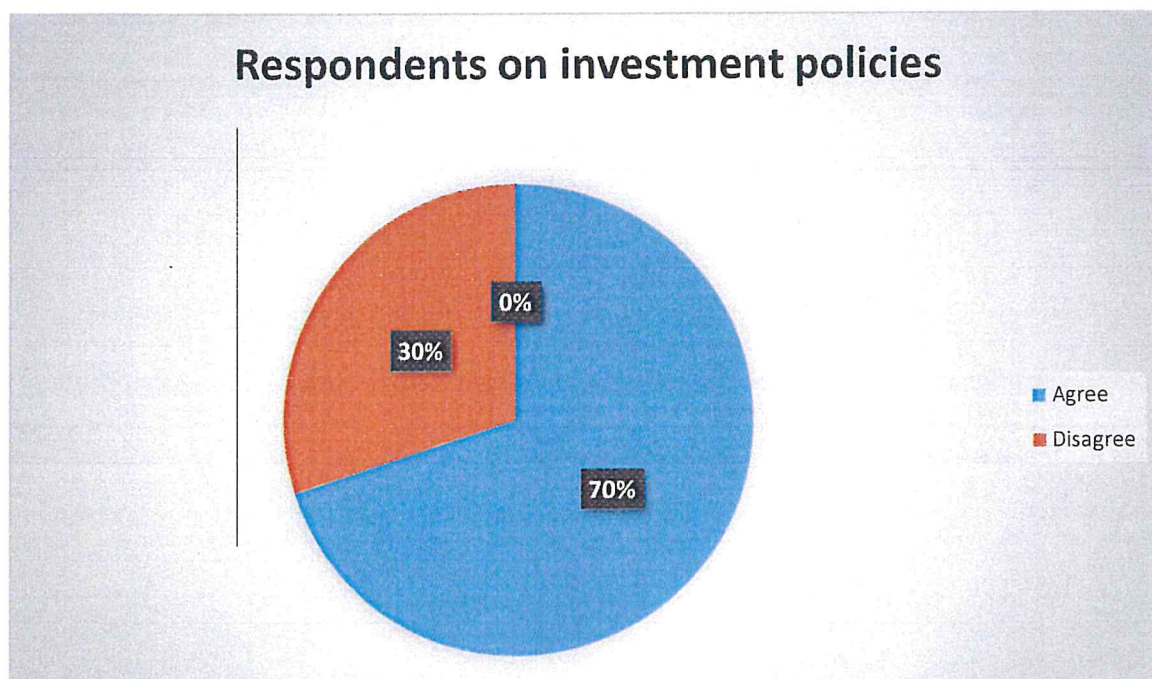
A clear comprehensive competition policy framework is a driving force for promotion of healthy competition between and among signatories which will turn foster ensures economic growth. Well-regulated competition in trade pacts serves to boost growth levels, financial stability and revenue generating capacities, both on a local and regional level. The formulation of these competition

policies should also take into consideration key agenda items such as consumer protection and proper enforcement mechanisms to curb unfair trade practices. Ensuring the competition policies are legally and economically sound will in the long run be beneficial to the success of AfCFTA.¹⁴⁸

4.2.3 Creation of Impactful Investments policies

The study also sought to examine the need for better investment policies as a measure to overcome the challenges of implementing AfCFTA in Kenya.

Figure 4.4 Better investment policies



Source: Primary data. (2021)

Figure 4.4 above shows that 70% of the respondents agree that better investment policies are

¹⁴⁸ Geda, A., & Yimer, A. (2019). The Trade Effects of the African Continental Free Trade Area (AfCFTA): An Empirical Analysis. *International Economics*, 55-77.

critical for the implementation process of the Agreement and that these will aid in driving in the the level of investments taking place in the region. Well-formulated investment strategies and policies are key to attracting capital inflows that will enhance trade growth prospects for the continent. The remaining 30% of the respondents were of the view that the Agreement's implementation will be detrimental to improved investment inflows, hence better investment policies will not work to salvage the trade negatives that will be brought by the implementation of the Agreement.

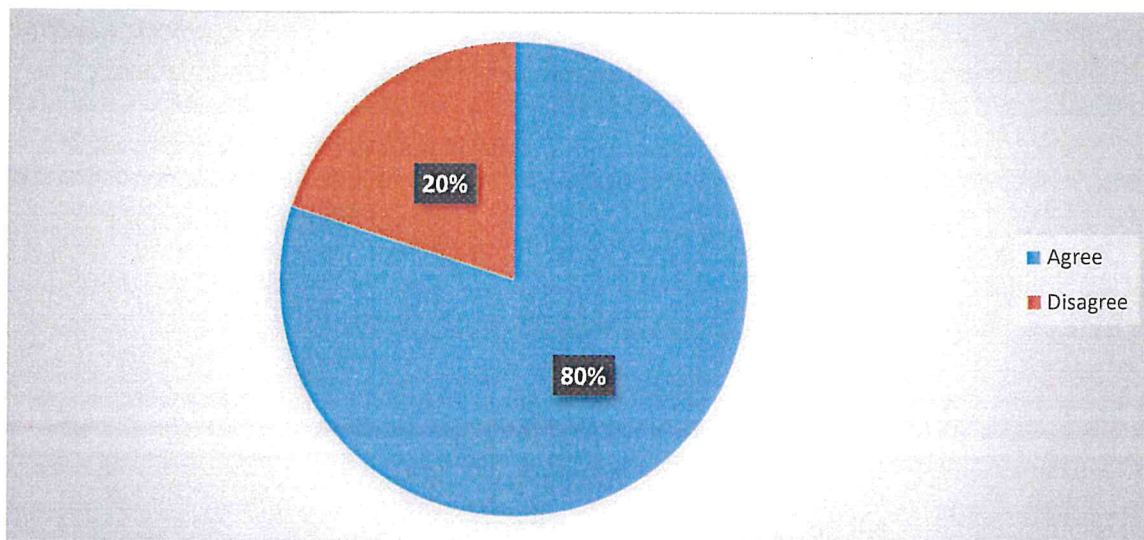
When it comes to the aspect of investment strategies, the Agreement also provides an opportunity for signatories to create environments that provide ease of doing business opportunities in order to attract financial capital that will boost trade development. An example we can refer to here is the alignment of the investment vision provided in the Addis Ababa Action Agenda for Ethiopia and and the Agenda 2030 for the AfCFTA Agreement. These two documents are harmonized when it comes to bettering investment opportunities for Ethiopia through mobilization of sufficient financing for development including Foreign Direct Investment (FDI) that will in turn enhance sustainable development targets. Additionally the member states, through restructuring their investment policy frameworks, should work towards supporting the development of local and regional industries that will create jobs and improve welfare conditions.¹⁴⁹

4.3 Better intra-Africa Bilateral and Multilateral trade agreements

The study also examined existing bilateral and multilateral agreements as a measure to overcome the challenges of implementing AfCFTA as shown in the figure below.

¹⁴⁹ Fofack, H. (2020). *Making the AfCFTA work for 'The Africa We Want*. Accra : Africa Growth Initiative

Figure 4.5 Better intra-Africa Bilateral and Multilateral trade agreements



Source: Primary data. (2021)

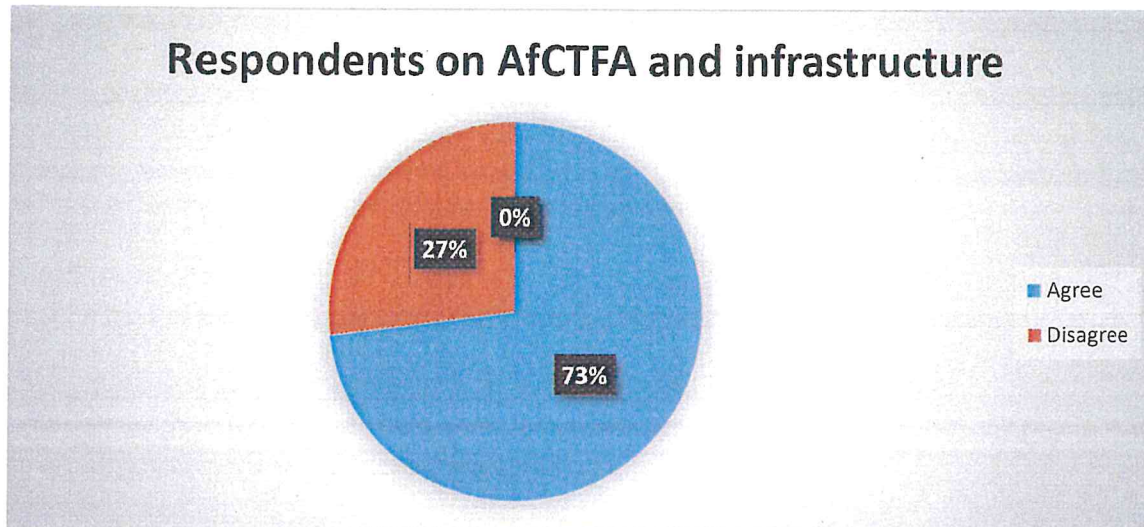
80% of the respondents agreed that there is a need to have more intra African bilateral and multilateral agreements to ensure increased trade among member countries. 20% of the respondents were of the contrary opinion. An increase in intra-Africa Bilateral and Multilateral trade agreements will result in commodity and service diversification and improve existing trading channels. ensures that progressive trade goes on between two or more countries. These trade relations between and among member countries should be encouraged as they provide established trade frameworks that are conducive for the implementation process of AfCFTA. ¹⁵⁰

4.4 Improved trade infrastructure to ease Intra Africa trade

The study sought also examined improved trade infrastructure frameworks as a mechanism to aid intra Africa trade and overcome the challenges facing AfCFTA implementation. The findings are shown in table 4.6 below.

¹⁵⁰World Trade Organization. (2020, April 20). *Recent activities by ARSO*, <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/TBT/GEN289.pdf&Open=True>>

Figure 4.6 Improved trade infrastructure



Source: Primary data. (2021)

The above figure shows that 73% of the respondents agree that improved infrastructure will result from the implementation process of AfCTA. 27% of the respondents disagreed with the fact that the agreement will have any improved impact on development of infrastructure. Infrastructure frameworks are critical for the enhancement of trade as they serve to provide ease of transportation and facilitate market access across borders and check points. Good infrastructure therefore increases the ease of doing business; and decreases the cost of trade among countries. Low trade costs in turn result in higher volumes of exports, that are beneficial to the growth of the economy.¹⁵¹

One of the factors that will severely impact the implementation of the Agreement is the poor state of infrastructure in member countries. Inadequate or lack of infrastructure has been a thorny issue on the continent as it has turned the region into an economic struggler on the global trade sphere.

¹⁵¹ Armel, K. (2020, July 12). (PDF) *Understanding the African continental free trade area: Beyond "Single market" to "Africa's rejuvenation" analysis,* <https://www.researchgate.net/publication/342882227_Understanding_the_African_Continental_Free_Trade_Area_Beyond_Single_Market_to_Africa%27s_Rejuvenation_Analysis>

The economic success of the continent in general and that of AfCFTA in particular can only be achieved if there is sufficient infrastructure on the ground-particularly transportation measures.¹⁵²

Road transport, for instance, which is the main mode of transport for commodities has proven to be the most challenging for members to create or maintain, in large part aided by politically corrupt government regimes. Poor or at times non-existent roads make it difficult for businesses to commit to delivery timelines, thus adding to loss of critical man hours on the road which then contribute to excessive trading costs. In addition, roads have multiple unnecessary customs and police checkpoints aiding extortion and bribery schemes, and frustrating logistics services.⁷⁵

According to the Senegalese Prime Minister , the AfCTFA agreement assures member countries of better and improved infrastructure as a way of enhancing the growth of regional trade. Although improvement of infrastructure through the AfCFTA is a welcome move, how this will be achieved practically is the main issue. Improved infrastructure has the capacity to improve trade prospects, which is the main aim of the Agreement. The construction of a good transport network, both road, and rail, as assured by AfCTFA, will open up borders and lead to market expansion. Cost-effective and improved ways for moving goods and services will also come about.¹⁵³ AfCTFA also assures its member states of digital infrastructure connectivity when it comes to operationalization of the Agreement.¹⁵⁴

Another aspect to infrastructure improvement touches on creation of ports and harbours that will

¹⁵² CAZARES, J. (2020, APRIL 9). *The Africa Continental Free Trade Area: Benefits, Costs and Implications*. Retrieved from INFORMINEO: <https://infomineo.com/africa-continental-free-trade-area/>

¹⁵³ Armel, K. (2020, July 12). (PDF) *Understanding the African continental free trade area: Beyond "Single market" to "Africa's rejuvenation" analysis*. ResearchGate. <https://www.researchgate.net/publication/342882227_Understanding_the_African_Continental_Free_Trade_Area_Beyond_Single_Market_to_Africa%27s_Rejuvenation_Analysis>

¹⁵⁴ Apiko, P., Woolfrey, S., & Byiers, B. (2020). The promise of the African Continental Free Trade Area (AfCFTA); Political Economy Dynamics of Regional Organisations in Africa. *DISCUSSION PAPER No. 287*, 10-19.

enhance trade competition and give the region access to coveted global shipping channels. There is also the need to provide renovation efforts to existing harbours and large cargo docks to ensure their trade volume capacities are upgraded. This in turn work towards solving the challenges of storage deficits, congestion, security, and cargo clearance delays.¹⁵⁵

The infrastructure improvement that is envisioned under the AfCFTA implementation should also be able to tolerate adverse weather and climate conditions. Quality of the infrastructure is therefore key. A body that is currently working towards amelioration of infrastructure on the continent is the Programme for Infrastructure Development in Africa (PIDA) and is funded by the African Development Fund Group.¹⁵⁶ The objective of PIDA is to provide enhanced access to interconnected regional infrastructure networks and services¹⁵⁷. PIDA, in collaboration with the AU, will aid in the achievement of the Agreement's goals of infrastructure enhancement thus enabling movement of commodities, services, and people across borders. Maintenance of good governance and political stability by the signatories is also a major factor in sustaining the infrastructure improvement that will be realized under AfCFTA.¹⁵⁸

4.5 Reducing border bureaucracy and petty corruption

The study also examined the reduction of border bureaucracy as one of the measures to overcome challenges of implementing AfCFTA. The responses are as highlighted in the figure below.

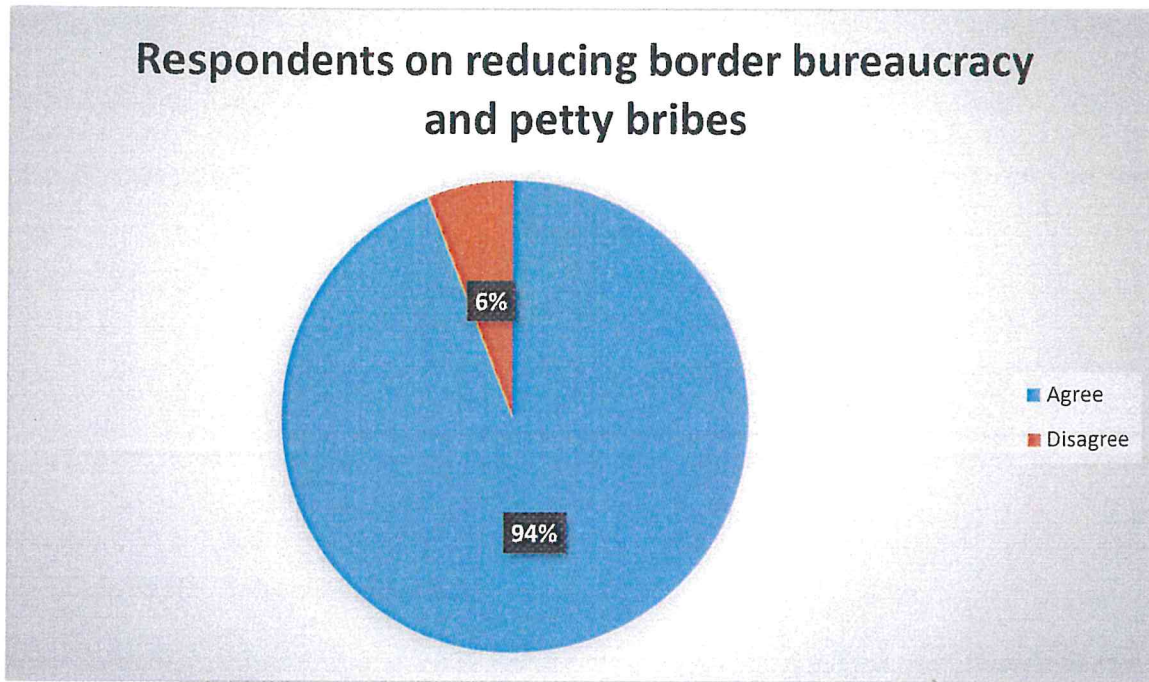
¹⁵⁵ Albert, T. (2019). The African Continental Free Trade Agreement: Opportunities and Challenges. *Geneva: CUTS International*, Geneva, 18-23.

¹⁵⁶ Programme for Infrastructure Development in Africa (PIDA), <<https://afdb.org>>

¹⁵⁷ Ibid.

¹⁵⁸ Kidane, A. T. (2021). The Possible Contribution of the African Continental Free Trade Area to the Economy of Eritrea. *International Journal of Research and Innovation in Social Science*, 82-90.

Figure 4.7 Reducing Border bureaucracy and Petty corruption



Source: Primary data. (2021)

The figure above shows that 94% of the surveyed respondents agree that reducing border bureaucracies and petty bribes will ease the cost of trade between member states and support the Agreement's operationalization. 6% of the respondents disagree with this view.

Border checkpoints and customs clearance provide a critical role in supporting trade and movement of goods and services while maintaining domestic security measures. However this critical trade facilitation resource has been crippled on the continent by pervasive corruption; under-funded facilities; and weak accountability systems. The breakdown of accountability leads to proliferation of illegal trade activities such as drug trafficking; and the expansion of black market trading for goods and services. Security risk factors are heightened which then negatively

impacts trade development and growth.¹⁵⁹

Petty corruption in customs is another risk factor that will create significant hurdles for the implementation process. Issues such as inadequate remuneration; lack of sufficient ;and high tariffs compound the issue of petty corruption and bribery. Corruption at the customs offices manifests itself through; petty bribes, bureaucratic corruption, misuse of funds and pervasive corruption.¹⁶⁰

The AfCTFA implementation mechanism can only overcome this issue through provision of trade facilitation measures such as removal or lowering of tariff and non-tariff barriers; and simplification of customs clearance procedures. There is also the need to improve the working conditions of border patrol and customs officials with a view to encouraging better work ethics and reducing trading backlog.¹⁶¹ Border bureaucracies need to be dismantled in order to enhance trading efficiency because border points are critical gateways to movement of goods and services. The AfCTFA implementation process should therefore give the utmost consideration to eradicating bureaucracy; consolidating and aligning customs regulation; and preventing proliferation of bribe-giving.¹⁶²

4.6 Conclusions

Chapter Four comprehensively analyses the AfCFTA with a view to addressing specific bottlenecks that it needs to tackle in the wake of its implementation. The pact faces various challenges including lack of supporting domestic policies, border bureaucracy and petty corruption

¹⁵⁹ Luke, D., & Sommer, L. (2017). *The Continental Free Trade Area (CFTA) in Africa –A HumanRights Perspective*. Geneva : United Nation Economic Commission for Africa.

¹⁶⁰ Masunda, S. (2020). *The Implications of the African Continental Free Trade Area on Intra- COMESA Trade*. Lilongwe, Malawi: COMESA

¹⁶¹ Armel, K. (2020, July 12). (PDF) *Understanding the African continental free trade area: Beyond "Single market" to "Africa's rejuvenation" analysis*. ResearchGate.

<https://www.researchgate.net/publication/342882227_Understanding_the_African_Continental_Free_Trade_Area_Beyond_Single_Market_to_Africa%27s_Rejuvenation_Analysis>

¹⁶² Ibid.

that create trade operation obstacles.

Addressing these key issues will be instrumental to aiding the implementation process. Necessary support from member countries, existing RECs and development partners will be needed to ensure these issues are tackled comprehensively. The anticipated AfCFTA gains can only be realized once these issues have been tackled.

CHAPTER FIVE

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.1 Summary of the Key Findings

The AfCFTA is a critical undertaking that has the potential to re-mold African economies, particularly for Kenya. This is mainly because the Agreement aspires to improve the economic capacities of its members and consolidate regional economic development. The encompassing objective is to realize economic gains that will serve to improve the financial health of the continent as a whole and to contribute to the domestic economic growth levels of its member countries. The economic stagnation of the continent, that has been exacerbated by recent events such as the COVID-19 pandemic, illustrate the urgency to remedy the situation, and move the continent to an improved state financially. In order for the AfCFTA to realize the aforementioned targets and strengthen economic integration on the continent, its implementation bodies need to build on the failures, successes and milestones of existing RECs.

There is also the aspect of tackling tariff and non tariff barriers in order to realize livelihood improvement. Previous research done on the trade pact highlights that the Agreement will be able to positively impact result revenue and welfare improvement through reduction of NTBs mainly. Increasing the extent of improvements by lowering NTBs beyond the levels commonly expected is critical for trade enhancement efforts. Furthermore, the economic restructuring that the AfCFTA will bring about will provide African economies with new potential for deeper enriched integration in global value chain formation. Trade, employment, and income are also seen as the main elements that will be the main beneficiaries of the positive development trajectory expected under the Agreement.

Implementation of the AfCFTA will not be a unique process for its member countries, as majority

of them are already members of existing RECs and partners under numerous bilateral and multilateral trade agreements. This is because free trade agreements (FTAs) are the most fundamental type of trade agreement, guaranteed to provide some sort of trading safety net. An example is SADC, whose members benefit from trading at levels which AfCFTA seeks to model its implementation after.

The Agreement's implementation serves to realize increased dynamics of trade; strong levels of integration; and a common market, in order to reap economic advantages that will serve to make the continent an economic powerhouse. As a consequence, these deeper economic systems will allow for very substantial trade multiplier effects such as greater food security and economic prosperity.

The challenges identified as overarching to the implementation of AfCFTA have been critically discussed from the responses provided by the target subjects. The challenges identified are conflict with regional economic communities, Kenya's commitment to existing trade agreements with other countries, harmonization of standards and certification of goods and services in the country, the numerous existing border bureaucracies that limit intra-African trade between Kenya and other member countries, and the rules of origin that have been set to regulate the production of goods. The responses indicate that all these issues stated have a negative implication on the efforts to promote the implementation of AfCFTA in Kenya. Therefore, there is a need for stakeholders across the board to come up with more lasting solutions to the challenges presented in order for the successful implementation of AfCFTA to be realized.

The AfCFTA was formed with the objective to boost trade in goods and services among its 55 member states. The pact faced various challenges and concerns at the inception, chief among the failure of various member states failing to contribute comprehensively to the process and support

its implementation. The Agreement's intended goals need support of all the signatories as it will lead to attainment of better economic growth, reduced poverty levels among the African people, and provision of job opportunities for the member states' populace. A reduction in trade tariffs, improved infrastructure, stable provision of goods and services, and investments in properties are other intended benefits of the Agreement.

5.2 Conclusions

It is clear that the Agreement has become a valuable strategy in the quest to improve African trade. The African states are among the fastest-growing economies yet there is less trade volumes among the countries. Member countries should shift towards trading with each other in order to enhance intra-African trade efforts and lose the tag of "third world countries". This will in turn enable the continent to overcome its repeated economic failures and gain proper economic leverage when it comes to decision making at the global level.

The Agreement was formed to bring together the African continent; improve trade relations; and increase the GDP of the participating nations. These wonderful ideals have historically failed to materialize on the continent because of various challenges such as political and economic instability which undermined growth of regional trade. One of the main trade enhancement measures to bolster regional trade is reducing trade tariffs between participating states so as to encourage the countries to trade with each other. Regional trade acceleration also requires the member states to open up their borders in order to encourage access to a diversified market platform for trading in commodities and services.

In addition, the Agreement was formed to improve the economic state of third-world countries. Although this is a brilliant idea; the follow through and execution might be lacking. Its execution will be met by various existing and new challenges that will in turn affect efficient implementation.

Regional trade integration efforts is crucial for a continent that is struggling to meet its economic requirements. Africa is a growing continent and trade is the perfect avenue for meeting the economic needs of the growing youthful population.

5.3 Recommendations

The AfCFTA is expected to improve the trade relations between the African states and is a crucial tool to improve Africa's trading ranking. The continent should therefore work on the various identified factors to enable improvement of economic health and regional integration efforts. It is evident that sluggish production and low manufacturing capacities have undermined the realization of the full benefits of enhanced regional trade. Regional trade improvement strategies can only work out if the member states are in a position to rise to the occasion and actively participate in formulating policies and aligning their legislative and regulatory procedures with that of the AfCFTA. Furthermore transparency, fair competition policies and good faith dealings among the members are critical elements when it comes to seamless operationalization of the trade pact.

The implementation process will also need dedicated avenues to address any identified pitfalls in order to ensure trading activities are not inhibited or stalled in any way. Trade is a key facet for any thriving economy, as such it is always important to ensure seamless movement of goods and services is maintained.

It is clear that the concept of the Agreement is a bold one that hopes to improve the continent's trading capacities and improve economic positions of signatory countries. The AfCFTA is the best way for Africa, particularly for Kenya, to integrate regionally with other members and to gain a significant foothold in the global economy. A lot of effort and time will be required to bring this trade Agreement to fruition in its implementation process, and for the continent to radically improve its developmental prospects.

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Appendices

Questionnaire

Hello, my name is **Saadia Omar Shurie**. I am a postgraduate student undertaking a Master of Arts degree in International Studies at the University of Nairobi. My research project entails reviewing challenges facing the implementation of the African Continental Free Trade Area Agreement (AfCFTA) in Kenya. To facilitate data collection and writing of my research project, I am requesting that you provide answers to the below questions as truthfully as possible and to the best of your knowledge. The data collection process will take approximately 45-60 minutes. All your personal identifying information collected during the data collection process will be kept private and confidential. Your cooperation will be much appreciated.

General Information

1. What is the African Continental Free Trade Area (AfCFTA)?
2. What is the vision of the AfCFTA in Kenya?
3. Why have some states across the continent implemented a thoughtful tactic to it?
4. Why do you think some countries have not signed the agreement? Will their absence affect the realization of the AfCFTA's vision and goal?
5. What stage is Kenya at regarding AfCFTA implementation?
6. What institutional preparations have been adopted so far to facilitate the efficient implementation of the AfCFTA in Kenya?
7. How will AfCFTA affect small and large businesses in Kenya and drive "The Africa we want"?

Challenges

1. What has Kenya achieved so far following the coming into force of the African Continental Free Trade Area Agreement?
2. AfCFTA came into effect on January 1 2021, what are some of the barriers or challenges that have been encountered so far in its implementation in Kenya?
3. Do you think the private sector in Kenya will help moderate some of the challenges in the implementation process of the AfCFTA? How?
4. What measures or action are being taken by various stakeholders to mitigate the challenges?
5. Do you think cost and time to trade constraints will be likely barriers to the implementation process of the AfCFTA? If yes or no, how so?
6. Have the structures that AfCFTA has put in place to help regulate the markets and monopolies hinder or facilitate trade? If yes or no, how so?
7. Do you think AfCFTA will promote investments in trade in goods and services? If yes or no, how so?
8. Do you think intellectual property rights will be a barrier to AfCFTA implementation? If yes or no, how so?
9. Do you think the implementation of AfCFTA in Kenya will promote fair competition within the region? If yes, how so?
10. Do you think the implementation of the AfCFTA will strengthen or weaken the existing regional economic blocs? If yes or no, how so?
11. How will the implementation of AfCFTA facilitate the realization of Vision 2030 in Kenya?