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1. Protocols and treaties that formed AfCFTA

The AfCFTA was established to accelerate African integration by strengthening the “Abuja Treaty” that created the African Economic Community(RECs) in 1991.¹ It is one flagship project of the African Union(AU) Agenda 2063, which is “The Africa We Want”.² The African passport and free movement of people and the Pan-African E-network are the other flagship projects of Agenda 2063.³ These projects are a catalyst in accelerating the implementation of AfCFTA, thus requiring a regulation in place. The Free Movement of People protocol was adopted in January 2018, whereas the AfCFTA treaty was announced in March 2018.

The agreement that established the AfCFTA was negotiated from 2016 to 2018, with many back-to-back meetings. The 10th Extraordinary Summit of the AU in Kigali, Rwanda, officially announced the agreement that established the AfCFTA on 21 March 2018.⁴ The agreement came into effect on 30 May 2019, and the operation phase was launched on 7 July 2019, at the 12th Extraordinary Summit of the AU.⁵ The AfCFTA operational phase was launched with only phase I negotiated Protocols and five operational instruments for the trading.

The AfCFTA negotiations are scheduled into phases and it has three phases. Phase I negotiations are the Protocol on Trade in Goods, Protocol on Trade in Services, and Protocol on Rules and Procedures of the Dispute Settlements. Phase II negotiations are on policies of investment, competition, and intellectual property rights, while phase III negotiations are on digital trade, women, and youth. The member state of the AfCFTA negotiated phase II protocols parallel to the operational phase. Even major operational instruments such as the Rule of Origin (RoO) and Schedule of Tariff Concessions are not finalized during the launching of the operational phases.

Phase III commenced in February 2020 after the end of phase II negotiation, although the negotiation was not planned during the establishment of AfCFTA. Thus, phase III is negotiated as a supplementary legal text since additional legal instruments are allowed by Article 8 of the

¹ The Preamble of AfCFTA Article 1

² The AU agenda 2063 is signed in the Golden Jubilee of May 2013

³ See flagship projects of agenda 2063, available at <https://au.int/en/agenda2063/flagship-projects> (accessed 20 July 2023)

⁴ see CFTA Summit Media Announcement (2018) available at <https://au.int/en/announcements/20180306/2018-cfta-summit-media-announcement> (accessed 12 August 2021)

⁵ See Operational Phase of the African Continental Free Trade Area Launched available at <https://au.int/en/articles/operational-phase-african-continental-free-trade-area-launched> (accessed 12 December 2021)



AfCFTA preamble.⁶ Currently, phase II and Phase III negotiations are finalized and there are nine annexes under trade-in goods protocols that serve as an operational instrument.⁷ These are Annex 1: on Schedule of Tariff Concessions, annex 2: Rule of Origin(RoO), annex 3: customs cooperation and administrative assistance, and annex 4: trade facilitation. Annex 5: non-tariff barriers (NTB), annex 6: technical barrier, annex 7: sanitary and phytosanitary measures (SPS), annex 8: transit, and annex 9: trade remedies.

The different protocols and treaties for operationalizing the trading are sufficient. Nevertheless, the implementation of these legal instruments by member states of the AfCFTA is debatable. Accordingly, this research assesses the different protocols and treaties that formed the AfCFTA and its implementation level. The evaluation focuses on the member state's capacity to implement the protocols. The evaluation is based on AfCFTA member state logistic performance, trade facilitation, and non-tariff measures implementation. In addition, it examines the protocols for the free movement of people and technology and its implementation level by the AfCFTA member state.

1.1 Data presentation and analysis

The protocols and treaties that formed the AfCFTA are negotiated in three phases, where the treaty that establishes the AfCFTA lays a foundational base for all protocols. Phase I negotiation formed the protocol on trade on goods, trade on service, and dispute settlement rules and procedures. Phase II negotiation formed the protocols on competition policy, investment policy, and intellectual property rights, while phase III negotiation formed protocols on digital trade, women, and youth. The operational phase of the AfCFTA is launched only with phase I negotiation protocols.

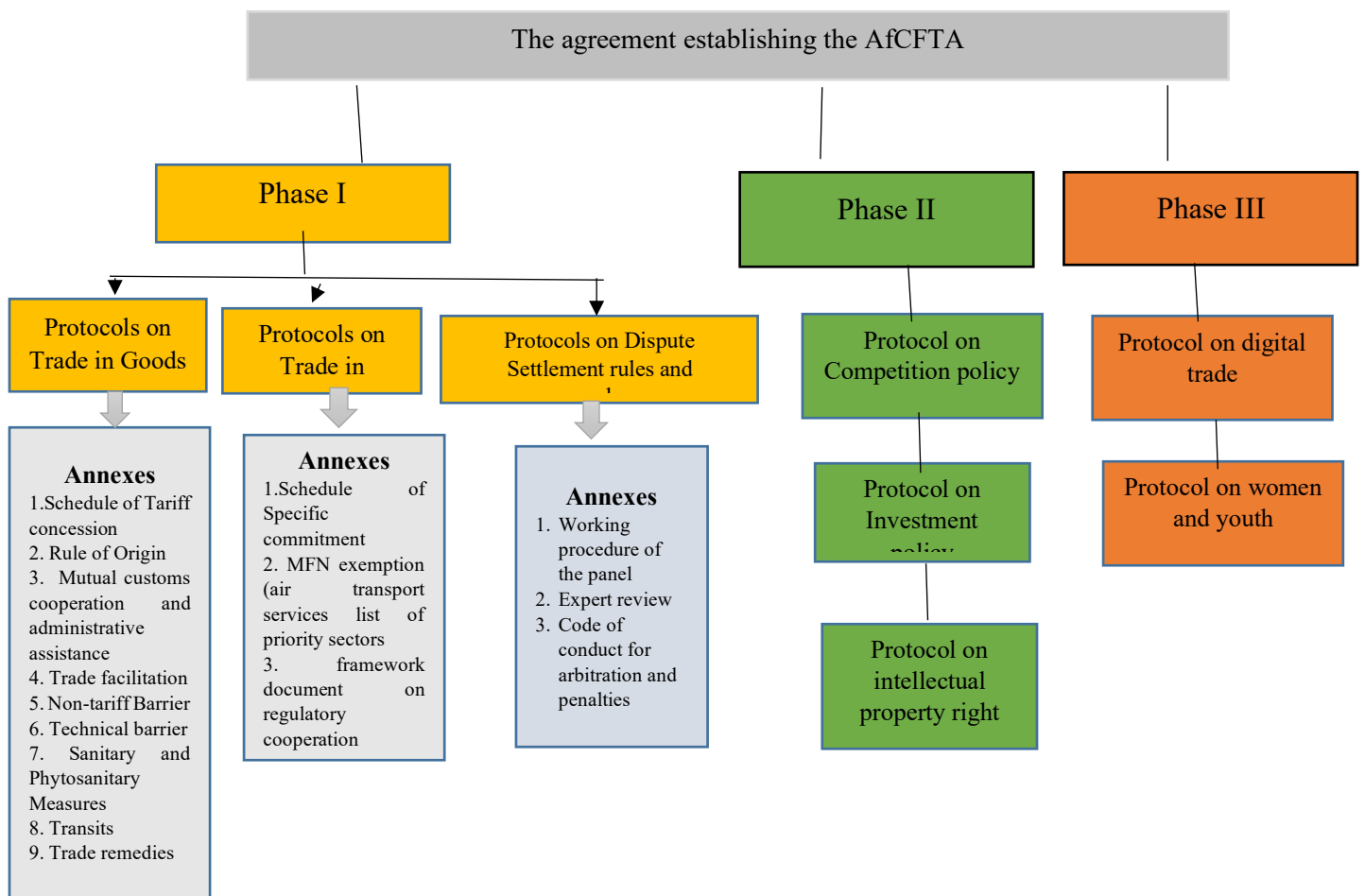
The operational phase launching is supported by five key legal instruments. These are the monitoring mechanism for Non-Tariff Barriers (NTB), the e-tariff books, the Pan-African Payment Settlement System (PAPSS), the Africa Trade Observatory, and the AfCFTA adjustment funds. Currently, there are nine annexes under the Protocol on Trade in Goods that serve as an operational instrument for trading. These are the regulations on RoO, administrative assistance, and trade facilitation. non-tariff barriers (NTB), technical barrier, sanitary and phytosanitary measures

⁶ *Talkmore Chidede*, AfCFTA phase II and phase III negotiation update, 10 February 2021

⁷ See report on the implementation of the AfCFTA to the fifth (5th) mid-year coordination meeting of the AU and RECs 17 July 2023

(SPS), transit, and trade remedies. The below figure summarizes the legal instruments of the AfCFTA.

Figure 1.1 The different treaties and protocols that formed the AfCFTA



The above figure illustrates the different protocols and treaties that formed the AfCFTA. Phase I negotiation has different annexes, which serve as the legal operational instrument for the trading. The analysis focuses on the operation instruments (i.e. the annexes) of Trade on Goods, as currently, the operational phase is only in Trade on Goods. The other protocols that formed the AfCFTA are negotiated in Phase II and Phase III is not yet on the implementation stage, hence assessing the level of implementation is difficult.

The analysis focuses on the operational instruments of Trade in Goods. The mutual customs cooperation and administrative assistance instrument is assessed based on the AfCFTA member state logistic performance index. In addition, trade facilitation implementation commitment including transit issues is assessed by the WTO countries' level of trade facilitation implementation. Furthermore, the technical barriers, Sanitary and Phytosanitary measures, RoO, and trade remedies are assessed under UNCTAD non-tariff measures.

1.1.1 Customs cooperation and mutual administrative assistance

Customs cooperation and mutual administrative assistance refer to cooperation on customs procedures and formalities to facilitate AfCFTA trading. Annex 3 of the AfCFTA is about customs administrative cooperation to improve the regulation of trade flows and applicable law enforcement. Mutual administrative assistance aims to ensure the customs law in their territories and combat customs offenses. Article 5, article 7, and Article 12 of Annex 3 are about the simplification and harmonization of customs procedures, automation of customs operation, and communication of customs information respectively.

Simplification and harmonization of customs procedures, automation of customs, documentation, etc are some of the indicators that evaluate the customs performance. Thus, the member states of AfCFTA customs performance is evaluated based on the World Bank customs performance score. The customs performance score is one element of the World Bank performance index indicator. The below table presents the customs performance index of the AfCFTA member state along with other five logistic performance index elements.

Table 1.1 AfCFTA member state 2023 logistic performance index score and rank

| Countries | 2023 | | | | | | | |
|-------------------------|----------|-----------|---------------|----------------------|------------------------------|---------------------|--------------------|-----------|
| | LPI rank | LPI score | Customs Score | Infrastructure score | International shipment score | Logistic competency | Tracking & tracing | Timelines |
| Algeria | 97 | 2.5 | 2.3 | 2.1 | 3 | 2.2 | 2.5 | 2.6 |
| Angola | 134 | 2.1 | 1.7 | 2.1 | 2.4 | 2.3 | 2.3 | 2.1 |
| Benin | 66 | 2.9 | 2.7 | 2.5 | 2.9 | 3 | 3.2 | 2.7 |
| Botswana | 57 | 3.1 | 3 | 3.1 | 3 | 3.4 | 3 | 3.3 |
| Burkina Faso | 123 | 2.3 | 2 | 2.3 | 2.4 | 2.4 | 2.2 | 2.4 |
| Cameroon | 134 | 2.1 | 2.1 | 2.1 | 2.2 | 2.1 | 1.8 | 2.1 |
| Central Africa Republic | 97 | 2.5 | 2.4 | 2.6 | 2.1 | 2.9 | 2.4 | 2.6 |
| Congo Dem Rep | 97 | 2.5 | 2.3 | 2.3 | 2.5 | 2.4 | 2.5 | 2.8 |
| Congo Rep | 88 | 2.6 | 2.3 | 2.1 | 2.6 | 2.9 | 2.7 | 2.9 |
| Djibouti | 79 | 2.7 | 2.6 | 2.3 | 2.5 | 2.8 | 2.7 | 3.6 |
| Egypt | 57 | 3.1 | 2.8 | 3 | 3.2 | 2.9 | 2.9 | 3.6 |

| | | | | | | | | |
|---------------|-----|-----|-----|-----|-----|-----|-----|-----|
| Gabon | 115 | 2.4 | 2 | 2.2 | 2.6 | 2 | 2.5 | 3 |
| Gambia | 123 | 2.3 | 1.8 | 2.3 | 2.6 | 2.3 | 2.4 | 2.6 |
| Ghana | 97 | 2.5 | 2.7 | 2.4 | 2.4 | 2.5 | 2.2 | 2.7 |
| Guinea | 97 | 2.5 | 2.4 | 2.4 | 2.2 | 2.7 | 2.7 | 2.5 |
| Guinea-Bissau | 88 | 2.6 | 2.7 | 2.4 | 2.9 | 2.9 | 2.3 | 2.4 |
| Liberia | 115 | 2.4 | 2.1 | 2.4 | 2.8 | 2.4 | 2.4 | 2.3 |
| Libya | 138 | 1.9 | 1.9 | 1.7 | 2 | 1.9 | 1.8 | 2.2 |
| Madagascar | 123 | 2.3 | 1.8 | 1.8 | 2.9 | 2.2 | 2 | 2.6 |
| Mali | 88 | 2.6 | 2.6 | 2 | 2.6 | 2.5 | 2.7 | 3.1 |
| Mauritania | 123 | 2.3 | 2.1 | 2 | 2.2 | 2.5 | 2.5 | 2.8 |
| Mauritius | 97 | 2.5 | 2.4 | 2.5 | 1.9 | 2.5 | 2.9 | 3.1 |
| Namibia | 66 | 2.9 | 2.8 | 2.8 | 3 | 2.9 | 2.8 | 2.9 |
| Nigeria | 88 | 2.6 | 2.4 | 2.4 | 2.5 | 2.3 | 2.7 | 3.1 |
| Rwanda | 73 | 2.8 | 2.5 | 2.9 | 2.4 | 3 | 3 | 3.1 |
| Somalia | 137 | 2 | 1.5 | 1.9 | 2.4 | 1.8 | 1.8 | 2.3 |
| South Africa | 19 | 3.7 | 3.3 | 3.6 | 3.6 | 3.8 | 3.8 | 3.8 |
| Sudan | 115 | 2.4 | 2.1 | 2.3 | 2.4 | 2.4 | 2.3 | 2.7 |
| Togo | 97 | 2.5 | 2.3 | 2.3 | 3 | 2.4 | 2.3 | 2.8 |
| Zimbabwe | 97 | 2.5 | 2.2 | 2.4 | 2.5 | 2.3 | 2.7 | 2.8 |

Source: World Bank 2023 logistic performance index indicator database

1.1.2 Trade facilitation

Trade facilitation is a major tool for increased and smooth international trade flow, as it simplifies and harmonizes international trade procedures. It includes the practices, activities, and formalities of collecting, presenting, communicating, and processing necessary data for the movement of international trade. Annex 4 of the Protocols on Goods, which is trade facilitation, is one of the operational instruments of AfCFTA. The objectives of the trade facilitation as per Article 2 of the AfCFTA are:

- a) simplify and harmonize international trade procedures and logistics to expedite the processes of importation, exportation, and transit; and
- b) expedite the movement, clearance, and release of goods including goods in transit across borders within State Parties

Trade facilitation requires member-state commitments in implementing the agreements. For example, Article 4 of the AfCFTA, which is the publication, requires member state commitments to promptly publish information about the procedure and document required. Following Article 29 of Annex 4, which is about the implementation commitment, member states commitments are based on the notification under the WTO agreement on Trade facilitation. Thus, considering the

member state commitment as per the WTO notification status provides us an input on how fast the member states can implement trade facilitation agreements.

Countries' commitment to implement the trade facilitation practices falls at category A, category B, or Category C. Category A are commitments implemented as of February 2017 for developed and developing countries, while it is implemented until February 2018 by least developing countries. Category B and C are for members of WTO who need additional time and additional time as well as capacity building respectively. The main commitment activities by the AfCFTA by WTO are; publication, enquire points, advance ruling, pre-arrival processing, electronic payment, separation of release, and risk management.

Post clearance audit, average release time, authorized operator, expedited shipments, perishable goods, use of international standards, and single window are the other activities that require member state commitments. Moreover, pre-shipment inspection, use of a customs broker, freedom of transit, fees, customs cooperation, and documentation require a member-state commitment for implementation. Member states notify WTO of the implementation commitment by showing under category A, B, or C which has an indicative and definitive implementation time. Category A has a definitive implementation time of 2018, while Category B and C have definitive implementation times of up to 2024 and 2027 respectively. The below table presents the 43-member state of AfCFTA trade facilitation notification under the WTO agreement.

Table 1.2 African countries' trade facilitation notification to WTO under category A, category B, and category C

| No | Countries | Category A | Category B | Category C |
|-----------|--------------------------|-------------------|-------------------|-------------------|
| 1 | Angola | 22.7% | 55,9% | 21,4% |
| 2 | Benin | 65.5% | 21.8% | 12.6% |
| 3 | Botswana | 28.2% | 67.2% | 4.6% |
| 4 | Burkina Faso | 13% | 17.6% | 69.3% |
| 5 | Burundi | 35.3% | 29% | 35.7% |
| 6 | Cameroon | 1.7% | 45.4% | 52.9% |
| 7 | Central African Republic | 26.9% | 0 | 73.1% |
| 8 | Chad | 34.5% | 30.3% | 35.3% |
| 9 | Congo | 22.7% | 50.8% | 26.5% |
| 10 | Cabo Verde | 37.4% | 16.8% | 45.8% |
| 11 | Cote d'ivoire | 34% | 5% | 60.9% |
| 12 | Democratic Reb of Congo | 42% | 39.9% | 18.1% |
| 13 | Djibouti | 1.7% | 23.5% | 74.8% |

| | | | | |
|----|----------------------|-------|-------|-------|
| 14 | Egypt | 23.1% | 2.5% | 74.4% |
| 15 | Eswatini, kingdom of | 9.7% | 42.4% | 47.9% |
| 16 | Gabon | 13.9% | 21.4% | 64.7% |
| 17 | Gambia | 48.7% | 38.2% | 13% |
| 18 | Ghana | 9.7% | 17.2% | 73.1% |
| 19 | Guinea | 14.7% | 54.6% | 30.7% |
| 20 | Kenya | 7.6% | 23.9% | 68.5% |
| 21 | Lesotho | 11.8% | 24.4% | 63.9% |
| 22 | Liberia | 35.7% | 32.8% | 31.5% |
| 23 | Madagascar | 8.8% | 0 | 91.2% |
| 24 | Malawi | 63% | 10.1% | 26.9% |
| 25 | Mali | 65.5% | 17.2% | 17.2% |
| 26 | Mauritania | 39.9% | 2.5% | 57.6% |
| 27 | Mauritius | 57.1% | 36.6% | 6.3% |
| 28 | Morocco | 91.2% | 0.8% | 8% |
| 29 | Mozambique | 65.5% | 10.5% | 23.9% |
| 30 | Namibia | 51.3% | 0 | 48.7% |
| 31 | Niger | 31.9% | 6.7% | 61.3% |
| 32 | Nigeria | 15.1% | 42.4% | 42.4% |
| 33 | Rwanda | 26.9% | 65.1% | 8% |
| 34 | Senegal | 52.5% | 10.5% | 37% |
| 35 | Seychelles | 55.9% | 27.3% | 16.8% |
| 36 | Sierra Leone | 0.8% | 19.7% | 79.4% |
| 37 | South Africa | 90.3% | 9.7% | 0 |
| 38 | Tanzania | 21.8% | 17.2% | 60.9% |
| 39 | Togo | 42.9% | 32.8% | 24.4% |
| 40 | Tunisia | 59.7% | 0 | 40.3% |
| 41 | Uganda | 8.4% | 27.3% | 64.3% |
| 42 | Zambia | 5.5% | 27.7% | 66.8% |
| 43 | Zimbabwe | 34.9% | 50% | 15.1% |

Source WTO notification of category commitments under the agreement on trade facilitation

1.1.3 Non-tariff barrier

The non-tariff barriers are implicit trade restrictions such as quotas and sanctions that affect international trade. It includes measures such as governance, infrastructure, and border crossings, the prevalence of informal trade; rules of origin, certificates required by the exporting country, export registration requirement, special authorization for SPS and TBT reasons, and inspection requirements. The NTBs are divided into technical barriers and non-technical barriers. Technical barriers are regulation on the contents of products such as SPS and pre-shipment inspection. Non-technical barriers are measures that limit the total no of imports such as quotas and rules of origin.

The regulation for, NTB is Annex 5 of the AfCFTA, the technical barrier is Annex 6, SPS is Annex 7, and Annex 9 is trade remedies. The technical barrier, SPS, and trade remedies are non-tariff barriers., thus assessing AfCFTA NTM is crucial. To assess the AfCFTA member state readiness for NTB measurements, 20 countries' 2023 NTB measures are analyzed as per the World Bank NTM. The analysis considered both the export and import measures of its NTM coverage, ratio, and NTB-affected products. The measuring indicators consist of technical barriers, Sanitarily and Phytosanitary and pre-shipment inspection, charges, taxes, RoO, and other Para-tariff, and anti-competitive. The below table presents the AfCFTA member state NTB.

Table 1.3 AfCFTA member state non-tariff measurements coverage for import and export products

| Countries | Export | | | | Import | | |
|---------------|--------------|---------------|-----------------------|-------------|--------------|---------------|-----------------------|
| | NTM coverage | NTM frequency | NTM affected products | Total trade | NTM coverage | NTM frequency | NTM affected products |
| Algeria | 0.02% | 1.49% | 22 | 1,475 | 52.9% | 53.17% | 2,506 |
| Benin | 46.68% | 30.17% | 366 | 1,213 | 64.11% | 32.73% | 1136 |
| Burkina Faso | 65.39% | 27.31% | 196 | 1,264 | 61.76% | 26.46% | 963 |
| Cameroon | 76.55% | 14.98% | 328 | 2,189 | 46.80% | 18.71% | 837 |
| Cote d'ivoire | 38.39% | 3.38% | 98 | 2,899 | 21.87% | 18.71% | 813 |
| Ethiopia | 91.90% | 37.29% | 827 | 2,218 | 97.80% | 90.05% | 4,188 |
| Gambia | 3.48% | 8.18% | 40 | 489 | 61.25% | 14.75% | 425 |
| Ghana | 93.30% | 24.14% | 833 | 3,451 | 51.34% | 41.27% | 1,945 |
| Liberia | 36.27% | 38.88% | 491 | 1,263 | 19.15% | 46.47% | 1,687 |
| Mauritania | 32% | 12.83% | 147 | 1,146 | 36.58% | 17.93% | 684 |
| Morocco | 32.15% | 24.11% | 873 | 3,621 | 57.25% | 44.55% | 2,138 |
| Niger | 1.54% | 0.99% | 12 | 1,212 | 28.51% | 18.78% | 690 |
| Nigeria | 1.02% | 24.41% | 267 | 1,094 | 94.33% | 85.90% | 3,923 |
| Senegal | 32.94% | 10.49% | 264 | 2,517 | 48.30% | 28.77% | 1,237 |
| Tunisia | 56.66% | 42.83% | 1,496 | 3,493 | 70.63% | 58.17% | 2,748 |

Source: UNCTAD NTM database

1.1.4 The role of technology and the free movement of people in accelerating the AfCFTA implementation

The African passport and free movement of people as well as the pan-African E-network are among the flagship projects of Agenda 2063.⁸ These projects are the catalyst in accelerating the implementation of the AfCFTA, thus requiring a regulation in place. The aim of the pan-African E-network project is to put policies in place that transform Africa into e-society. The free movement of people protocol aims to eliminate border restrictions by promoting visa issuance.

1.2.4.1 The different technologies

The Pan-African E-network project has the potential to promote the AfCFTA implementation. The E-network project is working towards African digital trade and e-commerce consumer protection, data localization and authentication, cross-border data flows, and cybersecurity. Generally, e-commerce refers to the production, distribution, marketing, and delivery of goods or services through electronic means. Digital trade refers to all e-commerce activities including the movement of digital data. Phase III of the AfCFTA negotiated on digital trade protocol that provides a framework for digital trade and e-commerce. Per the digital protocol, the AfCFTA leverages different technologies to enhance its operation and promote efficacy.

The operational phase launching is supported by five key legal instruments, of which three of them are a digital platform. These are the Pan-African Payment Settlement System (PAPSS), the Africa Trade Observatory (ATO), and the monitoring mechanism for NTB including the e-tariff books. However, these platforms remain unimplemented during the first AfCFTA trade initiative. The PAPSS network is established to promote AfCFTA implementation by arranging trading payments with local currency. It was developed by an African export-import bank and officially launched in Accra, Ghana in January 2022. Currently, Nigeria, Ghana, Liberia, Guinea, Sierra Leone, Gambia, Djibouti, Zimbabwe, and Zambia central banks are part of the PAPSS network.⁹

The ATO aims to provide up-to-date reliable trade data information for the private sector and policy makers. It is implemented by the International Trade Centre (ITC) to support AfCFTA trading. The trade-related information includes information on trade flows such as trade value and trade quantities, etc. However, there is no trade data on the trade flows between the eight countries that participated in the first AfCFTA trade initiatives. The monitoring mechanism for NTB is an

⁸ See flagship projects of agenda 2063, available at <https://au.int/en/agenda2063/flagship-projects> (accessed 20 July 2023)

⁹ Michael Akuchie, PAPSS: Africa is heading towards a single payment system, how can it pull it off?

e-platform mechanism opened to the private sector including for SMEs to register and report NTB trade obstacles while trading under the AfCFTA initiative.

The NTB monitoring portal is launched on 7 July 2019 in Niamey Niger.¹⁰ The NTB monitoring experts are following the trading under the AfCFTA trade initiative in case of any NTB. However, the private sector is not aware of the NTB reporting platform.

Furthermore, there is a digital platform called “AfCFTA hub” launched in Accra, Ghana. The hub provides a common transactions reference framework to deepen operational interoperability among e-commerce, e-logistics, e-regulation, and e-customs platforms. Any private sector who desires to trade under the AfCFTA can get AfCFTA unique code, which is used as their transaction reference number.¹¹ The hub aims to enhance regional digital collaboration to enhance market access on the Continent by cutting red tape and simplifying customs procedures.

Ghana and six other African countries would soon begin onboarding young entrepreneurs, SMEs, and startups to obtain free AfCFTA numbers. There are other platforms established by Africans that accelerate the AfCFTA implementation. For instance, the African Trade Exchange Platform, eTrade group, and Sokokuu. Africa are portal that provides trade-related information data. Therefore, the AfCFTA recognizes the role of technology and thus establishes different platforms that facilitate its implementation. However, most of these technology remain unimplemented, although the AfCFTA is still in its infancy stage.

1.2.4.2 The free movement of people

The AU believed that the free movement of people across their border accelerated intra-Africa trade. Thus, the AU signed the free movement of people parallel to the AfCFTA initiative. The free movement of people’s protocols come into force with only 15 members of the AU ratification. Currently, 33 out of 55 members of the AU ratified the Protocol, while only Seychelles, Benin, and Gambia implement the protocol by removing their border restrictions.¹² This means the implementation level of the Protocol is about 5%, although the ratification is 61%.

¹⁰ UNCTAD AfCFTA support program to eliminate non-tariff barriers, increase regulatory transparency and promote industrial diversification

¹¹ See Get AfCFTA number and Join the AfCFTA Hub, available at www.afcfta.app (accessed 20 July 2023)

¹² See stories of ECA about the free movement of people, a catalyst for trade on 29 March 2023 available at www.uneca.org (accessed 20 August 2023)

The free movement of a person's protocols contains provisions on progressive realization.¹³ The provision is about the right of residence and right of business establishment which is divided into three phases. Phase one is about the implementation of border restriction removal, while phase two and phase three are about the right of residence and business establishment respectively. State parties are responsible for implementing the protocol by adopting regulations and administrative measures as per Article 27 of the protocol.

The free movement of persons remains unimplemented by 52 members since leaders have fears that implementing the protocols trigger political instability. This is because the protocol promotes low-skilled economic migrants to rich African countries. Thus, members of the AU feel that there should be a policy in place on population registration, passporting, record of criminal records, and cooperation. This policy makes member states feel safeguarded, hence implementing the protocol of free movement of persons.

To consider the implementation of the protocols, the African Visa Openness Report of 2022 is considered.

Table 1.3 AfCFTA member state broader openness report of 2022

| Countries | No visa required | Visa required | Visa on arrival |
|--------------------------|-------------------------|----------------------|------------------------|
| Algeria | 6 | 47 | 0 |
| Angola | 10 | 36 | 7 |
| Benin | 53 | 0 | 0 |
| Botswana | 17 | 36 | 0 |
| Burkina Faso | 16 | 26 | 11 |
| Burundi | 6 | 0 | 47 |
| Cabo Verde | 16 | 1 | 36 |
| Cameroon | 7 | 46 | 0 |
| Central African Republic | 8 | 45 | 0 |
| Chad | 14 | 38 | 1 |
| Comoros | 0 | 0 | 53 |
| Democratic Reb of Congo | 4 | 46 | 3 |
| Cote d'ivoire | 22 | 31 | 0 |
| Djibouti | 0 | 3 | 50 |
| Egypt | 0 | 48 | 5 |
| Eritrea | 1 | 50 | 1 |
| Eswatini, kingdom of | 17 | 36 | 0 |
| Ethiopia | 2 | 2 | 49 |
| Gabon | 9 | 44 | 0 |
| Gambia | 53 | 0 | 0 |

¹³ Article 5 of the protocol on free movement of person, right of residence and establishment

| | | | |
|-----------------------|----|----|----|
| Ghana | 26 | 1 | 26 |
| Guinea-Bissau | 13 | 0 | 40 |
| Guinea | 19 | 34 | 0 |
| Kenya | 19 | 34 | 0 |
| Lesotho | 16 | 37 | 0 |
| Liberia | 14 | 39 | 0 |
| Libya | 1 | 52 | 0 |
| Madagascar | 0 | 1 | 52 |
| Malawi | 15 | 27 | 11 |
| Mali | 20 | 31 | 2 |
| Mauritania | 8 | 0 | 45 |
| Mauritius | 27 | 5 | 21 |
| Morocco | 7 | 46 | 0 |
| Mozambique | 9 | 2 | 42 |
| Namibia | 13 | 15 | 25 |
| Niger | 18 | 35 | 0 |
| Nigeria | 17 | 0 | 36 |
| Rwanda | 18 | 0 | 35 |
| Republic of Congo | 5 | 40 | 8 |
| Sao Tome and Principe | 7 | 46 | 0 |
| Senegal | 40 | 13 | 0 |
| Seychelles | 53 | 0 | 0 |
| Sierra Leone | 13 | 23 | 17 |
| Somalia | 0 | 1 | 52 |
| South Africa | 18 | 35 | 0 |
| South Sudan | 3 | 50 | 0 |
| Sudan | 0 | 51 | 2 |
| Tanzania | 19 | 12 | 22 |
| Togo | 14 | 1 | 38 |
| Tunisia | 22 | 31 | 0 |
| Uganda | 20 | 33 | 0 |
| Zambia | 14 | 28 | 11 |
| Zimbabwe | 17 | 26 | 10 |

Source: Africa Visa Openness Index 2022

1.2 Findings and results

The findings and results are discussed based on the data presentation. First, it discusses the customs performance and administrative assistance per the AfCFTA member state logistic performance index. Thereafter, it discusses the AfCFTA member state trade facilitation implementation commitment and the NTM. Finally, it considers the implantation level of different technologies and the free movement of people.

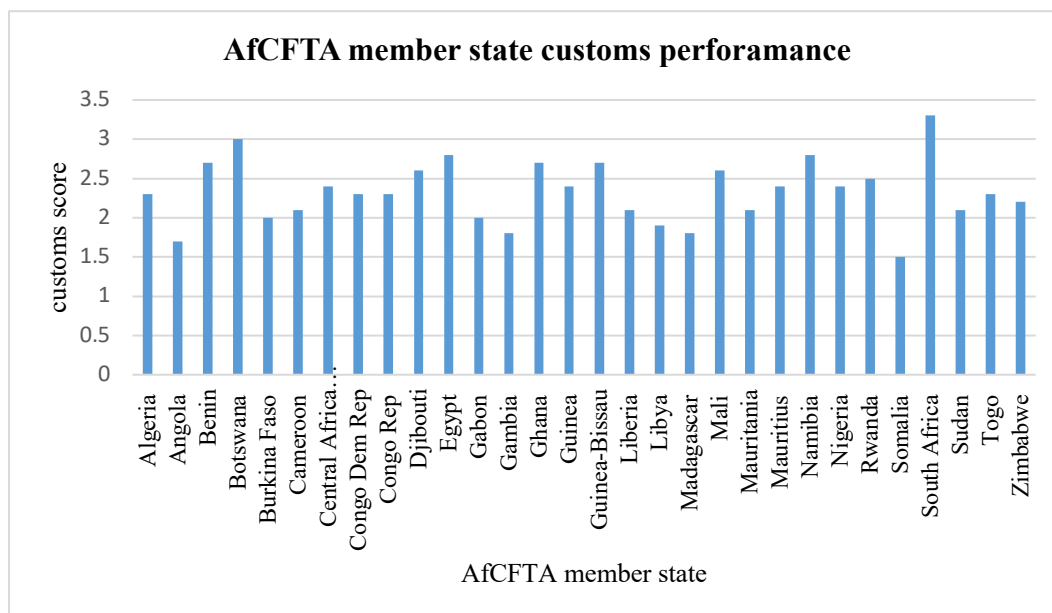
1.2.1 Customs performance and administrative assistance

1.2.1.1 Customs score

The customs score is about the administration of customs law, collection of duties and taxes, application of laws, and simplification and harmonization of customs procedures for exportation and importation. The customs score of 29 out of 54 member states of AfCFTA is evaluated per the World Bank 2023 customs score. The analysis is on 29 member states, as only 29 AfCFTA member states data is available. The customs score analysis is based on 5 to 1, where 5 indicates the highest customs performance.

As shown in the below figure out of the 29 AfCFTA member states only 9 countries got more than the average score, which is 2.5. Of which, the 8 AfCFTA member state custom scores are between 2.5 and 3, where Botswana scored 3, while the others are close to 2.5. South Africa is the only AfCFTA member state that scored 3.3 This means in 2023, 68.97% of the AfCFTA member states scored below average performance, while 31.03% of the AfCFTA members scored above average. Thus, to improve customs performance, the AfCFTA is required to work with the member state that scored below the average custom score.

Figure 1.1 AfCFTA member state customs performance



1.2.1.2 Logistic Performance Index

Further to the customs service score analysis, the logistic performance index is analysed, to consider AfCFTA member state logistic performance. The logistic performance index is calculated in terms of customs services, infrastructure development, ease of arranging shipment, quality of logistics services, timeliness, tracking, and tracing. This analysis is important because it shows the gap between member states. For example, the first consignments of batteries exported by Kenya to Ghana under the AfCFTA took six weeks to travel from the port of Mombasa to Tema as the goods went via Singapore.¹⁴ This shipment is a witness to the long timeline of shipments under AfCFTA.

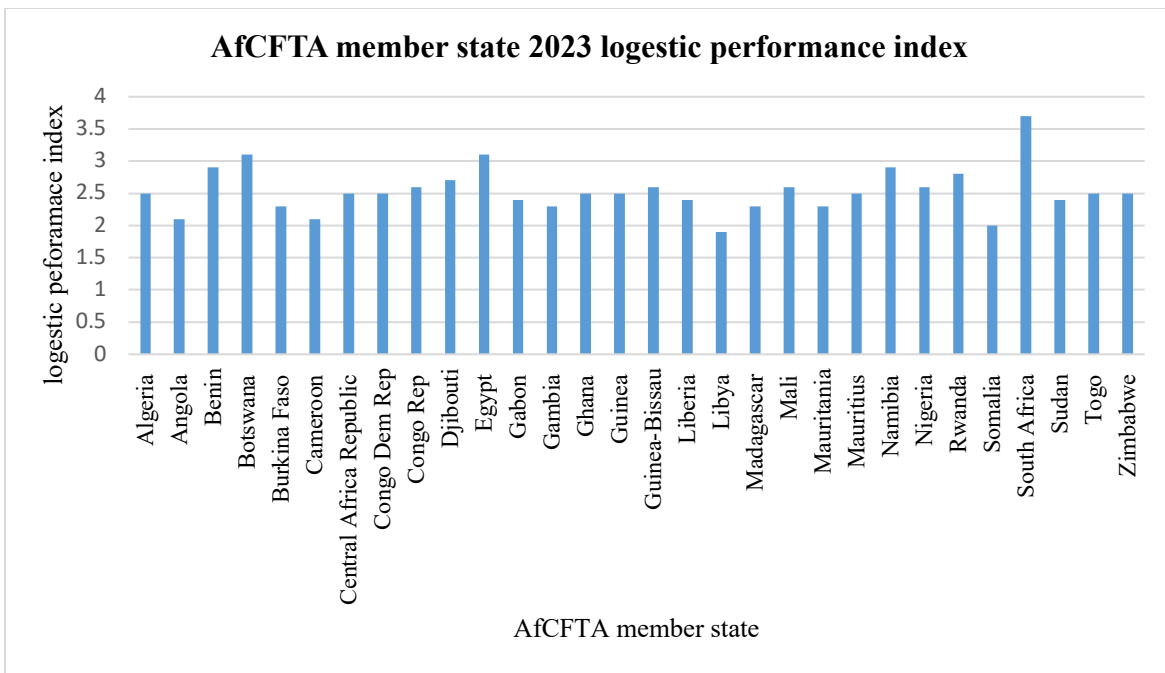
In terms of infrastructure, only Egypt, Ghana, and South Africa established necessary customs infrastructure.¹⁵ The logistic performance index of 2023 indicates AfCFTA's performance in terms of timelines, infrastructure, custom service, ease of arranging shipment, quality of logistic service, and tracking and tracing. The performance index is based on the World Bank data of 2023 with a 5 to 1 score, where 5 indicates high performance and 1 indicates low performance.

As illustrated in Figure 1.2 out of the 29 AfCFTA member states, 11 countries scored more than average and 8 countries scored exactly 2.5. Out of the 11 countries, three countries scored more than 3 with South Africa with a score of 3.7 and Egypt and Botswana scoring 3.1. This means 62.07% of the AfCFTA member state logistic performance indexes are 2.5 and below, while 37.93% are above 2.5. This shows that the logistic performance of the member state requires improvement in terms of infrastructure development, arrangement of shipment, reduction of timelines, improvement of customs services, quality logistic service, and tracking and tracing.

Figure 1.2 AfCFTA member state logistic performance index

¹⁴ Kate Hairsine, Africa AfCFTA free trade agreement takes

¹⁵ Kingsley Ighobor, AfCFTA: 100 days since start of free trading, prospect seems bright



1.2.1 Trade facilitation

Trade facilitation is a catalyst in promoting international trade flow by reducing the time and cost of trading. WTO sets out terms and requirements for trade facilitation by putting an implementation framework for its members. Member states of the AfCFTA trade facilitation implementation commitment are per the WTO trade facilitation commitments.¹⁶ Out of the 54 member states of the AfCFTA, 43 members are members of the WTO who notified their implementation commitments to WTO. 20 trade facilitation activities require AfCFTA member state implementation commitments.

The trade facilitation implementation activities should be per the AfCFTA trade facilitation provision from Article 4 to Article 24. These Articles are publication, enquire points, advance ruling, pre-arrival processing, electronic payment, separation of release, and risk management. Post clearance audit, average release time, authorized operator, expedited shipments, perishable goods, use of international standards, and single window are the other activities that require member state commitments. Moreover, pre-shipment inspection, use of a customs broker, freedom of transit, fees, customs cooperation, and documentation requires member state commitment for implementation.

¹⁶ Article 29 of Trade Facilitation of AfCFTA

The 43-member state of WTO, which is also a member of AfCFTA, should notify the 20 activities implementation commitment by classifying under categories A, B, or C. Each category has its own indicative and definitive implementation time. Category A has a definitive implementation time of 2018, while Category B and C have definitive implementation times of up to 2024 and 2027 respectively.

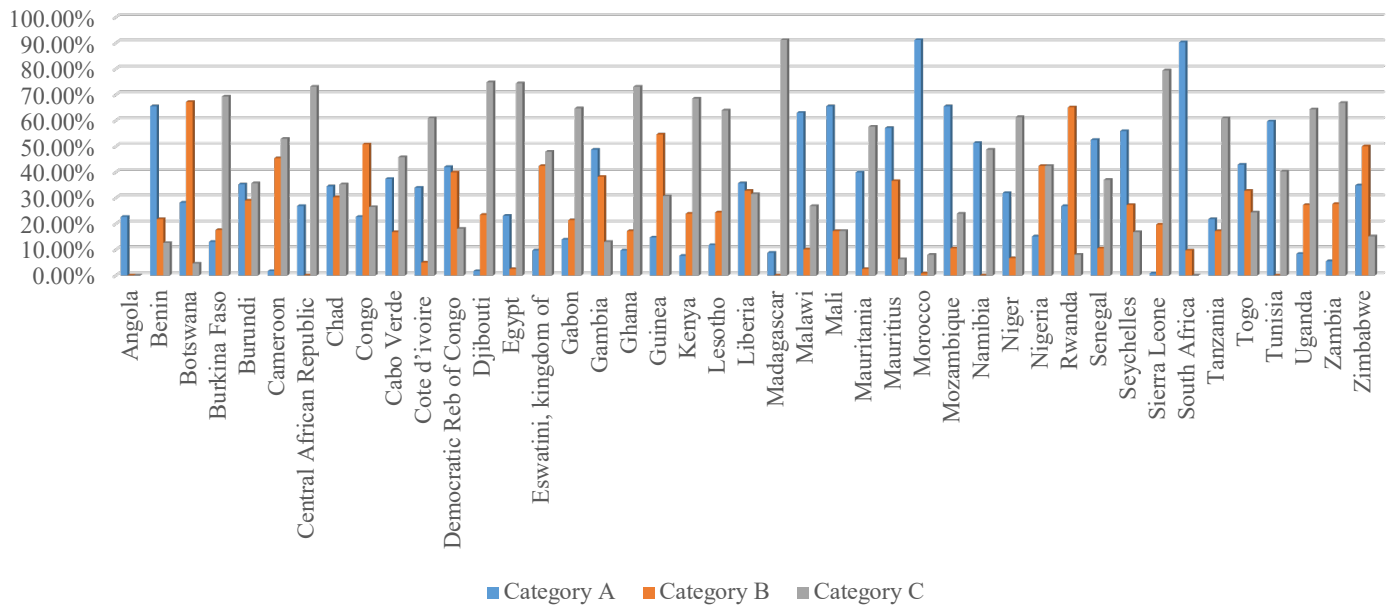
The below figure shows 43 AfCFTA member states trade facilitation commitment notifications. From the findings, 11 countries' commitment notifications are 50% and above under Category A. 5 countries and 17 countries' commitment notifications are 50% and above are under Category B and Category C respectively. This means, that of the 20 implementation commitment activities, only 11 countries committed to implement more than 50% of activities under Category A. 5 countries and 17 countries notified more than 50% of their commitment under Category B and Category C respectively.

Of the 11 countries, Morocco and South Africa notify 90% of their implementation commitment under Category A, while nine countries' commitments are between 50% to 60%. On the other hand, of the 17 countries under Category C, Madagascar and Sierra Leone trade facilitation implementation commitment is 90% and 80% respectively, while the 15 countries' commitment is between 50% to 70%. From the findings, most of the AfCFTA members' trade facilitation commitment notifications are under Category C, where the Category C implementation timeline is between 2024 to 2027.

Most likely there will be an extension of the implementation timeline due to COVID-19 and other unanticipated circumstances. Thus, trade facilitation affects the trade flow under the AfCFTA initiatives for a minimum of five years. However, the probability of AfCFTA members in implementing trade facilitation activities is high. This is because the WTO implementation commitments were in place in 2017, while the implementation phase of AfCFTA was launched in 2019. Therefore, the probability of implementation the trade facilitation will be accelerated, if AfCFTA collaborates with WTO to build the capacity of its members.

Figure 1.2 AfCFTA members state trade facilitation commitment notification as per WTO framework

AfCFTA member state trade facilitation commitment notification

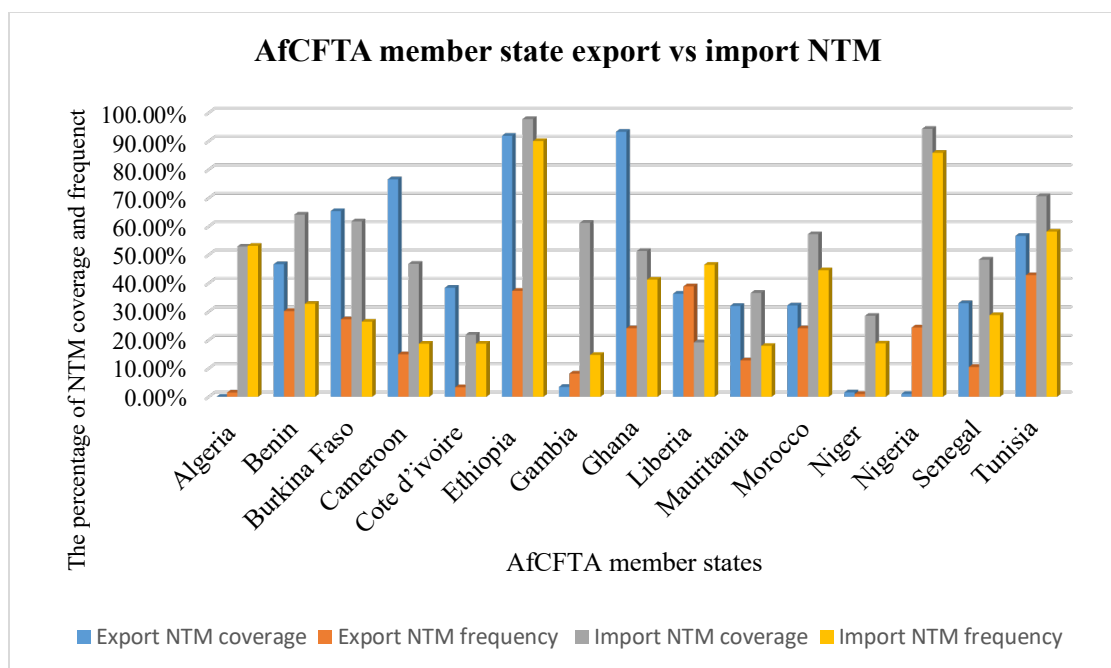


1.2.3 Non-Tariff barriers

To assess the AfCFTA member state non-tariff trade barrier, the NTM taken to export vs import is considered by taking the 15 countries as a sample. The NTM findings are based on the data retrieved from the UNCTAD database on NTB. As you can see in the below figure of 15 countries, the NTM taken for imported products is greater than the exported product. Of the 15, countries, 9 countries' NTM import coverage is more than 50%, while 5 countries' NTM export coverage is more than 50%. In addition, of the 15 countries, 8 countries' import NTM frequency is greater than 30%, while 3 countries' NTM export frequency is greater than 30%.

The findings show that the countries' NTM for importation is much greater than the export NTMs. This is because the 15 countries mostly exported outside of Africa, where the NTM is eliminated by the imported countries to reduce the NTB. This means the AfCFTA faces an NTM, as most African countries have NTM during importing. This highly impacts the trading under the AfCFTA initiative.

Figure 1.3 15 AfCFTA member state export vs imports NTMs

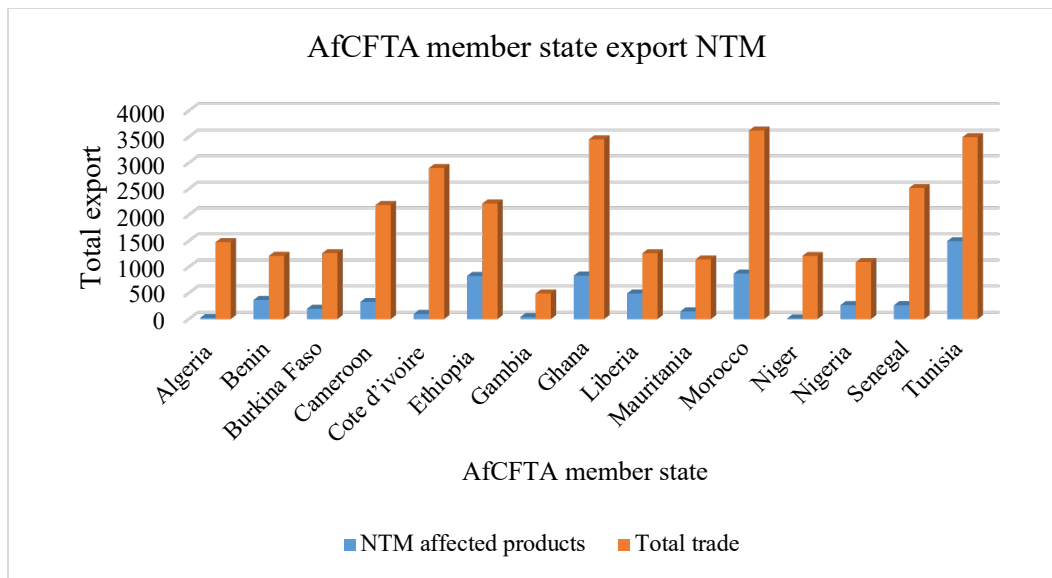


1.2.3.1 Non-Tariff measures on exportation

The NTM findings are based on 15 AfCFTA member state World Bank databases. Of the 54 AfCFTA member states, only 15-member state results are discussed as only these members' data is available. As shown in the below figure, the top three exporters are Morocco, Tunisia, and Ghana, while the top three least exporters are Gambia, Nigeria, and Mauritania. Morocco, Tunisia, and Ghana exported a total of 3,621, 3,493, and 3,451 trade respectively, of which 873, 1,496, and 833 products are taken as NTM. This means the NTM of Morocco, Tunisia, and Ghana accounts for 21.11%, 42.82%, and 23.85% respectively compared to their total export products.

Gambia, Nigeria, and Mauritania exported a total of 489, 1,094, and 1,146 trades respectively, of which 40, 267, and 147 trades are taken NTM. This means NTM of Gambia, Nigeria, and Mauritania accounts for 8.18%, 24.41%, and 12.83% respectively in terms of their total export products. Both the top three highest exporter and top three least exporter percentage are below 30%. This means NTM taken by these countries are low, hence non-tariff trade barriers are low. Accordingly, the non-tariff trade barrier impact on the AfCFTA trading is very low.

Figure 1.3 15 AfCFTA member states NTMs on export trade



1.2.1 Technology and free movement of people

1.2.1.1 Technology

Technology has the potential to foster economies of scale by decreasing bureaucracy in cross-border trade. This is because technology has the potential to make trading easy and quick. Also, it has the advantage of unmasking the fraud, as it is often said nothing is ever permanently deleted from the internet. The AfCFTA recognized the role of technology in promoting trading, hence leveraging different technologies to enhance its operation and promote efficacy. Technology requires regulation in place, where phase III of the AfCFTA negotiated on digital trade protocol that provides a framework for digital trade and e-commerce.

The operational phase of the AfCFTA launching is supported by five key legal instruments, of which three of them are a digital platform. These are the Pan-African Payment Settlement System (PAPSS), the Africa Trade Observatory (ATO), and the monitoring mechanism for non-tariff barriers including the e-tariff books. However, these platforms remain unimplemented during the first AfCFTA trade initiative. Moreover, there is a digital platform called “AfCFTA hub” launched in Accra, Ghana. The hub provides a common transactions reference framework to deepen operational interoperability among e-commerce, e-logistics, e-regulation, and e-customs platforms. Ghana and six other African countries would soon begin onboarding young entrepreneurs, SMEs, and startups to obtain free AfCFTA numbers.

The AfCFTA launching is supported by 80% technology assistance. Thereafter, there are also other technologies like the AfCFTA hub, the Africa exchange trade, etc to foster the trading under the

AfCFTA initiative. However, in terms of implementation, of the four technologies that assisted the AfCFTA launching, only one technology is implemented, which is the e-tariff book. The PAPSS, the ATO, and the AfCFTA hub remain unimplemented. The online monitoring mechanism for non-tariff measures was implemented during the first trade initiative under the AfCFTA.

Generally, the AfCFTA recognizes the role of technology in promoting the African intra-trade, hence doing extraordinary jobs. However, working towards the implementation should be the other main issue that requires more work. Accordingly, the AfCFTA is required to work the implementation strategies parallel to the development of technology that fosters the AfCFTA.

1.2.1.2 Free movement of people

Regional economic integration has five levels, where level 1 is a free trade area creation that enables members to reduce restrictions on export and import trading.¹⁷ Level 2 is a customs union, which allows free internal trade and member states to impose common external policies. Level 3 is the creation of a common market where members are allowed freedom of movement of production in addition to level 1 and level 2 agreements. Level 4 is an economic union where there is a common rule and coordination of national and regional economic policy. The last is, political union, a stage where the common government is increased and the sovereignty of member states is reduced.

On one hand, the AfCFTA is a regional integration that creates a continental single market via free trade area, which is level 1 economic integration. On the other hand, the free movement of people is part of level 3, which is the common market, of regional economic integration. The AU recognized the importance of the free movement of people in fostering the economic integration of Africa. Thus, the AU takes the free movement of people as one flagship project of Agenda 2063, while the AfCFTA is the other flagship project.

The free movement of people's protocols came into force with only 15 members of AU ratification in January 2018.¹⁸ This protocol is part of the Abuja treaty that established the African Economic Communities (RECs) in 1961. The free movement of a person's protocol has three phases scheduled with four to twelve years of implementation. Phase one is about the implementation of

¹⁷ Bela Balassa, *The theory of integration* (1962)

¹⁸ The treaty establishing the free movement of people, the right of residence, and the right of business establishment

border restriction removal, while phase two and phase three are about the right of residence and business establishment respectively. The removal of border restrictions is a phase one implementation, where African countries are required to open their broader African nations with an implementation timeline of four years.

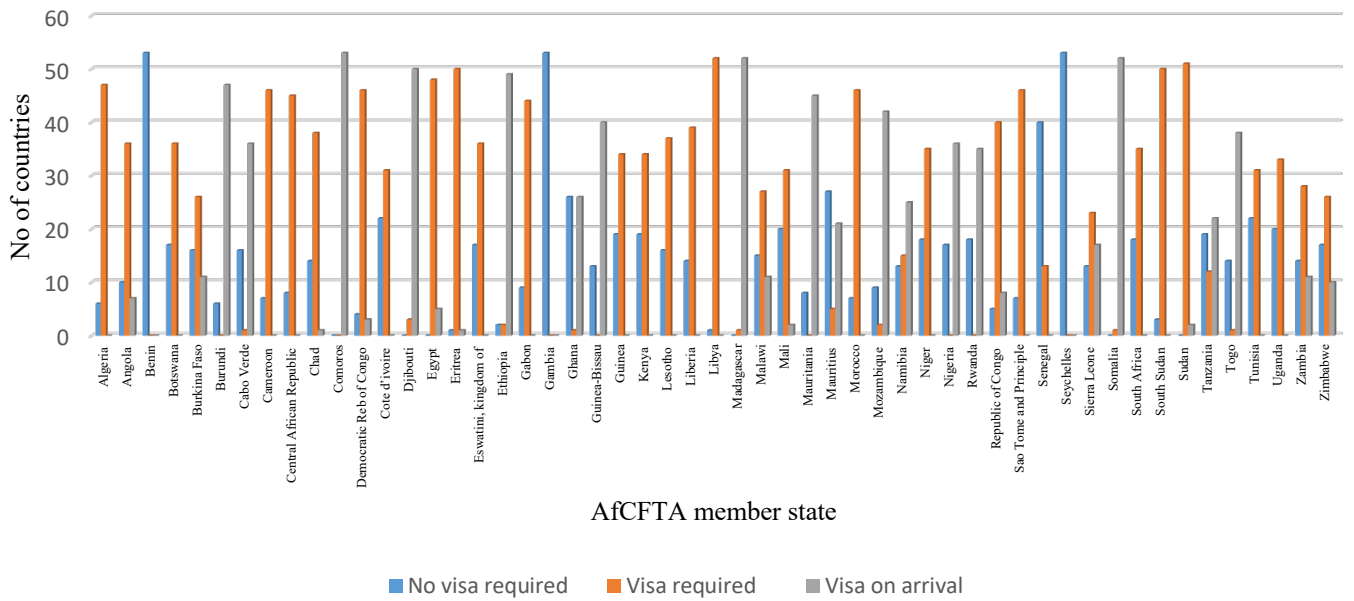
Currently, 33 out of 55 members of the AU ratified the Protocol, while only Seychelles, Benin, and Gambia implement the protocol by removing their border restrictions.¹⁹ This means the implementation level of the phase I protocol is about 5%, although the ratification is 61%. As you can see from the below figure 32 countries request a visa for more than 20 countries, while 10 countries open their broader for more than twenty countries. The visa openness prioritized the REC members. For example, as shown in Table 1.4, Cameroon allowed the free movement of people from Chad, Congo, and the Democratic Republic of Congo, who are members of CEMAC. However, Cameroon increased visa fees from CFA 50,000 to 150,000 for short-term stays for other fellow African nations.²⁰ Generally, the implementation level of visa openness is 5%, although the implementation timeline is until 2022.

Figure 1.4 Africa Countries Visa Openness Report of 2022

¹⁹ See stories of ECA about the free movement of people, a catalyst for trade on 29 March 2023 available at www.uneca.org (accessed 20 August 2023)

²⁰ See business news in Cameroon, Cameroon govt launches e-visa, increase cost for fast track procedures, (05 May 2023)

African countries visa openness report of 2022



1.4 Findings conclusion

The different treaties and protocols that formed the AfCFTA are sufficient for operationalizing the AfCFTA. However, the capacity of AfCFTA member states to adopt these protocols is limited, hence their level of implementation is debatable. The logistic performance index analysis evidence that 67% of members scored low performance. In addition, most AfCFTA member state trade facilitation implementation commitment notification is under category C, which has a definite timeline of up to 2027 with the requirement of capacity building.

Furthermore, the NTM analysis indicated that African countries impose more NTM for importing products compared to their exporting products. This is because African countries exported their product mostly outside of Africa. Hence, African countries' NTM for importing products affects the trading under the AfCFTA. Moreover, the implementation level of the free movement of people protocol and the different technologies created by AfCFTA are below 5%. Therefore, from this analysis, we conclude that the implementation level of the different treaties and protocols that formed the AfCFTA is very low.