IMPACT OF REGULATORY FRAMEWORKS ON INFORMAL CROSS BORDER TRADE IN NIGERIA: A CASE STUDY OF THE RICE IMPORT RESTRICTION AND BORDER CLOSURE OF 2019

by

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Abstract

Informal cross border trade (ICBT) appears to be neglected in trade policy discussions in Nigeria and Africa despite its enormous contribution to income earnings and food security. Regulatory policies often perceive ICBT as a social and economic threat. Hence, government policies often focus on the formal traders, neglecting the challenges encountered by informal cross border traders. ICBT constitutes the bulk of the informal economy and comprises vulnerable, small traders who use informal channels for trade as a result of non-inclusive government policies.

Failure to develop regulations and policies that incorporate the realities of informal cross border traders is costly to both the ICBT actors and the government. First, a significant portion of government revenue is lost to ICBT in unpaid customs duties and tax. Second, existing policies continue to exclude traders involved in ICBT, preventing them from benefiting from incentives and other trade facilitation initiatives by the government. Excluding informal cross border traders in trade policy discussions undermines the profitability of cross border trade for all economic actors.

This research combines a theory-driven approach with empirical case studies to evaluate the impact of regulatory frameworks on ICBT in Nigeria. Examining the rice import restriction and border closure policies implemented in 2019, this thesis demonstrates that (i) the trade regulatory framework in Nigeria is non-inclusive of ICBT, (ii) hostility and non-inclusion further drives informality in cross border trade in Nigeria, and in Africa, and, (iii) ICBT actors are crucial to building effective trade regulatory frameworks.

By identifying the ideological gaps in the current regulatory framework, I propose a reform to the cross border trade regulatory framework in Nigeria. I also identify the gaps in regional trade regulatory frameworks. The empirical case studies corroborate the need for a reform in the approach to cross border trade regulation. The analysis of trade data from the case studies reveals the inadequacy and ineffectiveness of the current framework.

Lay Summary

Research suggests that the design of hostile and non-inclusive regulatory frameworks undermine the role of ICBT in the provision of income earnings, food security, and employment opportunities for a large percentage of vulnerable populations. ICBT is a common phenomenon among vulnerable, small, unregistered traders. In 2019, the Nigerian government directed the closure of the country's land borders to prevent informal trade in rice. The trade regulatory framework in Nigeria and in Africa encourages ICBT because of non-inclusive regulatory policies. Within Africa, ICBT is largely unmeasured and excluded from trade policy discussions by national governments despite its prevalence in the informal economy. This research combines a theoretical approach with empirical case studies to evaluate the impact of trade regulatory frameworks on ICBT. Result from empirical investigation shows that the trade regulatory framework in Nigeria is ineffective and non-inclusive of ICBT.

Preface

This thesis is the original, unpublished, independent work of the author, Mariam Ololade Omotosho. Chapter 4 is based on official international trade statistics obtained from the United Nations International Trade Statistics Database. I analyzed the reported data for the purpose of this thesis.

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List of Abbreviations

AfCFTA	African Continental Free Trade Agreement
AFREXIM	Africa Export Import Bank
ATPC	Africa Trade Policy Centre
AU	African Union
CBN	Central Bank of Nigeria
CFA franc	Communatué financière d'Afrique or African Financial Community
COMESA	Common Market for Eastern and Southern Africa
ECOWAS	Economic Community of West African States
GCI	Global Competitiveness Index Report
GDP	Gross Domestic Product
GIZ	German Agency for International Cooperation
HS Code	Harmonized System of classification
ICBT	Informal Cross Border Trade
NBS	National Bureau of Statistics
NCS	Nigeria Customs Service
NIS	Nigeria Immigration Service
NOTN	Nigerian Office for Trade Negotiations
RECS	Regional Economic Communities
SADC	Southern Africa Development Community
TFT	Tit-for-Tat Strategy
UN COMTRADE	United Nations International Trade Statistics Database

UNECA	United Nations Economic Commission for Africa
USDA FAS	United States Department of Agriculture Foreign Agricultural Service
USD	United States Dollars
WTO	World Trade Organization

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I am immensely grateful for the greatest gift of all—Family. I am thankful to my parents, my siblings, and my adorable nieces and nephews whose overwhelming love and encouragement kept me going when the journey was rough. For the time spent listening to my research, words cannot adequately express how thankful I am.

Dedication

To Him — The Lord of the Universe. The Best of Helpers. The Entirely Merciful. The Especially Merciful.

Chapter 1: Introduction

Despite the paucity of data and absence of a consistent framework for collecting information on cross-border trade, to say nothing of definitional challenges, ICBT's contribution to total intra-African trade . . . varies significantly across the region, but is particularly prevalent in Western and Eastern Africa, where ICBT accounts for as much as 42% and 80%, respectively, of total trade between some countries. [T]he magnitude of these estimates implies that ICBT is a critical feature of Africa's trade landscape that has neither been taken into account in balance of payment statistics nor drawn upon to inform the design of trade and industrial policies.

- *Africa Trade Report 2020*[1]

1.1 Informal Cross Border Trade: So What?

In 2017, ICBT generated approximately USD18 Billion, constituting over two-thirds of trade flow in the African continent.[2] In fact, reports suggest that about 64 percent of the gross domestic product (GDP) of Nigeria is generated through ICBT.[3] The role of the informal economy, especially ICBT, in the provision of income earnings, food security, and employment opportunities for a large percentage of vulnerable populations in Africa is often overlooked.[4]

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[1] *African Trade Report 2020*, by African Export Import Bank, Informal Cross Border Trade in Africa in the Context of AFCFTA (Cairo: African Export Import Bank, 2020) at 11.

[2] Suffyan Koroma, Clement Onyango, & Ny You, "Formalization of informal trade in Africa: trends, experiences and socio-economic impact" (2016) Food and Agriculture Organization of the United Nations (Policy Brief 2017) 5 at 1.

[3] *Nigeria's Booming Borders: The Drivers and Consequences of Unrecorded Trade*, by Leena Kofi Hoffman & Paul Melly (Britain: Chatham House, Royal Institute of International Affairs, 2015) at vii.

[4] *Informal Cross-Border Trade in Africa: How Much? Why? And What Impact?* Discussion Paper, by Antoine Bouet, Kathryn Pace & Joseph Glauber, Discussion Paper 01783 (Washington DC: International Food Policy Research Institute, 2018) at 1.

Several studies suggest that for many African countries including Nigeria, the value of informal trade exceeds the value of formal trade.[5]

In Nigeria and across Africa, ICBT and the informal economy is disregarded in the design of trade regulatory policies. Trade regulation in Nigeria has been directed towards measuring exports and imports that move through formal channels, focusing on how formal trade can be enhanced, while informal trade has been discouraged and neglected.[6] An example which is subsequently considered in this thesis is the restriction on the importation of rice through the closure of the country's borders in 2019. While the objective of this policy was to reduce ICBT in rice, reports show that the policy only further increased the informality associated with rice importation. This regulatory blindness towards ICBT has undermined the profitability and contribution of the ICBT sector to food and income security.

ICBT is a common phenomenon among vulnerable, small, unregistered traders. Within Africa, ICBT is largely unmeasured and unregulated by national governments despite its prevalence across the continent. In different border towns in Nigeria, it is common to see traders crossing the borders with heads and arms overloaded with goods for sale. This kind of cross border trade is usually called informal as it involves small entrepreneurs who do not pass through the formal import and export channels for all or part of their goods.[7] The bulk of trade between African

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[5] *Ibid* at 8.

[6] *The Continental Free Trade Area (CFTA) in Africa - A Human Rights Perspective*, by Caroline Dommen, (United Nations Economic Commission for Africa, Freidrich Ebert Stiftung) at 61.

[7] Koroma, Onyango, & You, *supra* note 2.

countries is conducted by small, unregistered traders, and is not captured by national trade statistics.[8] Traders often pass through informal routes sometimes using motorcycles, canoes, and beasts of burden[9] to connect neighbouring African countries. These traders, referred to as informal cross border traders, contribute immensely to intra-African trade.

Informal cross border traders in Nigeria encounter numerous challenges as a result of non-inclusive regulatory frameworks, inefficient processes and bureaucratic institutional procedures. In addition to the several restrictive import and export regulations, cross border traders are confronted with onerous currency exchange conditions at domestic financial institutions. These challenges often drive cross border traders to circumvent regulatory frameworks and adopt informal, and even unsafe means to conduct their business.[10]

In several African countries including Nigeria, ICBT constitutes a significant proportion of informal sector activities.[11] The trade conducted between Nigeria and the neighbouring countries of Benin Republic, Cameroon, Niger, and Togo are several times greater in volume than the amount of trade that is officially reported. This indicates the magnitude of informal trade within Nigeria itself. Reports suggest that ICBT is “a response to the obstacles and complications that

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[8] *Informal Cross-Border Trade and Trade Facilitation Reform in Sub-Saharan Africa*, OECD Trade Policy Working Papers, by Caroline Lesser & Evdokia Moise-Leeman, OECD Trade Policy Working Papers No. 86 (France: Organisation for Economic Cooperation and Development, 2009) at 9.

[9] Jean-Guy K Afrika & Gerald Ajumbo, “Informal Cross Border Trade in Africa: Implications and Policy Recommendations” (2012) 3:10 13 at 2.

[10] Ibid

[11] Bouet A, Pace K. & Glauber J. *supra* note 4.

impede trading through formal, monitored channels".[12] It has also been suggested that the trade regulatory framework in Nigeria creates distortions that encourage ICBT.[13]

There are strong arguments connecting the development of trade to the quality of existing regulatory frameworks. Silberberger and Königer argue that "both regulation and trade have a significant positive influence on growth, with the effect of regulation being especially pronounced for countries that have worse regulatory quality and for middle-income countries."[14] Also, in a publication identifying how regulatory frameworks could be designed to achieve inclusive growth, it is suggested that a government's policy direction may negatively or positively impact development efforts.[15] For example, in the case of Nigeria, in spite of government's effort to boost industrialization and encourage consumption of domestically produced commodities, successive government administrations continue to adopt policies which hinder the achievement of these objectives.

The trade regulatory regime in Nigeria is dominated by a complex web of regulatory authorities comprising federal government ministries and agencies such as the Ministry of Industry, Trade and Investment, the Ministry of Finance, the Nigerian Office for Trade Negotiations (NOTN),

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[12] Hoffman & Melly, *supra* note 3 at vii.

[13] Stephen Golub, Ahmadou Aly Mbaye & Christina Golubski, "The effects of Nigeria's closed borders on informal trade with Benin", (29 October 2019), online: *Brookings* <https://www.brookings.edu/blog/africa-in-focus/2019/10/29/the-effects-of-nigerias-closed-borders-on-informal-trade-with-benin/>.

[14] Magdalene Silberberger & Jens Königer, "Regulation, trade and economic growth" (2016) 40:2 Economic Systems 308–322 at 308.

[15] OECD, *Regulatory Reform in the Middle East and North Africa: Implementing Regulatory Policy Principles to Foster Inclusive Growth*, OECD Reviews of Regulatory Reform (OECD, 2013) at 11.

the Central Bank of Nigeria (CBN) and the Nigeria Customs Service (NCS), with trade policies "lacking effective coordination".[16] While there have been arguments for and against government intervention in economic markets,[17] these arguments are not extensively considered in this research. My research investigates the effectiveness of government intervention in trade in Nigeria through an evaluation of the recently adopted border closure and rice importation policies. I argue that while it may be necessary for government to intervene moderately in trade in emerging economies with a large proportion of small and vulnerable enterprises like Nigeria, intervention efforts should accommodate the less influential actors like the micro and small business enterprises, to be effective.

The first and only attempt to measure ICBT in Nigeria was in 2014 when the CBN commissioned a study to examine the size and pattern of ICBT at the borders of Nigeria. According to the report, until recently, no country in the Economic Community of West African States (ECOWAS) had made efforts to study the pattern or size of ICBT.[18] This is of course not the case for formal cross border trade. Globally, trade relations and business opportunities are becoming increasingly crucial to societies and their economic activities.[19] Compared to other

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[16] *A Nigerian Policy RoadMap- Perspectives and Insights*, by Nigerian Office for Trade Negotiations (Nigerian Office for Trade Negotiations, 2020) at 13.

[17] See for more discussion Antonio Costa, "Multilateralism under threat: Causes, impact, and the policy debate on government intervention in trade" (1985) 7:1 Journal of Policy Modeling 181–217.

[18] *Measuring Informal Cross-Border Trade in Nigeria*, by External Sector Statistics Division (Central Bank of Nigeria, 2016) at v.

[19] Gbadebo OA Odularu, Mena Hassan & Musibau Adetunji Babatunde, eds, *Fostering Trade in Africa: Trade Relations, Business Opportunities and Policy Instruments*, Advances in African Economic, Social and Political Development (Cham: Springer International Publishing, 2020) at 2.

regions in the world and some other parts of Africa, trading across Nigeria's territorial borders is fraught with tariff challenges such as high taxes and custom duties, and non-tariff related challenges such as poor trade infrastructure, cumbersome trade policies and inefficient trade support institutions.

Most of the scholarship on cross border trade in Africa analyze the trend and magnitude of ICBT in East and Southern Africa. Discussion of cross border trade in Africa has also considered the role of ICBT in poverty alleviation,[20] regional integration and informal trade in specific countries like Benin Republic,[21] cross border trade facilitation in sub-Saharan Africa,[22] the prevalence of women in ICBT,[23] and the contribution of institutional factors to the dominant informal sector in West Africa.[24] My research fills the gap in existing literature by focusing on ICBT in Nigeria. Unlike existing research, I adopt a theory-driven perspective to investigate how trade regulatory frameworks impact ICBT. The objective is to underscore the importance of including ICBT in trade policy discussions. With the increasing environmental risks of resource extraction, the uncertainty attached to resource-dependent revenue, and the effect of the global pandemic on

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[20] Olukayode Faleye, "Impact of Informal Cross Border Trade on Poverty Alleviation in Nigeria: Kotangowa Market [Lagos] in Perspective" (2014) 2:1 Crossing the Border: International Journal of Interdisciplinary Studies 13–22.

[21] See for more discussion Sami Bensassi, Joachim Jarreau & Cristina Mitaritonna, "Regional Integration and Informal Trade in Africa: Evidence from Benin's Borders" (2019) 28:1 Journal of African Economies 89–118.

[22] See for more discussion Lesser & Moise-Leeman, *supra* note 8.

[23] See for more discussion Jubril Olayiwola Jawando, Ezekiel Oluwagbemiga Adeyemi & Busoye Oguntola-Laguda, "Survival Strategies of Women in Informal Cross Border Trade Along Lagos-Seme Border Axis" (2012) 12:9 Global Journal of Human Social Science, Sociology, Economics & Political Science 11.

[24] See for more discussion Stephen Golub & Jamie Hansen-Lewis, "Informal Trading Networks in West Africa: The Mourides of Senegal/The Gambia and The Yoruba of Benin/Nigeria" in *The Informal Sector in Francophone Africa* (Washington, DC: World Bank, 2012).

African economies, my research contributes to the discussion of harnessing the potential of trade, and in particular ICBT, in Nigeria, and, in Africa.

This research is expected to generate three outcomes: (i) clarify the current state of regulatory policies in Nigeria in relation to ICBT; (ii) evaluate the impact of regulatory frameworks, and in particular, deterrent regulatory frameworks on ICBT using the country's rice importation restriction and border closure of August 2019 as a case study; and (iii) recommend how trade regulatory frameworks can accommodate the informal economy for collective benefits.

1.2 Background

Africa is the second largest continent in the world comprising 55 countries which account for about 16 percent of the world population.[25] It also has the highest number of the world's youngest average population.[26] Despite Africa's enormous potential, Africa remains home to the poorest countries in the world, with 27 out of the 55 countries in Africa categorized as the least developed economies in the world.[27] This remains the case, in spite of efforts to leverage Africa's trade potential to improve its global competitiveness.

With the increasing volatility of resource revenue and awareness of the need to adopt sustainable development strategies, there is renewed attention in Nigeria and across Africa on the enormous

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[25] Lisandro Abrego et al, *The African Continental Free Trade Area: Potential Economic Impact and Challenges (2020)*, Staff Discussion Notes (International Monetary Fund., 2020) at 10.

[26] Odularu, Hassan, & Babatunde, *supra* note 19 at 1.

[27] Abrego et al, *supra* note 25 at 10.

potential of intra-African trade.[28] Since Nigeria's independence in the twentieth century, different trade policies have been adopted to boost the country's regional and global trade position. To date, these efforts have yielded less than desired results.

According to existing research, tariff and non-tariff barriers including poor transport infrastructure, lengthy custom procedures, high import and export duties, and counterproductive policies continue to prevent Nigeria from maximizing the potential of trade within the continent.[29] My research focuses on one of the barriers identified above—counterproductive policies. I evaluate the impact of deterrent trade policies on ICBT in Nigeria.

I focus on Nigeria because of its population and economic position in Africa. The informal economy, and ICBT in particular, provides income security for about half of the population. While Nigeria generates vast cross border trade across a diverse range of commodities, official statistics only record a marginal portion and does not capture the massive volumes of informal export and import activity. This fragmented account affects government revenue and the access of informal traders to government's trade support initiatives.

In Nigeria, ICBT constitutes a significant proportion of informal sector activities. Yet, very little attention has been given to ICBT in the design of regulatory policies by the Nigerian government. The scant attention has been directed at implementing regulations to deter ICBT,

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[28] Intra-African trade refers to trade between countries in Africa. It involves trading across territorial borders of countries in Africa and can also be described as cross-border trade.

[29] Odularu, Hassan, & Babatunde, *supra* note 19 at 8.

such as the rice importation restriction, and the border closure of 2019. This regulatory attitude towards ICBT is surprising, especially considering Nigeria's recent acknowledgment of the importance of a "well-structured trade policy framework"[30] for inclusive trade growth.

In 2020, the Nigerian Office for Trade Negotiations (NOTN) published the roadmap for achieving Nigeria's current trade policy objectives. The publication states that:

> *Rooted in Nigeria's geopolitical position, Trade Policy should provide for a holistic, whilst detailed, trade framework to make Nigeria one of the 15 largest economies in the world by 2025. Concretely, Nigeria's trade policy should provide a framework for increasing the share of trade in GDP to 50%, and the workforce share employed in trade-related industries to 28%, by 2023*.[31]

While the trade policy roadmap reflects an awareness of the need for an inclusive regulatory framework for the set objectives to be achieved, it is silent on the obstacles to establishing the type of framework required to achieve the set objectives. Setting lofty aspirations and designating sophisticated expertise to design trade policy objectives is certainly good for the country's trade development; what is better, however, is to identify and address the shortcomings of the existing regulatory framework to facilitate the realization of the set objectives.

With the size and contribution of ICBT to trade in Nigeria, efforts to place Nigeria and the African continent in a competitive position in the global trade market will continue to yield less than desired results until ICBT, and the informal economy as a whole, is considered as important as the formal economy in regulatory policy discussions. There are two major effects of excluding

[30] Nigerian Office for Trade Negotiations, *supra* note 16 at 13.

[31] *Ibid* at 11.

ICBT in the design of trade regulatory frameworks. First, the emerging regulatory framework will be ineffective. As is the case, existing policies will continue to exclude traders involved in ICBT, preventing them from benefiting from incentives and other trade facilitation initiatives by the government. Second, the larger fraction of trade revenue will remain unaccounted for.[32] In any case, the government and the traders are negatively affected.

1.3 Research Question

The overarching question my research seeks to answer is: how does the trade policy framework in Nigeria impact ICBT? In the course of answering this question, I will also seek to answer the following: (i) what is the impact of deterrent policies on ICBT in Nigeria? (ii) how can the existing regulatory landscape in Nigeria and in Africa facilitate cross border trade for small, unregistered enterprises?

1.4 Methodology

According to De Vaus ". . .when designing research, we need to ask: given this research question, what type of evidence is needed to answer the question in a convincing way?"[33] The questions raised in this research are answered by combining a theory-driven approach with empirical investigation methods. I draw on the socio-legal theory of responsive regulation, propounded by Ayres and Braithwaite in their book, *Responsive Regulation: Transcending the*

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[32] Bouet, Pace & Glauber, *supra* note 4 at 38.

[33] David De Vaus, *Research Design in Social Research*, first edition ed (London: SAGE, 2001) at 9.

Deregulation Debate,[34] and results from empirical case study to evaluate the impact of preventive or deterrent regulatory frameworks on ICBT in Nigeria.

A theory-driven approach draws on a specific framework of thoughts in evaluating a research problem.[35] As explained by Leeuw and Schmeet, "empirical legal research focuses on 'empirical'".[36] It involves collecting and analyzing data about how the law works in practice.[37] "Doing empirical legal research often implies asking and answering *evaluative questions*"[38] as is the case in this research. According to Leeuw, research based on "theory-driven evaluations" is one in which "argumentation analysis and visualization software, in-depth interviewing and other types of data collection and research reviews are used to unravel or *unpack* underlying normative and causal assumptions of policy makers and lawyers."[39] My research evaluates the impact of the rice import restriction and the border closure of 2019 on ICBT in Nigeria, drawing on the Ayres and Braithwaite theory of responsive regulation. I explain the regulatory regime on informal cross border trade in Nigeria, the rationale behind the regulatory regime and examine whether this rationale has yielded desired results.

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[34] Ian Ayres & John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (New York: Oxford University Press, 1992).

[35] Frans L Leeuw & Hans Schmeet, "Theories and Empirical Legal Research" in *Empirical Legal Research: A Guidance Book for Lawyers, Legislators and Regulators* (United Kingdom: Edward Elgar Publishing, 2016) 54 at 54.

[36] Frans L Leeuw & Hans Schmeet, "Introducing Empirical Legal Research" in *Empirical Legal Research: A Guidance Book for Lawyers, Legislators and Regulators* (United Kingdom: Edward Elgar Publishing, 2016) at 4

[37] Denis J Galligan, *Legal Theory and Empirical Research* (Oxford University Press, 2010) at 3–4.

[38] Leeuw & Schmeet, *supra* note 36 at 6.

[39] Frans Leeuw, "Can legal research benefit from evaluation studies?" (2011) 7 Utrecht Law Review 52–65 at 53.

The responsive regulatory theory of Ayres and Braithwaite challenges the deterrent regulatory theory of law and economics by arguing that regulatory frameworks which are built on cooperative and less coercive strategies induce greater compliance and are likely to be more effective.[40] My research queries the underlining utility maximization ideology upon which Nigeria's trade regulatory framework is built. I argue that ICBT remains prevalent in Nigeria because of the ideology that adopting preventive and deterrent policies will induce traders to use formal channels for trade.[41]

The data for this research is obtained from a desk review of existing literature. I consider laws and policies on trade in Nigeria such as *Export (Prohibition) Act, Laws of the Federation of Nigeria, 2004* and the Import and Export Guidelines, regional treaties like the African Continental Free Trade Agreement (AfCFTA), and some texts on trade and policy in Africa. I also rely on data from websites such as the World Bank DataBank for Development Indicators and Enterprise Survey, Nigeria's National Bureau of Statistics and International Labour Organization. Using the rice importation restriction and border closure of 2019 as case studies, I show that the use of preventive regulations has been ineffective in curbing ICBT.

My analysis draws on secondary data obtained from the United Nations International Trade Statistics database (UN COMTRADE). From the UN COMTRADE database, I obtain secondary data on the value of Nigeria's rice imports and exports between 2015 and 2019 when the rice

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[40] Peter Drahos & Martin Krygier, "Regulations, Institutions and Networks" in *Regulatory Theory, Foundations and Applications* (ANU Press, 2017) 1 at 5.

[41] Richard Craven, "Socio-legal Studies and Economics" in Marc Mason, Kirsten McConnachie & Naomi Creutzfeldt, eds, *Routledge Handbook of Socio-Legal Theory and Methods*, 1st ed (New York: Routledge, 2019) 179 at 182.

import restriction and border closure policies were adopted. I also obtain secondary data on the value of rice exports of top exporters of rice into Nigeria. By analysing the trade value of (i) rice imports into Nigeria, (ii) rice imports into four of the African countries sharing borders with Nigeria, and (iii) rice exports into Nigeria from the global market, I show that the border closure has been ineffective in curbing ICBT in rice. Relying on the results derived from the case study, I argue that deterrent frameworks such as closing the country's borders or imposing import restrictions is counterproductive to the objective of curbing ICBT and encouraging formal cross border trade.

The theory and method adopted in this research may have some perceived limitations, which should be noted and addressed. According to Burton, findings of "small-scale empirical projects" often suffer from the problem of "representativeness". Burton explains that using empirical methods raise the problem of "reliability, representativeness and validity".[42] Indeed, while such concerns are valid, it may also be "unfounded" depending on the objective of the research. As Burton explains, there may not be concerns for representativeness where the objective of the research is not to make a claim of representativeness, but is rather to show the impact of certain initiatives or policies.[43] This research does not make a claim of representativeness. Rather, it seeks to show the impact of a body of regulatory policies. The rice restriction and border closure

[42] Mandy Burton, "Doing Empirical Research: Exploring the Decision-making of Magistrates and Juries" in Dawn Watkins & Mandy Burton, eds, *Research Methods in Law*, second edition ed (New York: Routledge, 2017) 66 at 73.

[43] *Ibid*.

policies have been selected in this research to show the importance of incorporating ICBT into trade regulatory frameworks.

Second, critics have argued that the theory of responsive regulation, which is proposed as an alternative to the deterrent regulatory theory,[44] encourages regulatory capture. Regulatory capture is the control and domination of regulatory authorities by regulated entities, in a way that advances the interests of the entities being regulated. Supporters of deterrent regulations argue that responsive regulation fosters corruption and ineffective regulation. Also, a theory also remains "a provisional answer to a question, waiting for an (empirical) test".[45] Thus, the effectiveness of the responsive regulatory theory can only be tested by empirical data.

Finally, the nature of ICBT also impacts access to data for this research, which is limited. The novelty of the selected case studies limits the literature existing on the topic. The case studies also draw on secondary data on Nigeria's rice trade statistics reported by the UN COMTRADE. Hence, the research findings are limited to the data available and analysed through the UN COMTRADE database. The UN COMTRADE database gathers data on imports and exports of countries using the country's official trade statistics and the trade patterns of a country's trade partners. The data collection method assumes that all goods reported to have been exported by a country, have economic origins in the exporting country. Therefore, it does not reflect goods

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[44] The deterrent regulatory theory posits that individuals are rational decision makers driven by the desire to maximize utility and reduce cost. Hence, increasing the cost of non-compliance to a regulation through sanctions prevents non-compliance.

[45] Leeuw & Schmeet, *supra* note 36 at 55.

imported into a country for re-export. In the case of Nigeria, some of the products, including rice, are imported into and re-exported from Nigeria to other African countries through ICBT.

Both identified limitations, however, have minimal impact on the findings of this research because of the evaluative character of this thesis. While the data collected from the UN COMTRADE database may be subject to minor inaccuracies, there is a strong indication that the border closure policies have been ineffective in curbing ICBT. Further, as much as responsive regulation may lead to regulatory capture, the cost of regulating with deterrence for developing countries like Nigeria, still outweighs its benefits.

1.5 Thesis Overview

This thesis comprises six chapters. This introductory Chapter 1 provides a context for my subsequent discussions by explaining the relevance of my research, the objectives, the methodologies adopted in pursuit of these objectives, justification for adopting these methodologies, and the limitations to the research findings. In Chapter 2, I provide an overview of the regulatory framework for ICBT in Nigeria. I also clarify the meaning of ICBT within the context of this research. That is, cross border trade in legal goods by small traders through informal channels. I discuss ICBT in Nigeria, examining its significance, magnitude, pattern and its challenges, particularly for women.

Following this contextual overview, in Chapter 3, I explain the underlining ideology which influences the regulatory framework explained in Chapter 2. My analysis draws on the deterrent theory of law and economics and the socio-legal theory of responsive regulation. I explain that the trade regulatory framework in Nigeria is based on the ideology that increasing the cost of using informal channels in terms of punitive regulations, will discourage ICBT. I argue that this regulatory approach however incentivizes informality, and creates a fragmented and non-inclusive framework. As an alternative, I propose the adoption of the theory of responsive regulation.

In Chapter 4, I support my theoretical analysis in Chapter 3 through case studies of two policies aimed at preventing ICBT— the rice importation restriction and the border closure of August 2019. With secondary data obtained from the UN COMTRADE database, I show that ICBT persists in spite of the “preventive” regulatory frameworks. Chapter 5 considers ICBT regulation from a regional perspective, considering the recent ratification of the AfCFTA. ICBT is common across Africa and a major objective of the AfCFTA is to curb ICBT. Countries in Africa, including Nigeria, have ratified the AfCFTA for domestication in respective signatory countries. I examine the implications of the AfCFTA for ICBT providing recommendations on how the regulatory frameworks in Nigeria and in Africa can be improved to integrate ICBT and the informal economy.

In Chapter 6, I summarize the questions considered in this research, the methodologies adopted in answering these questions and the research findings. I highlight the relevance of this research to the discussion on sustainable and inclusive development in emerging economies, and identify less extensively considered areas which may benefit from further research.

Chapter 2: Informal Cross Border Trade in Nigeria: A Contextual Analysis

2.1 The Concept of Informal Cross Border Trade

Research as well as anecdotal reports acknowledge the dominance of ICBT across Africa. In spite of the numerous regional trade integration initiatives by national governments, the bulk of the trade across the borders of countries in Africa, is informal and unrecorded.[46] Research conducted in 2017 suggests that ICBT accounts for approximately two-thirds of the trade flows in many African countries, including Nigeria.[47]

The concept of ICBT in emerging economies has been explained from different perspectives. Although, there is consensus in existing literature that ICBT involves trade in legal goods through illegal channels, ICBT has been discussed within the context of trade by micro and small unregistered traders, conducting businesses entirely outside the formal regulatory channels; and trade by formal and registered micro, small and medium-sized traders through complete or partial evasion of trade regulatory frameworks, including under-invoicing imports to reduce the actual value of the assessed imports, misclassifying or mis-declaring goods to circumvent imposed tariffs.[48]

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[46] Bensassi, Jarreau & Mitaritonna, "Regional Integration and Informal Trade in Africa", *supra* note 21 at 2.

[47] Koroma, Onyango, & You, *supra* note 2 at 1.

[48] Lesser & Moise-Leeman, *supra* note 8 at 11.

There is a lack of consensus on the distinction between ICBT and smuggling. Some researchers argue that since ICBT primarily involves evasion of regulatory duties and restrictions, ICBT is, in fact, smuggling.[49] This argument however has been criticized because it does not distinguish trade in legal goods, through illegal channels, by small traders who lack the knowledge and skills to follow cumbersome border trading regulations, from deliberate trade in illegal or prohibited goods through illegal channels. This lack of consensus on the scope of ICBT, in part, limits the efforts to establish a harmonized methodology for measuring the volume of ICBT within Africa.[50] My research focuses on ICBT in the first context, that is, trade in legal goods by micro and small unregistered traders, outside formal regulatory channels in Nigeria. In Section 2.2, I highlight some of the reasons why more attention should be given to ICBT in Nigeria. Section 2.3 considers ICBT from a gender perspective, particularly in relation to the predominance of women in ICBT. In Section 2.4, I identify some of the reasons why ICBT continues to dominate trade transactions in Nigeria and Africa.

[49] Bouet, Pace & Glauber, *supra* note 4 at 4.

[50] African Export Import Bank, *supra* note 1 at 19.

2.2 Why is Informal Cross Border Trade Important to Nigeria?

Nigeria is a major economic link to Africa. The size of its domestic market, comprising about 196 million people,[51] rich deposits of mineral resources, vibrant labour force and fast growing economy[52] supports its description as "the engine of trade growth across the entire region".[53] This assertion is however in sharp contrast with its present trade and economic situation. In fact, doing business in Nigeria, including trading across Nigerian borders, is fraught with difficulties.

National governments in Africa acknowledge the significance of ICBT to sound macroeconomic management, reliable balance of payment records and formal trade integration.[54] Yet, most African countries, including Nigeria, neglect ICBT in trade support initiatives. The first and only domestic attempt to measure the volume of ICBT in Nigeria was through a survey conducted by the CBN between May 2013 and June 2014 (CBN Survey of 2014).

In 2014, Nigeria's external trade was valued at approximately USD135.8 billion.[55] This official estimate, however, excludes the huge volume of ICBT. Unrecorded ICBT between Nigeria and its neighbours account for approximately 60 percent and 40 percent of total imports and exports

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[51] *Doing Business 2020: Comparing Business Regulation in 190 Economies (Nigeria)*, by World Bank Group, 17th Series at 5.

[52] Aso Etea, "Fiscal and Regulatory Considerations in Optimizing Nigeria's Cross Border Trade" (2016) SSRN Journal, online: <https://www.ssrn.com/abstract=2797213> at 2.

[53] Hoffman & Melly, *supra* note 3 at 8.

[54] African Export Import Bank, *supra* note 1 at 19.

[55] Hoffman & Melly, *supra* note 3 at 8.

respectively.[56] Efforts by the Nigerian government to reduce the size of the informal economic sector, which accounts for approximately 64 percent of Nigeria's GDP, seem to neglect ICBT. [57]

Trading within Nigeria and with neighbouring countries in Africa, in particular, remains difficult. An evaluation of the efficiency of the existing regulatory framework for cross border trade in Nigeria by the World Bank *Doing Business Report 2020*, assessed the ease of trading across the legal territorial borders of Nigeria, considering the time, cost and regulatory requirements at 29.2 percent, placing Nigeria at the 179th position out of the 190 evaluated economies.[58] The existing landscape encourages ICBT, particularly for small and micro traders with limited business skills and capital.

2.3 Disproportionate Composition of Women in ICBT in Nigeria

Women make up the majority of informal cross border traders in Nigeria. Existing surveys reveal that nearly 60 percent of the ICBT traders in West Africa, including Nigeria, are women.[59] Research also suggests that ICBT provides a source of income for more than three-quarters of the population in Nigeria,[60] with women constituting a significant proportion of this population. Yet, the disproportionate impact of the challenges of trading across borders on women in Nigeria

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[56] External Sector Statistics Division, *supra* note 18 at 23.

[57] Hoffman & Melly, *supra* note 3 at 8.

[58] World Bank Group, *supra* note 51 at 79.

[59] Afrika & Ajumbo, *supra* note 9 at 2.

[60] Koroma, Onyango, & You, *supra* note 2 at 1.

remains unacknowledged, and the contribution of women to trade in Africa as a whole is undervalued.

In 2019, the African Trade Policy Centre (ATPC) of the United Nations Economic Commission for Africa (UNECA) in collaboration with the African Export-Import Bank (AFREXIM) conducted a study on the pattern and volume of ICBT along the Abidjan-Lagos border of South-West Nigeria for a period of four months. Data collected during the research shows that 51 percent of the goods traded through ICBT were agricultural goods, exported from and imported into Nigeria from neighbouring African countries. This study also suggested that women constituted about 61 percent of the informal cross border traders.[61] This staggering picture raises concerns as to why, micro and small vulnerable cross border traders, trading substantially in low-value and often low tariff commodities, (i) dominate ICBT and (ii) are women.

Women between the ages of 15 to 64 constitute 53.8 percent of the Nigerian population.[62] As at 2019, females of ages 15 and above constituted 49 percent of the labour force[63] in Nigeria.[64] A report by the UNECA suggests that women in Nigeria are responsible for producing nearly 70 percent of the nation's food supply, while less than 5 percent of women are involved in

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[61] African Export Import Bank, *supra* note 1 at 25.

[62] World Bank Group, "World Development Indicators | DataBank", (2019), online: *DataBank, WorldBank Development Indicators* <https://databank.worldbank.org/reports.aspx?source=2&series=SP.POP.1564.FE.ZS>.

[63] labour force participation rate is the percentage of women involved in the supply of goods and services during a specified period.

[64] World Restriction, "labour force participation rate, female (% of female population ages 15+) (modeled ILO estimate) - Nigeria | Data", online: <https://data.worldrestriction.org/indicator/SL.TLF.CACT.FE.ZS?locations=NG>.

governance and decision-making.[65] This implies that the majority of the women in the labour force in Nigeria are informal cross border traders. Existing studies also suggest that women in ICBT in Nigeria often trade in agricultural commodities because such commodities are usually cheaper to trade, strongly influenced by the prevalent weather conditions, and are often part of the daily household diet. However, men often trade in manufactured goods which often have higher values.[66] The findings of this research are also supported by the CBN Survey of 2014 which shows that the composition of goods which form the bulk of ICBT are food products, specifically, staple foods, vegetables and animal products, which are often of low-value, attracting low or no tariffs.[67]

Only one-fifth of small-sized enterprises have access to restriction loans and similar financial services.[68] Trading through the formal channel requires an average of six days to comply with border clearance procedures for export and an average of 11 days to comply with border procedures for import.[69] In addition to the hostile regulatory climate for cross border trade, women have limited access to education and business management skills, are subject to social and cultural stereotypes which restrict their participation in formal employment, experience

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[65] *Gender Equality and Africa Peer Review Mechanism*, by Economic Commission for Africa (Addis Ababa, Ethiopia: Economic Commission for Africa, 2016) at 61.

[66] *Women Cross-Border Traders in Southern Africa: Contributions, Constraints, and Opportunities in Malawai and Botswana*, by Rae Lesser, Joyce Malaba & Lis Meyers (United States Agency for International Development, 2016) at 23.

[67] External Sector Statistics Division, *supra* note 18 at 6.

[68] Lesser, Malaba & Meyers, *supra* note 66 at 33.

[69] World Bank Group, *supra* note 52 at 79.

higher rate of sexual harassment at formal border posts, are marginalized in terms of access to finance, are often oppressed by corrupt government officials and have huge social expectations in terms of child upbringing and domestic household responsibilities.

The hostile landscape for cross border trade has higher effects on women in comparison to men. In addition to the existing social and cultural stereotypes which make it difficult for women in Africa to thrive, women in ICBT are stigmatized and harassed throughout Africa, and in Nigeria, because of the nature of ICBT. To circumvent the challenges encountered through formal trading channels, most women use informal and often longer and dangerous connecting routes to transport their commodities across the borders. They also often fall victim to sexual harassment, oppression and theft while trying to navigate these informal routes. These challenges are however ignored by most government and trade support institutions in Africa.

Women informal cross border traders contribute immensely to intra-regional trade and economic growth. If Nigeria intends to increase its share of global trade, gender-based issues must be placed at the forefront of discussions on trade, particularly ICBT.

2.4 Reasons for the Prevalence of ICBT in Nigeria

ICBT significantly impacts economic growth. Yet, trade facilitation initiatives and policymaking in Nigeria neglects ICBT. Activities in the informal sector, including ICBT, is poorly understood. This limited understanding affects the effectiveness of trade and economic policymaking.[70] Government and policymakers condemn ICBT because of the perception that

[70] Hoffman & Melly, *supra* note 3 at 10.

ICBT is a menace to social and economic growth. It is argued that, while ICBT can in the short to medium term improve food security and serve as a source of income earnings and poverty alleviation, particularly for women,[71] in the long term, ICBT affects the competitiveness of domestic industries and reduces foreign exchange earnings.[72]

These arguments are however narrowly conceived. ICBT in Nigeria ought to be considered within the larger context of the ideological underpinnings of the existing trade regimes as well as the social, political, geographical, and economic conditions of the country.[73] Environmental conditions such as poor road and communication infrastructure, onerous restriction and currency exchange regimes, cumbersome border crossing procedures, high costs of formal imports and exports, multiple and unstable regulatory frameworks, limited access to credit facilities for micro and small enterprises and counterproductive trade regulatory strategies, make it difficult for all traders, and particularly, small cross border traders to trade in and across the borders of Nigeria.

The bulk of research on trade and development in Nigeria have dealt extensively with the role of quality infrastructure in promoting trade. Researchers have also criticized the Nigerian government for its regulatory position in relation to cross border trading activities in the country. In subsequent subsections, I identify and briefly discuss some of the infrastructural challenges such as inadequate trade infrastructure, restricted access to finance, cumbersome and expensive border crossing procedures, hostile economic policies and other regional factors which have

[71] Lesser & Moise-Leeman, *supra* note 8 at 25.

[72] *Ibid* at 27.

[73] Kobena T Hanson, "The Impact of Informal Cross-border Trade on Regionalism and Poverty Reduction in West Africa" in *Contemporary Regional Development in Africa* (Routledge, 2015) 115 at 3.

contributed to the preference for ICBT by small cross border traders. In addition to acknowledging how these infrastructural challenges contribute to the prevalence of ICBT, my thesis furthers existing scholarship by analyzing the regulatory strategies adopted to curb ICBT in Nigeria. Contrary to the objective, the regulatory framework in place has been counterproductive.

2.4.1 Trade Infrastructure and ICBT

Poor trade infrastructure hinders formalization of cross border trade in Nigeria and Africa. According to the *2019 Global Competitiveness Index Report* (GCI),[74] the Nigerian economy ranks 116th in terms of the quality of its enabling environment for transactions, 130th in terms of the quality of its markets and financial system, and 118th in terms of its innovation ecosystem relative to 141 considered economies.[75]

Research suggests that only 10 to 15 percent of the total road network in Nigeria are in good to fair conditions. In fact, less than 15 percent of the road network connecting the land borders are paved.[76] Good road networks are essential to formal trade integration in Nigeria and even in Africa, where about 32 percent of the countries in the continent are landlocked.[77] The poor road and port infrastructures in Nigeria have huge implications for the formalization of trade.

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[74] Global Competitiveness Index evaluates the standard of existing policies, institutions and factors which impact economic prosperity.

[75] *The Global Competitiveness Report 2019*, by The World Economic Forum (Switzerland, 2019) at 430

[76] *World Measuring Rural Access: Update*, by World Bank Group, ACS26526 (World Bank Group, 2019) at 26.

[77] Odularu, Hassan, & Babatunde, *supra* note 19 at 11.

Clearing shipments at the Tin Can port[78] —one of the ports operating at nearly full capacity, out of the six ports in the country, has been very recently described by an entrepreneur as "the ghetto".[79] While sharing the challenges of trading formally across the borders of Nigeria through the Tin Can port, an entrepreneur laments that:

> *. . .there is no semblance of order at the entrance/exit. No sense of urgency either. The entire place could be at a standstill for 2 days and you cannot identify why nobody is moving or why no one seems to be urging people to move. Everything is languid. The major entrance/exit to the 2nd gate is under construction and closed to traffic. The road construction follows the same languid pattern. The contractors don't work every day. They can arbitrarily close a lane and disappear for two weeks & all is well. So you have one entrance/exit serving the busiest port in the country. Maybe 10 containers get out in a day. 1,000 trailers queue to get in. Nobody is directing trailers to keep moving. There seems to be a concerted effort to keep the system moving slowly. . . My container arrived Tin Can Port January 21. Today is February 17. I've paid all I was billed as Duty but I face new bills every day. For no fault of mine. I am told it's the norm so I'm to chin up and pay. . .*[80]

These difficulties encountered in using formal channels including poor infrastructure, inconsistent and cumbersome regulations, lengthy clearance procedures, corruption and inefficient trade support institutions induce traders to use informal channels for business.

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[78] The Tin Can Port is one of the two ports in South West, Lagos, Nigeria.

[79] Sam Hart, "Clearing Container at Tin Can is the Ghetto.", (17 February 2021), online: *@hartng* <https://twitter.com/hartng/status/1362060565317906441>.

[80] *Ibid*.

In relation to other infrastructural facilities such as good communication systems (although the use of mobile telephones and network coverage is on the rise), only an estimated 47 percent of the Nigerian population have access to the internet.[81] Expensive and limited access to internet facilities limits financial inclusion of micro and small traders because internet connectivity is often required to make payments on mobile platforms established by financial institutions. Unlike countries in East Africa that have been able to provide cross border payment platforms in cheap and accessible forms to small businesses, small businesses in Nigeria cannot afford mobile payment platforms of financial institutions in Nigeria for cross border payments.[82] Investing in functional border institutions, transport and communication systems will make a significant difference.

2.4.2 Limited Access to Finance and Strict Exchange Controls

Informal cross border traders rely on meagre capital for their businesses and will benefit substantially from simplified credit and cross border payment services. Micro and small enterprises often face difficulties in accessing credit facilities for reasons such as unreliable records of financial credibility, lack of collateral, lack of corporate accounts and poor business management structures.[83] In the World Bank Enterprise survey[84] of Nigeria, a borrower is

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[81] Joseph Johnson, "Nigeria: number of internet users 2025", online: *Statista* <https://www.statista.com/statistics/183849/internet-users-nigeria/>.

[82] Hoffman & Melly, *supra* note 3 at 13.

[83] African Export Import Bank, *supra* note 1 at 20.

[84] The World Bank Enterprise Survey uses relevant indicators to compare the quality of business environments across countries in the world.

required to provide approximately 228 percent of a loan amount as collateral. This is significantly higher than the average value of collateral globally, estimated at 199 percent. Approximately 4 percent of the businesses in Nigeria operate on bank loans. This is compared to the average of 12 percent in other parts of the world.[85] Informal cross border traders rely on trade credit and other informal credit sources such families and friends as alternatives. This keeps cross border trade outside formal regulatory channels.

The existing regional and international payment systems, and the imposition of strict currency exchange controls also discourage formalization. Research suggests that micro enterprises in Nigeria prefer to make cross border payments in naira and the CFA franc (the currency of all of Nigeria's immediate neighbors), informally through the parallel markets because of the high cost and cumbersome procedures for making similar payments through financial institutions.[86]

According to the study conducted by the German Agency for International Cooperation (GIZ) in 2012 in Ogun State, a State in South West Nigeria which shares its borders with Benin Republic, payment for most of the transactions across the shared border was made in cash. Less than 3 percent of the traders used financial institutions like banks to make payments. In fact, approximately 90 percent of the traders, including domestic importers, used the parallel market for transactions involving currency exchange.[87] These informal payments limit micro and small

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[85] The World Bank, "Enterprise Surveys, The World Bank", (February 2015), online: *World Bank* <http://www.enterprisesurveys.org/>.

[86] Hoffman & Melly, *supra* note 3 at 31.

[87]*Ibid* at 33.

enterprises from modern trade payment systems and government trade support programs. Traders are also exposed to the risks associated with cash-based and parallel market currency exchange transactions.[88] The country's balance of payment statistics is also adversely affected.

2.4.3 Cumbersome and Expensive Border Crossing Procedures

Trading across the designated borders of Nigeria is an arduous task for enterprises. The bureaucratic border compliance procedures, multiple legislations and documentation as well as the poor access to the borders have huge cost implications for businesses. The case is particularly worse for micro and small businesses with meagre business capital. The situation is not different in other neighbouring countries. Research suggests that in addition to high trade protection, the documentation process for cross border trade is longer in Africa as a whole than in anywhere else in world.[89]

Although the World Bank lists the Nigerian economy among the economies with tremendous improvement in tackling burdensome regulations in the *Doing Business 2020* report, there is still room for a lot of improvement in terms of trading across borders. Research suggests that it takes an average of eight days to comply with border and documentation requirements to export from Nigeria, and an average of 15 days to comply with the documentation and border compliance requirements to import into Nigeria. The cost of complying with these requirements also falls

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[88] African Export Import Bank, *supra* note 1 at 21.

[89] Odularu, Hassan, & Babatunde, *supra* note 19 at 11.

within an average of USD700.[90] These complex and fragmented regulatory frameworks have been estimated to account for about 15 percent of the value of the transaction.[91]

Effective reforms to administrative institutions like the NCS will also encourage participation in the formal economy. Despite reforms introduced by the NCS to harmonize the numerous regulations and improve the ease of trading across borders, these reforms have been ineffective. The research conducted by the Chatham House, Royal Institute of International Affairs suggests that efforts to improve the service of the NCS have been unsuccessful because of poor implementation practices affected by the imposition of arbitrary clearance procedures, poor planning and administration and poor technological infrastructure.[92] Business owners still have to pay facilitation fees[93] to custom authorities and follow-up the procedures physically.

2.4.4 Multiple Regulatory Frameworks and Hostile Economic Policies

The need to comply with the numerous regulations of different regulatory agencies in the formal economy also discourages formalization. Business enterprises in the formal economy have to comply with the different regulatory requirements imposed by the different regulatory frameworks such as the NCS, Nigeria Immigration Service (NIS), Nigerian Export-Import Bank, Federal Inland Revenue Service, Nigerian Export Processing Zone Authority, CBN, Nigeria Investment Promotion Commission, Small and Medium Enterprises Development Agency of

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[90] World Bank Group, *supra* note 51 at 79.

[91] Lesser & Moise-Leeman, *supra* note 8 at 20.

[92] Hoffman & Melly, *supra* note 3 at 34.

[93] Facilitation fees are bribes and arbitrary, non-statutory payments

Nigeria and others.[94] These are exclusive of industry specific regulatory bodies and associations. Business enterprises often have to pay facilitation fees[95] to administrative authorities within these frameworks to facilitate approval of export grants and other related trade support initiatives of the government. In fact, the perception among business owners is that the proliferation of regulatory frameworks is strategic as it helps to generate additional revenue by increasing the costs of doing business.[96] The burden and cost implications of these numerous regulatory frameworks drive micro and small businesses to the informal economy.

Trade policymaking in Nigeria has been poorly directed. Although there are several reasons for this, research suggests that the most prominent is the poor understanding of the trade landscape. The current trade regime in Nigeria continues the historical pattern of trade protectionism through the imposition of import restrictions and currency exchange restrictions despite the consistent failure of these policies. The reliance on strict import and exchange control regimes in Nigeria, have resulted in the prevalence of informal parallel markets where foreign currency is exchanged.[97]

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[94] Hoffman & Melly, *supra* note 3 at 15.

[95] *Ibid* at 18.

[96] *Ibid* at viii.

[97] Jagdish Bhagwati, "On The Underinvoicing of Imports" (2009) 27:4 Bulletin of the Oxford University Institute of Economics & Statistics 389–397 at 1.

Although Nigeria appears to adopt a liberalized trade regime considering its membership of the ECOWAS, AfCFTA and the World Trade Organization (WTO), trade is still heavily regulated.[98] Arbitrary policies without strategies for continuity and infrastructure for implementation will continue to produce less than the desired results. For example, the National Coordinating Committee on Informal Trade under the Federal Ministry of Industry, Trade and Investment was set up in 2011-2015 with a mandate to develop and implement strategies to increase formalization of informal trade.[99] In 2017, the successive government established the NOTN under the same ministry with a mandate to lead domestic trade reforms, abandoning the existing initiative.

The pattern is also similar for policymaking. In June 2015, the CBN imposed an importation restriction on 41 items including staple foods like rice, poultry chicken, eggs, margarine and meat, preventing business owners who deal in these items from accessing foreign exchange through formal regulatory channels.[100] This foreign exchange and import restriction imposed by the CBN is in addition to the existing list of import restrictions on food and non-food items by the NCS. Despite these restrictions, reports suggest that ICBT in these items have increased as custom officers continue to confiscate increasing quantities of these items through raids of informal border routes.[101]

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[98] Folarin Alayande, "Understanding Shifts in Nigeria's Trade Policy: From Realism to Protectionism" (2020) 45:1 Africa Development / Afrique et Développement 149–162 at 10.

[99] Hoffman & Melly, *supra* note 3 at 21.

[100] *Ibid* at 31.

[101] Kunle Falayi, "Why Nigeria has restricted food imports", *BBC News* (16 August 2019), online: <https://www.bbc.com/news/world-africa-49367968>.

The continuous pattern of imposing import and foreign exchange restrictions, without making consistent efforts to increase local production and promote exports is not sustainable.[102] Efforts to reduce Nigeria's over-dependence on oil by increasing its share in regional and global trade, must be adequately supported with a realistic and holistic consideration of the existing political, social and economic landscape to be fruitful.

2.4.5 Regional Factors

Intra-regional trade in Africa has remained low despite numerous efforts by national governments across the continent. Considering the proliferation of regional economic and trade blocs like the African Union (AU), Southern Africa Development Community (SADC), ECOWAS, Common Market for Eastern and Southern Africa (COMESA), and the even more recent AfCFTA, formal trade between countries in Africa is still relatively low, constituting only 14.4 percent of the region's trade.[103] The case is not different in terms of global trade and growth. In 2019, the contribution of Africa to global trade and growth was estimated at approximately 2.8 percent and 1.5 percent respectively.[104]

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[102] Olu Fasan, "Nigeria's import restrictions: A bad policy that harms trade relations", (17 August 2015), online: *Africa at LSE* <https://blogs.lse.ac.uk/africaatlse/2015/08/17/nigerias-import-restrictions-a-bad-policy-that-harms-trade-relations/>.

[103] African Export Import Bank, *supra* note 1 at 13.

[104] *Ibid*.

The low volume of African trade, particularly intra-regional trade, is due to informal trade which leaves a significant fraction of the trade across the continent unrecorded.[105] In spite of trade liberalization efforts like reducing tariffs, and forming trade and economic blocs, non-tariff barriers such as import restrictions, bureaucratic regulations and poor trade facilitation infrastructure remain major obstacles to trade between African countries. Countries within the region are largely connected by bad roads, making the means of transportation within the region heavily reliant on air, and as such, expensive. The interdependence of the economies in Africa and the economic and geographical position of Nigeria places her at the centre of socio-economic transformation in the region.[106] The trade protectionist regime in Nigeria incentivizes Entrepồt trade — a form of trade where a country imports goods from other regions for re-export into neighbouring countries. Neighbouring countries also provide channels for exporting goods informally from Nigeria to other parts of the world.[107] Efforts to reduce ICBT in Nigeria must include a consideration of these domestic and regional realities.

2.4.6 Conclusion

Infrastructural and regulatory challenges make trade through formal channels difficult. The situation is worse for women because of the numerous social and cultural stereotypes deeply rooted in Africa as well as in the Nigerian society. These stereotypes create barriers for women, making it more challenging for Nigerian women to engage in formal cross border trading

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[105] Bensassi, Jarreau & Mitaritonna, "Regional Integration and Informal Trade in Africa", *supra* note 21 at 2.

[106] Hoffman & Melly, *supra* note 3 at 14.

[107] External Sector Statistics Division, *supra* note 18 at 29.

activity. Poor regulatory policies and weak institutions also drive small traders to seek alternatives which often involve circumventing the law. The challenges of trading within the African continent as a whole discourages small traders from using formal channels for trade. Hence, ICBT remains an attractive alternative for cross border traders.

In the subsequent chapter, I adopt a theoretical perspective to explain how the reasoning underpinning trade policymaking in Nigeria also encourages ICBT. In my analysis, I maintain that the regulatory approach adopted by the government and trade regulatory institutions, combined with the existing infrastructural challenges have contributed to the increasing participation in ICBT. I identify and analyze the theory which influences cross border trade regulation in Nigeria, arguing that because of the weaknesses inherent in the regulatory approach, regulatory efforts to eliminate ICBT have been ineffective.

Chapter 3: Theoretical Framework for Trade Policymaking in Nigeria

3.1 Introduction

The problem of non-compliance to regulations and policies is a challenge government and regulators continue to face globally. Despite widespread support for democratic institutions and forms of governance, governments in developing countries like Nigeria still struggle to implement its policies and regulations. There is a pervasive disregard for, and non-compliance to nearly all laws and policies, including policies which have obvious impacts on the safety and welfare of the people. In this chapter, I adopt a theoretical perspective to analyze the problem of non-compliance to regulatory efforts to curb ICBT in Nigeria.

Researchers have tried to explain the dominance of ICBT in Africa and Nigeria. The case of Nigeria is particularly surprising considering the heavy regulation of cross border trade through protective trade and economic policies. Existing literature on ICBT in Nigeria have applied economic analysis as well as quantitative and empirical methodologies to explain the prevalence of ICBT in Nigeria in spite of diverse regulatory measures. Some researchers have also extensively considered the role of poor infrastructure, and to an extent, environmental factors such as, political instability, corruption and poor governance in facilitating ICBT. The main question I attempt to answer in this chapter is, "why does ICBT persist in spite of the robust preventive trade regulatory framework in Nigeria"?

To answer this question, I consider the problem of persistence of ICBT from a theoretical perspective — a perspective which has not enjoyed much attention in cross border trade scholarship in Africa and Nigeria. Beyond the problem of poor infrastructure, I explain the ideological underpinnings which drive trade and particularly, cross border trade policymaking in Nigeria. Challenging this ideology, I argue that regulatory efforts to curb ICBT has been ineffective and unable to induce compliance because the regulations have been overly concerned with "deterrence" rather than "cooperation". Most of the regulatory measures such as imposing huge monetary sanctions, confiscating traded goods, raiding shops and warehouses for prohibited imports, restricting access to foreign exchange for traded goods, imposing import restrictions and closing national borders, focus on preventing ICBT without addressing the systemic issues which fuel non-compliance and disobedience of government regulations. I propose a cooperative and less punitive regulatory strategy. I contend that the theory of responsive regulation propounded by Ayres and Braithwaite in their book, *Responsive Regulation: Transcending the Deregulation Debate*, would, if adopted, be a more effective approach to reducing non-compliance with cross border trade policies, and the prevalence of ICBT.

3.2 The Concept of Interdisciplinary Research

The concept of compliance has been considered in different fields of discipline including law, political Science, economics, philosophy, sociology and psychology. While political scientists are concerned with "how compliance is obtained",[108] Sociologists and Psychologists consider how "social control, socialization, social and personal influence and deterrence"[109] affect

[108] James T Tedeschi et al, "Power, Influence, and Behavioral Compliance" (1970) 4:4 Law & Society Review 521–544 at 523.

[109] Robert V Stover & Don W Brown, "Understanding Compliance and NonCompliance with Law: The Contributions of Utility Theory" (1975) 56:3 Social Science Quarterly 363–375 at 364.

compliance to legal and non-legal rules. Similarly, economic analysis has attempted to predict and explain the reasons for "variations in compliance with sundry forms of governmental regulation of economic activity".[110] Philosophers have also considered the conditions under which compliance should be compulsory or voluntary.[111] In legal scholarship, compliance is a central concept to discussions on the role of law in preserving orderliness in the society.

Compliance theories advanced within disciplines have been criticized as being limited in application. It is suggested that the absence of a coherent and integrated theory within existing disciplines explains why existing research on compliance and non-compliance with law is fragmented.[112] This lack of coherence within disciplines also explains why discussions attempting to understand the rationale behind compliance and non-compliance to government regulations is more prominent in interdisciplinary literature. In fact, most of the theoretical perspectives to understanding compliance and non-compliance have emerged through interdisciplinary research in law and economics, and socio-legal studies. I will focus on the contributions of law and economics, and socio-legal studies to compliance and regulatory theory literature in the subsequent Sections.

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[110] *Ibid*.

[111] Samuel Krislov et al, "Compliance and the Law: A Multidisciplinary Approach" (1972) 10:2 Criminology 243–243.

[112] Stover & Brown, *supra* note 109 at 364.

3.2.1 Economic and Socio-legal Analysis of Compliance with Law

Historical accounts trace the evolution of law and economics as a method of research to the article by Ronald Coase titled "The Problem of Social Cost", also regarded as the Coase theorem, published in 1960.[113] When researchers apply law and economics, or an economic analysis in the discussion of law, Calabresi suggests that law and economics "uses economic theory to analyze the legal world. It examines that world from the standpoint of economic theory and, as a result of that examination, confirms, casts doubt upon, and often seeks reform of legal reality."[114]

According to Petersen and Towfigh, economically informed legal research could be used as a "descriptive tool", referred to as a positive theory, or as a normative tool, also regarded as normative theory.[115] Researchers apply economic analysis as:

> "*a perspective to look at the world and to make sense of what we see. How do people behave — in terms of our theory? And why do they behave this way —in light of our theory? To see how well our positive theory reflects what we empirically observe, we derive hypotheses about the behavior we would expect to see in certain situations: We make predictions. We can then check. . .whether our predictions are correct, and evaluate our theory accordingly, adapting it if necessary*."[116]

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[113] "Economic methods and legal reasoning" in *Economic Methods for Lawyers* (Edward Elgar Publishing, 2015) 1 at 1.

[114] Guido Calabresi, *The Future of Law and Economics: Essays in Reform and Recollection* (Yale University Press) at 2.

[115] note 113 at 2.

[116] *Ibid*.

Law and economics could also be used as a normative tool in legal scholarship, that is, to propose a framework of how the law "ought to be (designed, reformed, interpreted or enforced) for it to achieve specific goals that are socially desirable. . ."[117] This functional division is however not always watertight.

Positive economic theories are often influenced by implicit assumptions of normativity. Petersen and Towfigh argue that positive theory in addition to theorizing "what is", may further "influence" behaviour.[118] Kaplov and Shavell summarily explain that economically informed legal research "seek to answer two basic questions about legal rules. Namely, what are the effects of legal rules on the behavior of relevant actors? And are these effects of the legal rules socially desirable?"[119] Hence, descriptive economic theories test a theoretical proposition or a prediction against legal reality, while normative economic theories are reform-oriented perspectives of what legal reality ought to be.

A review of economically informed legal research reflects two components. First is the legal component which focuses on identifying the legal rules, policies and the entire regulatory framework. The second component is cost-benefit analysis of the rules and policies on human behaviour. Classical economic analysis furthers the theory that humans are rational beings who behave in ways which allow maximization of benefit. Although, this postulation of rationality by

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[117] Albert Sanchez-Graells*, "Economic analysis of law, or economically informed legal research" in *Research Methods in Law Second Edition*, second edition ed (Routledge, 2017) 260 at 171.

[118] note 113 at 2.

[119] Louis Kaplow & Steven Shavell, "Economic Analysis of Law" in Alan J Auerbach & Martin Feldstein, eds, *Handbook of Public Economics* (Elsevier, 2002) 1661 at 1.

classical economics has been challenged by behavioural law and economics researchers who contend that human behaviour is not always rational as a result of other social, cultural, psychological or emotional factors, the bulk of the existing economic theories of compliance are premised on the idea that rationality and utility maximization are central to human behaviour.[120] Law and economics researchers have modified the cost-benefit analysis to propound theories such as the Coase theorem, Game theory,[121] Deterrence theory, Expected utility theory,[122] Prospect theory[123] and others which have been used to explain compliance and non-compliance to laws and policies by individuals and businesses.[124]

Socio-legal research theories of compliance emerged in response to the decision theories postulated by microeconomics researchers, Gary Becker and George Stigler on penal policies.[125] The hypothesis of the decision theory of Becker and Stigler is that, individuals are self-interested actors who would select the options which guarantee the highest gain with the least cost where

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[120] Jonathan Baron & Tess Wilkinson-Ryan, "Conceptual foundations: a bird's-eye view" in Joshua Teitelbaum & Kathryn Zeiler, eds, *Research Handbook on Behavioral Law and Economics* (Edward Elgar Publishing, 2018) 19 at 19.

[121] Robert Leonard, *Von Neumann, Morgenstern, and the Creation of Game Theory: From Chess to Social Science, 1900–1960* (Cambridge: Cambridge University Press, 2010).

[122] Ivan Moscati, "Retrospectives: How Economists Came to Accept Expected Utility Theory: The Case of Samuelson and Savage" (2016) 30:2 The Journal of Economic Perspectives 219–236 at 219–220.

[123] Arie Harel et al, "Alternative utility functions: review, analysis and comparison" (2018) 51:3 Review of Quantitative Finance and Accounting 785–811.

[124] Markus Englerth, "Behavioral law and economics" in *Economic methods for lawyers* (Edward Elgar Publishing, 2015) 177 at 177.

[125] *Compliance Theories: A Literature Review*, SSRN Scholarly Paper, by Julien Etienne, papers.ssrn.com, SSRN Scholarly Paper ID 1825065 (Rochester, NY: Social Science Research Network, 2010) at 140.

all options are certain. According to Becker and Stigler's hypothesis, imposing high sanctions for non-compliance and providing monetary incentives for compliance will deter future non-compliance.[126] In order to prevent non-compliance, policymakers and regulatory institutions simply need to increase its cost. This means increasing the risk of apprehension and severity of sanction, whether monetary and non-monetary.[127]

This law and economics analysis has informed socio-legal contributions to the theory of compliance. According to Craven, socio-legal theories of compliance with law supplement the cost-benefit hypothesis of law and economics, with social analysis.[128] In other words, socio-legal research infuses the effect of social interaction on human behaviour[129] into compliance theories. Increasingly, scholars in the regulatory network have attempted to show that regulatory efforts which have been able to effectively induce compliance are collaborative and more connected with the society than we realize.[130] This has led to the postulation of socio-legal theories of

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[126] *Ibid* at 141.

[127] Craven, *supr* note 41 at 182.

[128] Naomi Creutzfeldt, Marc Mason & Kirsten McConnachie, eds, *Routledge Handbook of Socio-Legal Theory and Methods*, 1st ed (New York: Routledge, 2019) at 182.

[129] note 113 at 3.

[130] Drahos & Krygier, *supra* note 40 at 3.

responsive regulation, smart regulation[131] and tripartism[132] which propose socially conscious and less economic perspectives to regulation and compliance.

In the next Section, I present the theoretical underpinning which informs government regulation and policymaking on cross border trade in Nigeria.

3.3 The Deterrence Theory and Trade Policymaking in Nigeria

According to Bentham's hypothesis, increasing the sanctions attached to non-compliance increases compliance. Hence, preventive regulatory measures and sanctions such as high taxes and fines stimulate compliance.[133] Proponents of the deterrence theory of regulation rely on the economic hypothesis that businesses as well as individuals only make rational decision in order to maximize utility. "[F]or the purpose of predicting or analyzing the behavior that will result from specific legal rules or reforms, the economic analysis of law assumes that we make decisions based on our assessment of the utility we can obtain from the different options and that, rationally, we will choose the option that maximizes our utility (or, in other words, that we are self-interested)."[134] This is the reasoning behind the deterrence theory of regulation.

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[131] See for more discussion Neil Gunningham & Darren Sinclair, "Smart Regulation" in Peter Drahos, ed, *Regulatory Theory-Foundations and Applications* (Australia: Australian National University Press, 2017) 133

[132] See for more discussion Ian Ayres & John Braithwaite, "Tripartism: Regulatory Capture and Empowerment" (1991) 16:3 Law & Social Inquiry 435–496 at 435.

[133] John T Scholz, "Enforcement Policy and Corporate Misconduct: The Changing Perspective of Deterrence Theory" (1997) 60:3 Law and Contemporary Problems 253–268 at 254.

[134] Sanchez-Graells*, *supra* note 117 at 175.

Hodges further explains that "[t]he use of deterrence as a theoretical justification for imposing sanctions or punishment goes further than the objective of seeking the prevention of future offending." Deterrence is a regulatory strategy which drives compliance by influencing future behaviour.[135] Scholz also indicates that contrary to popular opinion, deterrence strategies are not limited to the realm of criminal law where the objective is to impose punishment for acts regarded as socially undesirable. In fact, deterrence is increasingly used in corporate, commercial law and administrative law through applications of costs and the use of non-monetary sanctions.[136]

Researchers have also investigated the effectiveness of the deterrence theory in enhancing compliance through empirical studies of tax and criminal law. Hoffman et al. states that empirical research studying the effect of sanctions on tax evasion and avoidance shows that cooperative regulatory strategies based on trust, good governance and participation in political decisions, as opposed to preventive or punitive strategies, result in higher compliance.[137]

Some researchers contend that in the absence of a coherent theory of compliance with law which integrates multidisciplinary perspectives, the deterrence theory remains relevant to understanding decisions of compliance and non-compliance by businesses and individuals.[138] According to

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[135] Christopher Hodges, "Deterrence Theory." in *Law and Corporate Behaviour: Integrating Theories of Regulation, Enforcement, Compliance and Ethics* (Oxford: Hart Publishing, 2015., 2015) 47 at 49 Bloomsbury Collections.

[136] Scholz, "Enforcement Policy and Corporate Misconduct", *supra* note 133 at 254.

[137] *Enhancing Tax Compliance Through Coercive and Legitimate Power of Authorities*, SSRN Scholarly Paper, by Eva B Hofmann et al, papers.ssrn.com, SSRN Scholarly Paper ID 2235594 (Rochester, NY: Social Science Research Network, 2013) at 2.

[138] Stover & Brown, *supra* note 109 at 364.

Stover and Brown, all theories of compliance proceed on the assumption that "given the capacity to comply or not comply, individuals' responses to legal directives will vary with the expected value of the various compliant and noncompliant action".[139] This assumption similarly applies to business enterprises and has only been further developed and influenced by the diverse disciplinary backgrounds of researchers.[140]

According to Paternoster, the hypothesis that increasing the punishment of non-compliance such that it exceeds the gains of non-compliance on the basis of the utility maximization ideology fails to justify the lack of a proportional relationship between the severity of sanction, and the rate of compliance.[141] Proponents of deterrence as a regulatory theory assert that imposing sanctions has a normative effect on social behaviour. When preventive regulations are enacted, the understanding of the law as it ought to be, is also influenced. In addition to this normative effect of deterrence on social behavior, Xiao argues that increasing the severity of sanctions deters further non-compliance.[142] This argument however fails to address the argument of Paternoster that imposing severe sanctions for non-compliance has no correlation with the rate of compliance.

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[139] *Ibid* at 368.

[140] *Ibid* at 364

[141] Raymond Paternoster et al, "Perceived Risk and Social Control: Do Sanctions Really Deter?" (1983) 17:3 Law & Society Review 457–479 at 82.

[142] Erte Xiao, "Punishment, social norms, and cooperation" in Joshua Teitelbaum & Kathryn Zeiler, eds, *Research Handbook on Behavioral Law and Economics* (Edward Elgar Publishing, 2018) 155 at 168.

Research in support of using deterrence as a regulatory approach to induce compliance indicate that, in addition to preventing potential non-compliance, preventive regulatory measures impose legal obligations on businesses and individuals, and the existence of legal obligations induce compliance.[143] In an empirical study which adopted the deterrence theory to analyze compliance from the perspective of the taxpayer, the findings suggested that the deterrence theory did not provide sufficient explanation for payment and non-payment of taxes by both businesses and individuals, particularly when the probability of being prosecuted for tax evasion was low.[144] Researchers have also identified other weaknesses of the deterrence theory which will be discussed in the subsection below.

3.3.1 Criticisms of the Deterrence Theory

Compliance or regulatory theories are concerned with behavioural responses of individuals and businesses to regulatory and policy reforms. While the bulk of researchers in the regulatory network have identified that other factors substantially influence obedience and disobedience to regulatory reforms, proponents of the deterrence theory of compliance insist otherwise, maintaining that factors such as risk of punishment have more significant influence.[145] Governments and regulatory authorities in places like Nigeria have adopted the strategy of the deterrence theorists, introducing sanctions, monetary and non-monetary, to induce compliance.

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143 *Law and Corporate Behaviour: Integrating Theories of Regulation, Enforcement, Compliance and Ethics* (Hart Publishing, 2015) at 48.

144 Jeff T Casey & John T Scholz, "Beyond Deterrence: Behavioral Decision Theory and Tax Compliance" (1991) 25:4 Law & Society Review 821 at 840.

145 *Ibid* at 822.

The effectiveness of this approach remains questionable particularly considering continuous reports of disobedience in spite of the risk of sanctions, and in some cases, the obvious benefit of obedience over disobedience.

In the case of Nigeria, despite active efforts by the government in the last few years to discourage and prevent the growth of the ICBT sector through the implementation of several protective policies, trade statistics suggest that these efforts have been futile. In an interview conducted in March 2021 with the trade officials who have been saddled with the responsibility of implementing these deterrent measures, the officials reported that the measures adopted had induced the participants of ICBT to find new and less detectable channels to move their goods across the borders. According to the trade officials, more than before, there is an increase in ICBT in spite of the border closures, import restrictions, and foreign exchange restrictions. Most of the transactions are even more difficult to detect as businesses have devised more resistant strategies of moving goods informally across the borders. There has also been an increase in the number of women who have been victims of assault, sexual violence and theft as a result of increased use of more dangerous and less detectable trading routes.[146]

Researchers have identified some of the weaknesses of using "deterrence" as a strategy to induce compliance. In a study where deterrence was applied as a regulatory strategy to address corporate misconduct, it was suggested that the underlying assumptions of rationality, utility maximization, clarity and legitimacy of regulations which inform the deterrence hypothesis

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[146] ISSAfricaorg, "Nigeria's border closures haven't served their purpose", (22 March 2021), online: *ISS Africa* <https://issafrica.org/iss-today/nigerias-border-closures-havent-served-their-purpose>.

"capture a very small, albeit important part of a much larger picture".[147] Scholz further identifies examples of inconsistencies in the underlying assumptions of the deterrence theory in four different studies where the deterrence theory was applied to induce compliance with regulatory policies.[148] In the first study, the hypothesis that increasing severity of sanctions positively correlated with increased compliance was tested in businesses. The study observed whether the implementation of higher penalties and increased inspection by the Occupational and Health Administration would induce manufacturing firms to make decisions which complied with occupational safety and health standards for workers in the firms.[149] According to empirical findings, although there was an improvement in the level of workplace safety after the penalties were imposed, there was no relationship between the extent of improvement in workplace safety and the size of the penalties imposed. This empirical finding negates the hypothesis of the deterrence theorists that higher penalties translated to higher compliance.[150]

The second study applies cooperative regulatory enforcement strategies to induce compliance of firms with occupational safety and health standards. According to the study, compliance and enforcement analysis often adopt frameworks which do not explain how the relationship between the regulatory authorities and the regulated entities affect compliance.[151] The study finds that the

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[147] Scholz, "Enforcement Policy and Corporate Misconduct", *supra* note 133 at 254.

[148] *Ibid* at 254–255.

[149] John T Scholz & Wayne B Gray, "OSHA enforcement and workplace injuries: A behavioral approach to risk assessment" (1990) 3:3 Journal of Risk and Uncertainty 283–305 at 284.

[150] Scholz, "Enforcement Policy and Corporate Misconduct", *supra* note 133 at 255.

[151] John T Scholz, "Cooperative Regulatory Enforcement and the Politics of Administrative Effectiveness" (1991) 85:1 The American Political Science Review 115–136 at 117.

deterrence regulatory strategies are not as effective as cooperative regulatory strategies in inducing compliance standards with improved workplace safety.[152] Proponents of cooperative regulatory strategy contend that using deterrence to induce compliance with regulations and policies is ineffective because of the "inherent inefficiency of the regulations being enforced and the costs of enforcement actions". [153]

Scholz and Lubell apply the hypothesis of the deterrence theorists to tax regulations through a survey of tax return data of a group of taxpayers involving individuals and small business enterprises.[154] The study finds that trust in government and its institutions is more effective in inducing compliance. The empirical findings show that trust in the state and in its institutions is positively related to compliance. Taxpayers' trust in the state to use the collected tax for welfare purposes induces compliance more than the penalties or sanctions for being caught for evasion of tax.[155]

Hodges argues that application of deterrence as a strategy to induce compliance can only be reliable where decision-makers have complete and perfect knowledge of relative costs and benefits. The impracticality of this condition therefore queries the underlying assumption that the analysis of the cost and severity of the sanction attached to non-compliance in the present will

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[152] Scholz, "Enforcement Policy and Corporate Misconduct", *supra* note 133 at 255.

[153] Scholz, *supra* note 151 at 117.

[154] John T Scholz & Mark Lubell, "Trust and Taxpaying: Testing the Heuristic Approach to Collective Action" (1998) 42:2 American Journal of Political Science 398–417 at 388.

[155] *Ibid* at 401.

influence compliant behaviour in the future.[156] Hodges further criticizes the assumption that "a rational cost-benefit calculation is undertaken in relation to every decision". It is suggested that decision-making is influenced by other factors beyond considerations of cost and fear of sanctions.[157]

Similar to Scholz, Hodges also maintains that the effectiveness of using deterrence as a regulatory policy is heavily reliant on efficient enforcement and implementation of sanctions. This is however unrealistic as it requires "constant surveillance, and considerable cost" which many developing economies, such as Nigeria, cannot afford.[158] The cost of efficient enforcement is, in reality, unattainable in developing countries like Nigeria where the government is already overwhelmed with the burden of servicing huge sovereign debts. Damania et al. argues that deterrence and other economic theories which attempt to explain compliance are fragmented and incomprehensive because these theories neglect the influence of political economy on human behaviour.[159]

The relationship between political economic landscape and compliance to regulatory policies is reflected using cross-country data of developed and developing economies.[160] Empirical findings

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[156] Christopher Hodges, "Criticisms of Deterrence." in *Law and Corporate Behaviour: Integrating Theories of Regulation, Enforcement, Compliance and Ethics* (Oxford: Hart Publishing, 2015) 107 at 108.

[157] *Ibid* at 108–109.

[158] *Ibid* at 110.

[159] *The Persistence of Corruption and Regulatory Compliance Failures: Theory and Evidence*, IMF Working Papers, by Richard Damania, Per G Fredriksson & Muthukumara Mani, IMF Working Papers 2003/172 (International Monetary Fund, 2003) at 366.

[160] *Ibid*.

from the study suggests that compliance to regulations is indirectly related to the level of political stability. The results of the research showed that countries with high level of corruption experienced a higher level of political instability, and were characterized by weaker institutions, judicial systems and lower levels of compliance. The findings also show that high rate of corruption increases political instability and indirectly reduces the level of compliance with regulatory policies.[161]

Trade experts have also argued that using deterrence as a strategy to enforce compliance to trade policies without effective dialogue with the subjects of the policies, such as the private sector enterprises, creates a culture of resistance. The lack of inclusiveness of small businesses in particular affects the availability of relevant information, identification of concerns, reconciliation of interests and the understanding of the appropriate and most effective approach to addressing trade issues.[162] Sole reliance on deterrence as a compliance strategy breeds distrust between the regulatory authorities and the business entities, creating an atmosphere of hostility which is disadvantageous to all parties.[163] To induce compliance with regulatory policies, more cooperative and less deterrent strategies should be adopted. In the next Section, I propose the adoption of the theory of responsive regulation.

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[161] *Ibid* at 384.

[162] International Trade Centre, *The Role of Trade Support Institutions* (ITC, 2021).

[163] *Ibid*.

3.4 Ayres and Braithwaite's Theory of Responsive Regulation

There are numerous criticisms against the deterrence theory. Some researchers have criticized the punitive approach to enforcing regulations on the basis that the theory merely perceives compliance as a "result" expected from regulatory subjects. "Based on qualitative observations of regulatory interactions and interviews with regulators and regulated entities, compliance studies theorized that cooperative or facilitative regulatory strategies could produce better compliance outcomes than highly punitive regulatory strategies."[164]

Proponents of cooperative regulatory strategies view the concept of compliance from two connected perspectives; as an outcome, and also, as a process. Considering compliance as an outcome demonstrates the result of a law or regulation, while considering compliance as a process creates a "broader, relational concept."[165] Braithwaite explains that:

> *Compliance as process bridges the world of the regulated and the world of the regulator. From the perspective of the regulated, it incorporates our understanding of what an authority wants us to do, the purpose behind the regulation, whether or not we agree with it, how we evaluate implementation of the regulations and what our attitudes and behavioral intentions are with regard to the regulatory request and authority. From the perspective of the regulators, compliance as process asks what effort has a regulatory authority made to elicit compliance. . . How regulators and regulatees view each other and negotiate the compliance space is relevant not only to compliance as an outcome, but also to the future legitimacy and trustworthiness of the regulatory system more generally.*[166]

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[164] Jodi L Short, "The Politics of Regulatory Enforcement and Compliance: Theorizing and Operationalizing Political Influences" (2021) 15 Regulation & Governance 653–685 at 657.

[165] Valerie Braithwaite, "Closing the gap between regulation and the community" in Peter Drahos, ed, *Regulatory Theory, Foundations and Applications* (Australian National University (ANU) Press, 2017) 25 at 26.

[166] *Ibid* at 28–29.

This emphasis on the social relationship between the regulators and the regulated entities query the dominance of rational economic thinking in compliance and other regulatory concepts. Scholars within the regulatory network maintain that effective regulatory practices must be driven by two meta-principles. First, institutions and regulators must seek to use regulation only if and when necessary. "[F]ormal regulation" should only be introduced when necessary as the best type of regulation is that which encourages freedom and uses the least domination. The other meta-principle furthers the first, focusing on the concept of compliance as a process. Regulatory frameworks should be based on principles of "respect and procedural fairness". Structuring regulatory frameworks and institutions on the basis of these meta-principles increase cooperation and voluntary compliance. With increased compliance, the need for costly, punitive strategies is significantly reduced.[167]

The theory of responsive regulation was propounded by Ayres and Braithwaite in *Responsive Regulation, Transcending the Deregulation Debate*. The responsive regulation theory derives its origin from these meta-principles and furthers the proposition of Scholz that cooperative strategies are more effective for inducing compliance. Scholz's proposition, described as the "tit-for-tat" (TFT) strategy, is that, . . . the regulator leads with cooperation and continues to cooperate until the regulated entity defects."[168] Through this approach, both players put their best foot forward and are more willing to voluntarily cooperate.

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[167] *Ibid* at 30.

[168] Short, "The Politics of Regulatory Enforcement and Compliance", *supra* note 164 at 657.

The theory of responsive regulation builds on the TFT strategy of Scholz. Ayres and Braithwaite propose that effective regulation can best induce compliance when regulatory agencies adopt strategies which jettison punitive sanctions for cooperative measures. “[T]he more sanctions can be kept underground, the more regulation can be transacted through moral suasion, the more effective regulation will be.”[169] According to Ayres and Braithwaite, this hypothesis evolves on the basis that (i) regulatory objectives must unpack and identify the specific concerns of subject entities, (ii) different subject entities have different motivations for compliance. Some are driven by economic rationality and some are not, (iii) adopting narrow strategies which focus on either deterrence or persuasion will be non-inclusive, (iv) focusing on only deterrence measures is expensive and resource consuming, (v) deterrence encourages resistance and hostility, creating “a game of regulatory cat-and-mouse” whereby business enterprises invest resources in circumventing the law while the government invests in resources for enforcement and sanctions. The thesis of the responsive regulatory theory is that the most effective approach to induce compliance to regulations and policies is a cooperative strategy which integrates to the extent possible, the different motivations of the regulated subjects.[170]

Ayres and Braithwaite contend that the underpinning ideology that compliance is a rational choice which could be induced by “increasing the probability of detecting non-compliance and increasing sanctions to the point where non-compliance becomes irrational” provides a one-sided explanation for why regulated entities obey the law. This is because it does not justify the reason

[169] Ayres & Braithwaite, *supra* note 34 at 19.

[170] *Ibid* at 20.

for obedience to regulations and policies where there are no punitive sanctions.[171] It also does not explain the reason for disobedience, particularly when disobedience exposes the regulated entities to conditions detrimental to their welfare. These circumstances consolidate the argument that rationality, utility and fear of sanctions may not always influence the decision of whether to obey to disobey. Responsive regulatory theory suggests that compliance should be viewed by regulators as a process connected to an outcome.

Braithwaite demonstrates that the process of compliance and the eventual outcome are interconnected in a "wheel of social alignment" where the parts of the wheel must work together for progress. While a part of the wheel which serves as the regulator "sets the legislation, guidance for interpretation and policy intent, investigative rules and enforcement practices, principles of governance and administrative practices", aligning its part of the wheel with the environment and the atmosphere from which it operates, the other part represents "how those who are being regulated evaluate what is being asked of them and the primary factors shaping compliance."[172] This other part of the wheel comprises the regulated entities, including individuals and businesses, and their relationship with and perception of the regulatory institutions.

Responsive regulatory theory postulates that resistance to compliance arises when the regulatory institutions impose regulations in an atmosphere where there is distrust between the regulatory

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[171] Kristina Murphy, "Procedural Justice and its role in voluntary compliance" in *Regulatory theories, foundations and application* (ANU Press, 2017) 43 at 44.

[172] Braithwaite, *supra* note 165 at 31–32.

institutions and the regulated entities as a result of systemic issues like corruption and injustice.[173] Murphy elaborates in an empirical study investigating the effect of lack of trust in the taxation and policing systems in Australia, that, social and political context determines how regulatory authorities are viewed. Non-compliance is pervasive in environmental contexts where businesses and individuals have no faith or trust in regulatory authorities.[174]

The theory of responsive regulation emerged from discussion of the extent of government involvement in business regulation. In order to create a balance between excessive regulation favoured by governments and excessive deregulation which is favoured by businesses, Ayres and Braithwaite propose the creation of a "synergy between punishment and persuasion".[175] This is essential because firsthand application of deterrence without more by regulatory authorities simply encourages "an organized business subculture of resistance to regulation—a subculture that facilitates the sharing of knowledge about methods of legal resistance and counterattack."[176]

Responsive regulatory theory hinges effective policymaking on the principle of minimal sufficiency, also illustrated through the concept of pyramidal responsiveness. The minimal sufficiency principle proposes the use of minimal punitive strategies in influencing behavioural response. This informs a pyramid-like regulatory strategy in which cooperative strategies are

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[173] *Ibid* at 32.

[174] Kristina Murphy, "Turning defiance into compliance with procedural justice: Understanding reactions to regulatory encounters through motivational posturing" (2016) 10:1 Regulation & Governance 93–109 at 103.

[175] Ayres & Braithwaite, *supra* note 34 at 26.

[176] *Ibid*.

used as much as possible by regulatory institutions in the initial implementation of regulations, while deterrent strategies are reserved and sparingly used.[177] This broader approach identifies and addresses the limitations of the deterrence theory of compliance. Further, it presents a less punitive and more inclusive strategy which encourages voluntary compliance. Also, using cooperative strategies as much as possible contributes to legitimacy by improving the relationship between regulatory institutions and the regulated entities.[178]

Regulatory institutions must weigh the benefits of punitive regulatory strategies, in terms of the extent of compliance induced, against the cost of lost opportunities for cooperation and the likelihood of voluntary compliance.[179] Like any theoretical framework, responsive regulatory theory also has its limitations.

3.4.1 Limitations of the Proposed Theory of Responsive Regulation

Ayres and Braithwaite identify some limitations to the theory of responsive regulation, and by extension to some of the arguments of my research. Responsive regulatory theory assumes that business regulation mainly involves the regulatory authorities and regulated business enterprises. This narrow classification undermines the role of other institutions such as the industry and trade associations, consumers, and civil society organizations in business regulation.[180] To address this

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[177] John Braithwaite, “Responsive Regulation” in Peter Drahos, ed, *Regulatory theory: Foundations and Applications* (ANU Press, 2017) 117 at 119.

[178] *Ibid* at 120.

[179] *Going by the Book: The Problem of Regulatory Unreasonableness* (Routledge, 2017) at 93.

[180] Ayres & Braithwaite, *supra* note 34 at 54.

limitation, my discussion acknowledges that role of trade support institutions and other trade facilitation infrastructure in regulatory frameworks. Associations which influence the conduct of transactions in the ICBT sector are informal, and are not actively involved in regulatory policy design.[181]

According to Baldwin and Black, critics have questioned the concept, feasibility and underlining ideology of the responsive regulatory theory. The TFT strategy upon which the theory evolves has been criticized on the grounds that regardless of the use of cooperative strategies, the remote possibility of the use of sanctions can still negatively deter voluntary compliance.[182] This criticism of responsive regulatory theory however ignores the idea of pyramid of responsiveness on which responsive regulatory theory is built. Proponents of responsive regulation do not dismiss the impact of the remote possibility of sanctions on compliance, the argument, which is also made in this research, is that initial application of punitive regulation hinders the chance for a more effective and less punitive approach.[183]

The feasibility of limiting regulation to regulatory authorities and regulated entities has also been challenged. It is suggested that responsive regulatory theory assumes that regulatory authorities have unhindered capacity to enforce compliance. This is however inaccurate as factors such as availability of financial and non-financial resources, and other contextual or environmental

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[181] *Research and trade policy formulation: The case of Nigeria's adoption of the ECOWAS common external tariff*, by Kehinde Ajayi & Philip Osafo-Kwaako, 78 (Latin American Trade Network, 2007) at 3.

[182] Robert Baldwin & Julia Black, "Really Responsive Regulation" (2008) 71:1 The Modern Law Review 59–94 at 63.

[183] Braithwaite, *supra* note 177 at 119.

challenges affect enforcement capacity. Regulatory authorities may be compelled to adopt cooperative strategies as a result of inadequate resources.[184] In the case of Nigeria, historical accounts of the trajectory of ICBT policies, particularly ICBT in rice, reflect a pattern of deterrent regulatory strategies despite the inadequate capacity for enforcement.[185] Hence, this assertion remains untested.

Ayres and Braithwaite have also identified the potential of corruption and regulatory capture of regulatory authorities through excessive cooperation. The challenge of maximizing the benefit of cooperation between regulatory authorities and regulated entities, while ensuring that the regulated entities exercise minimal influence over the decision of regulatory authorities has been identified by critics of the theory of responsive regulation.[186] While Ayres and Braithwaite propose that this challenge be managed through "tripartism", explained as "the process in which relevant public interest groups (PIGs) become the fully fledged third player, scrutinizing the activities of the other two players. . ."[187], Gunningham et al. proposes the application of "smart regulation". [188] The smart regulatory theory proposes the use of non-state controls along with state controls to prevent regulatory capture. It is suggested that the "use of multiple rather than

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[184] Baldwin & Black, *supra* note 182 at 64.

[185] Alex Amaechi Ugwuja & Chimdi Chukwukere, "Trade Protectionism and Border Closure in Nigeria: The Rice Economy in Perspective" (2021) 22:1 Unizik Journal of Arts and Humanities 78–106 at 83–84.

[186] Ayres & Braithwaite, *supra* note 34 at 26.

[187] *Ibid* at 56.

[188] Baldwin & Black, *supra* note 182 at 64.

single policy instruments, and a broader range of regulatory actors. . ."[189] such as trade and industry associations, and non- governmental organizations will help induce compliance and address the challenge of corruption and regulatory capture.

Despite the proposition of the smart regulatory approach, researchers such as Braithwaite have contended that effective coordination of multiple regulatory authorities may be problematic and expensive. Problems of conflicts, transparency and uniformity resulting from multiplicity of regulatory institutions may even be worse under the smart regulatory theory.[190] Baldwin and Black also criticize the responsive regulatory theory because it does not provide a robust explanation for how institutional factors affect compliant and non-compliant behaviour. It is suggested that factors such as the existence of good trade support institutions and good trade infrastructure induce compliance to regulatory policies. [191]

The problem of conflict as a result of contextual applicability is also worthy of consideration. Transplanting the theory of responsive regulation which evolved from the study of the behavioral responses of individuals and businesses in developed economies to government regulations, to developing countries like Nigeria may be overly ambitious because of the differences in political, economic and social culture. While it is acknowledged that the theory of responsive regulation evolved from developed economies, the problem of conflict as a result of contextual applicability

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[189] Gunningham & Sinclair, *supra* note 131 at 133–134.

[190] John Braithwaite, "Responsive regulation and developing economies" (2006) 34:5 World Development 884–898 at 885–886.

[191] Baldwin & Black, *supra* note 182 at 71.

is unfounded considering the successful adoption of this strategy in some East African countries with similar political and economic structures like Nigeria.[192] For developing countries like Nigeria which have inactive non-state regulatory institutions, financially constrained state institutions and incoherent laws and policies, responsive regulatory strategies provide a cost effective and more inclusive approach to understanding the problem of non-compliance.[193]

3.4.2 Conclusion

ICBT regulation in Nigeria is driven by the deterrence theory of compliance. With emphasis on prevention and sanction at the expense of more important systemic issues such as lack of trust and legitimacy, a culture of resistance to and disregard for government regulations is encouraged among small cross border traders in particular. Therefore, ICBT persists despite the numerous regulatory measures to prevent ICBT across the borders of Nigeria. More cooperative and less punitive trade policies will induce compliance more effectively.

In the next chapter, I apply the above theoretical framework to two of Nigeria's recent trade policies aimed at ICBT. Namely, the border closure of 2019 and the restriction on rice imports. Using statistical analysis, I evaluate the effectiveness of these policies in preventing traders from participating in ICBT. Findings from my analysis show that despite the adoption of these preventive polices, ICBT continues to thrive.

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[192] Afrika & Ajumbo, *supra* note 9 at 6.

[193] Braithwaite, *supra* note 190 at 886.

Chapter 4: The Rice Import Restriction and Border Closure of 2019: A Case Study of the Weaknesses of Regulating with Deterrence in Nigeria

4.1 Introduction

In Chapter 3, I presented the underpinning ideology of deterrence which informs ICBT regulation in Nigeria. I will in this chapter show that this underpinning theoretical framework of deterrence has been counterproductive in preventing ICBT through a statistical analysis of cross border trade activities in Nigeria after the shift towards protective and preventive regulations. To show that the deterrence theory of regulation has been ineffective, I focus on two of the most recent cross border trade policies targeted at curbing ICBT in Nigeria—the rice importation restriction and the border closure of August 2019. My thesis is that the preventive and punitive regulatory strategies have not only failed to achieve the objective of eradicating ICBT across the borders of Nigeria, but have also encouraged a culture of resistance among informal cross border traders through the increasing use of obscure channels to circumvent government regulations and conduct cross border trade transactions. Using direct and mirror trade statistics data obtained from the UN COMTRADE and Nigeria's National Bureau of Statistics, I show that punitive and preventive regulations have been ineffective in curbing ICBT in Nigeria.

4.2 Trade Policy in Nigeria

The trajectory of Nigeria's trade policy has been categorized by existing scholarship into two regimes: the Pre-Structural Adjustment Program (Pre-SAP) regime, with a focus on import substitution policies and industrialization of the agricultural sector; and the Post-Structural Adjustment Program (Post-SAP) regime, involving increased trade liberalization.[194] Although the Pre-SAP and Post-SAP regimes pursued different economic objectives, historical accounts show an identical pattern in the policies adopted by the different government administrations. Trade imbalances have been addressed with foreign exchange controls, import quotas, import restrictions and custom tariffs.[195]

There is no consensus in trade development scholarship on whether developing economies like Nigeria should adopt liberalized or heavily regulated trade regimes. Proponents of trade protectionism contend that, although trade liberalization enhances economic growth through the benefits of comparative cost advantage,[196] the costs of liberalization for developing countries with huge infrastructural and technological deficits outweigh its benefits.[197]

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[194] FCO Analogbei, *Trade Reforms and Productivity in Nigeria* (Lagos: CBN Press) at 162,163.

[195] *Ibid* at 172.

[196] Ude Damian Kalu & Agodi Joy Agodi, "Does Trade Openness Make Sense? Investigation of Nigeria Trade Policy" (2015) 4:1 International Journal of Academic Research in Economics and Management Sciences 6–21 at 16.

[197] Mete Feridun, Folorunso Sunday Ayadi & Jean Balouga, "Impact of Trade Liberalization on the Environment in Developing Countries: The Case of Nigeria" (2006) 22:1 Journal of Developing Societies 39–56 at 41.

Proponents of trade liberalization have also made a strong case against trade protectionism. It is argued that trade protectionism is a tool of the oligarchy which exposes economies to excessive government intervention in the flow of goods and services. High custom tariffs, subsidies, import licensing and import restrictions provide short term benefits which affect the efficient allocation of resources and the competitiveness of local industries in the long term.[198]

There is also abundant historical and empirical research in support of the fact that the selective application of either trade liberalization or trade restriction does not necessarily translate into economic growth. For instance, historical accounts of the Pre-SAP regime show how excessive government intervention in trade created a distortion in the Nigerian economy. A distortion which had to be corrected by opening up the economy. Assessments of Nigeria's economic growth, Pre-SAP and Post-SAP, reflect fleeting improvements.[199]

Nevertheless, the need to diversify Nigeria's crude oil dependent economy and promote the growth of local industries has led to the adoption of protectionist trade policies. Although, the NOTN identifies the integration of small and medium-sized enterprises into global value chains, and formalization of the informal economy as part of the country's 21st century trade policy objectives, in reality, existing policies favour protectionism.[200] Fasan accurately describes Nigeria's trade policy direction as follows:

> *There is a consistent and predictable pattern to Nigeria's trade and industrial policies. For decades, successive Nigerian governments have resorted to*

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[198] Odularu, Hassan, & Babatunde, *supra* note 19 at 160.

[199] Analogbei, *supra* note 194 at 171, 172.

[200] Nigerian Office for Trade Negotiations, *supra* note 16 at 11.

> *protectionist measures, including import restrictions and exchange control, to deal with the problems of import and oil dependencies. This import substitution policy is usually presaged by an economic crisis, often triggered by the collapse of the oil market and a significant drop in Nigeria's oil revenues which account for 70% of the country's total revenues. Although the protectionist measures have never achieved the policy objective of industrializing Nigeria, this has not stopped successive governments from using them*.[201]

Trade policies have been directed towards increasing the competitiveness of local industries, reducing import dependencies and increasing the country's share of global trade through the use of financial disincentives in the form of high custom tariffs and restriction of access to foreign exchange for restricted products, and the use of sanctions and preventive measures in the form of import restrictions, border closures and confiscation of restricted products by custom officials.

Jerome explains that the process of trade policymaking in Nigeria is characterized by behavioural assumptions about individuals and businesses, and a huge gap between researchers, non-state actors and policymakers.[202] Weiss describes it as, "a political process with the basic aim of reconciling interests in order to negotiate a consensus, not implementing logic and truth".[203] Good governance, high quality institutions, active inclusion and participation of relevant actors such as the officers of the NCS and NIS, the trade support institutions, government ministries in charge of trade, commerce and industry, private sector participants,

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[201] Olu Fasan, "Nigeria's import restrictions: A bad policy that harms trade relations", (17 August 2015), online: *Africa at LSE* <https://blogs.lse.ac.uk/africaatlse/2015/08/17/nigerias-import-restrictions-a-bad-policy-that-harms-trade-relations/>.

[202] Afeikhena Jerome, *Institutional Framework and the Process of Trade Policy Making in Africa: The Case of Nigeria* (Nigeria: African Economic Research Institutions, 2005) at 3.

[203] Carol H Weiss, "Research for Policy's Sake: The Enlightenment Function of Social Research" (1977) 3:4 Policy Analysis 531–545 at 533.

particularly small traders involved in ICBT, enhances cooperative regulation which in turn induces voluntary compliance.[204]

As opposed to the objective of curbing ICBT, restrictive trade policies have fostered a culture of resistance and hostility to government policies, providing incentives for cross border traders to use informal channels of trade.[205] These restrictive policies have also made cross border trade transactions through official channels more difficult because custom officials now have to spend days in order to manually inspect shipments for prohibited goods. This manual inspection process lengthens the period of time required for clearance of commodities, exposing women cross border traders in particular to economic losses because the bulk of their goods are perishable agricultural products.[206]

ICBT remains prevalent in Nigeria because government's regulatory approach focuses on preventing and penalizing participation in ICBT, as opposed to cooperating with the traders to identify and address the issues which stimulate resistance to and non-compliance with regulatory policies. The existing policies have been enacted with the assumption that ICBT thrives because of the deregulation of cross border trade transactions. Hence, increasing regulation and adopting

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[204] Jerome, *supra* note 202 at 10.

[205] Gaël Raballand & Edmond Mjekiqi, "Nigeria's Trade Policy Facilitates Unofficial Trade but Not Manufacturing" in Volker Treicher, ed, *Putting Nigeria to Work: A Strategy for Employment and Growth* 55023 (Washington DC: World Bank, 2010) 304 at 204.

[206] *Ibid* at 205.

deterrent strategies would reduce ICBT.[207] The ineffectiveness of this approach is, of course, evident in the analysis of cross border trade statistics which is presented later in this discussion.

Unlike the deterrence theory which favours preventive regulatory strategies, responsive regulatory theory postulates that regulatory institutions and governments should cooperate with individuals and businesses, and understand how regulatory and environmental factors affect behavioural choices, which in turn determine compliance or non-compliance with designed polices. According to Braithwaite, cooperation involves ensuring that individuals and businesses have a clear understanding of the objective of the proposed regulation and view the regulation as capable of achieving the stated objectives.[208] It also includes addressing social problems of distrust in the government and its institutions, and eliminating burdensome regulatory procedures which discourage voluntary compliance.[209]

Research suggests that "unforgiving economic conditions, institutional shortcomings and the cost and difficulty of doing business through formal channels encourage a culture of adapting and improvising rather than following the rules. Particular aspects of Nigeria's trade and monetary policies — for example, . . .contribute to increasing the volumes of trade activity "under the radar".[210] Traders complain of paying high arbitrary import levies and bribes to custom officials

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[207] Karol Olejniczak, Paweł Śliwowski & Frans Leeuw, "Comparing Behavioral Assumptions of Policy Tools: Framework for Policy Designers" (2020) 22:6 Journal of Comparative Policy Analysis: Research and Practice 498–520 at 512.

[208] Braithwaite, *supra* note 165 at 28–29.

[209] Olejniczak, Śliwowski & Leeuw, "Comparing Behavioral Assumptions of Policy Tools", *supra* note 207 at 514.

[210] Hoffman & Melly, *supra* note 3 at 1.

in order to receive their shipments from the ports — a “formal” channel for trade. There are also non-tariff restrictions like the June 2015 memorandum of the Trade and Exchange Department of the CBN, restricting access to foreign exchange for the importation of “non-essential commodities”, including rice (the major staple food in Nigeria), margarine, palm oil and vegetable oils, meat and meat products, vegetables and vegetable products and 36 other commodities.[211] This is in addition to the existing import restriction imposed on 25 other items by the NCS.[212]

Restricting access to foreign exchange for importation of staple food commodities and other non-food products which are not sufficiently produced in Nigeria, does not provide a sustainable solution to the underlying problems of poverty, food insecurity, unemployment, corruption, wide economic inequality and poor infrastructure.[213] In fact, the foreign exchange restriction and food commodity restriction has become a tool for exploitation of cross border traders by corrupt custom officials.[214] Despite the negative public reaction and failure of the June 2015 import restriction policy, in August 2019, the Nigerian government continued the deterrence regulatory pattern by directing the closure of its land borders primarily to prevent the importation of rice, a major staple food in Nigeria, through ICBT.

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[211] Trade and Exchange Department Central Bank of Nigeria, *Inclusion of Some Imported Goods and Services on the List of Items Not Valid for Foreign Exchange in the Nigerian Foreign Exchange Markets* (2015).

[212] International Trade Administration, “Nigeria- Prohibited and Restricted Imports”, (13 August 2019), online: *Nigeria Country Commercial guide* <https://www.export.gov/apex/article2?id=Nigeria-Prohibited-and-Restricted-Imports>.

[213] Fasan, *supra* note 102.

[214] Hoffman & Melly, *supra* note 3 at viii.

In the following subsection, I consider the effect of deterrent regulatory strategies on cross border trade as a whole. I further consider the effect of the border closure of 2019 in particular, on informal importation of rice. Using trade statistics obtained from the UN COMTRADE database, I compare the value of rice officially imported into Nigeria after the border closure of 2019, with export trade statistics of Nigeria's major rice trade partners. I show that, with the shift towards preventive and protective regulations, the value of rice imported into Nigeria through official channels of trade reduced while the value of rice imported through unofficial channels increased. Although direct trade statistics in 2019 and 2020 suggest that rice was not imported into Nigeria in these years as result of the border restrictions, the rice export statistics of Nigeria's major rice trade partners indicate otherwise.

4.2.1 Impact of the Rice Import Restriction and Border Closure of 2019 on ICBT in Rice

Rice doubles as a major household meal and source of foreign exchange for Nigeria. Nigeria is the highest consumer of rice in the whole of Sub-Saharan Africa[215] and the fourth largest importer of rice in the world.[216] This is particularly interesting considering that Nigeria was recently ranked as the largest producer of rice in Africa and part of the top 15 producers of rice in the world by the United States Department of Agriculture Foreign Agricultural Service (USDA FAS) report of 2019.[217] The report of the Nigeria National Bureau of Statistics (NBS) as at the end of 2019 shows

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[215] Oghoneruemu Obi-Egbedi et al, "Effect of Rice Trade Policy on Household Welfare in Nigeria" (2012) 4 European Journal of Business and Management 12 at 160.

[216] Nathan Childs, "USDA ERS - Rice Sector at a Glance", online: <https://www.ers.usda.gov/topics/crops/rice/rice-sector-at-a-glance/#Global>.

[217] *Nigeria Grain and Feed Annual 2019 Nigeria's Imports of Wheat and Rice to Rise,* by Mariano J Beillard & Uche M Nzeka, NG-19002 (USDA Food and Agricultural Service, 2019) at 2.

that household expenditure on rice in Nigeria was worth approximately 2 Trillion Naira (approximately equivalent to USD5 Billion), ranking as the third highest household expenditure, and constituting approximately 5 percent of total household expenditure and 9 percent of the total expenditure on food in Nigerian households.[218]

Over the years, government efforts to boost domestic production of rice have consisted of erratic policies in the form of importation restrictions, low and high import tariffs, and confiscation of imports. For example, the rice trade policy direction between 2008 and 2010 was highly liberalized, allowing drastic reduction and, at some point, elimination of the tariff imposed on imported rice. By 2013, the government imposed high tariffs on rice imports of up to 50 percent. Custom tariff payable on imported rice is currently about 70 percent.[219]

Most of the rice farmers in Nigeria are individuals and small enterprises with limited access to industrial farming equipment. After the border closure of 2019, the government in September 2020, included fertilizers in the list of the items subject to foreign exchange restriction. High cost of production, poor seed quality, high cost of inputs such as fertilizers, and poor infrastructure make it difficult for domestic rice farmers to produce properly processed rice in sufficient quantity to meet domestic demand. These constraints also affect the market competitiveness of domestic rice. Currently, the high cost of producing domestic rice has resulted in an increase in the market

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[218] *Consumption Expenditure Pattern in Nigeria (2019)*, by National Bureau of Statistics (Abuja, 2020) at 10–13.

[219] Obi-Egbedi et al, *supra* note 215 at 160.

price of domestic rice for consumers.[220] This increases demand for foreign rice imported through ICBT because it is relatively cheaper than domestic rice.

Despite the policy efforts, millions of metric tons of rice are imported into Nigeria through ICBT annually. The border closure and rice importation restriction of 2019 only repeated the existing pattern of ineffective policymaking. On December 22, 2020, the government of Nigeria acknowledged that the border-closure directive imposed in 2019 has been completely counter-productive, resulting in hardship for small, cross border traders who are heavily reliant on cross border trade.[221] To support my argument, the graphs below reflect the trend in Nigeria's rice imports and exports since the shift towards preventive regulations in 2015.

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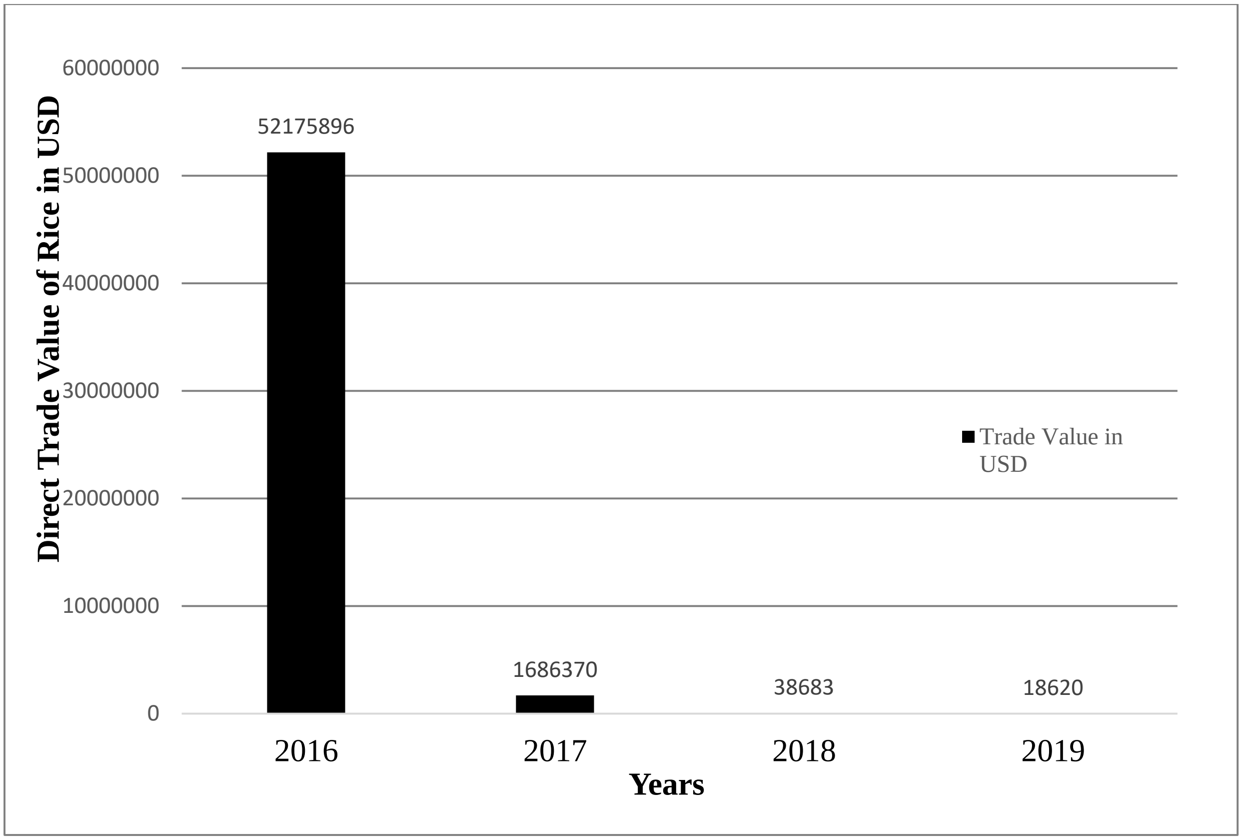
[220] *Grain and Feed Update*, NI2020-0002 (Lagos: United States Department of Agriculture, Foreign Agricultural Service; 2020) at 2.

[221] "Border closure failed to achieve objectives — Prof AsiwajuVanguard News", *Vanguard News* (19 January 2021), online: <https://www.vanguardngr.com/2021/01/border-closure-failed-to-achieve-objectives-prof-asiwaju/>.

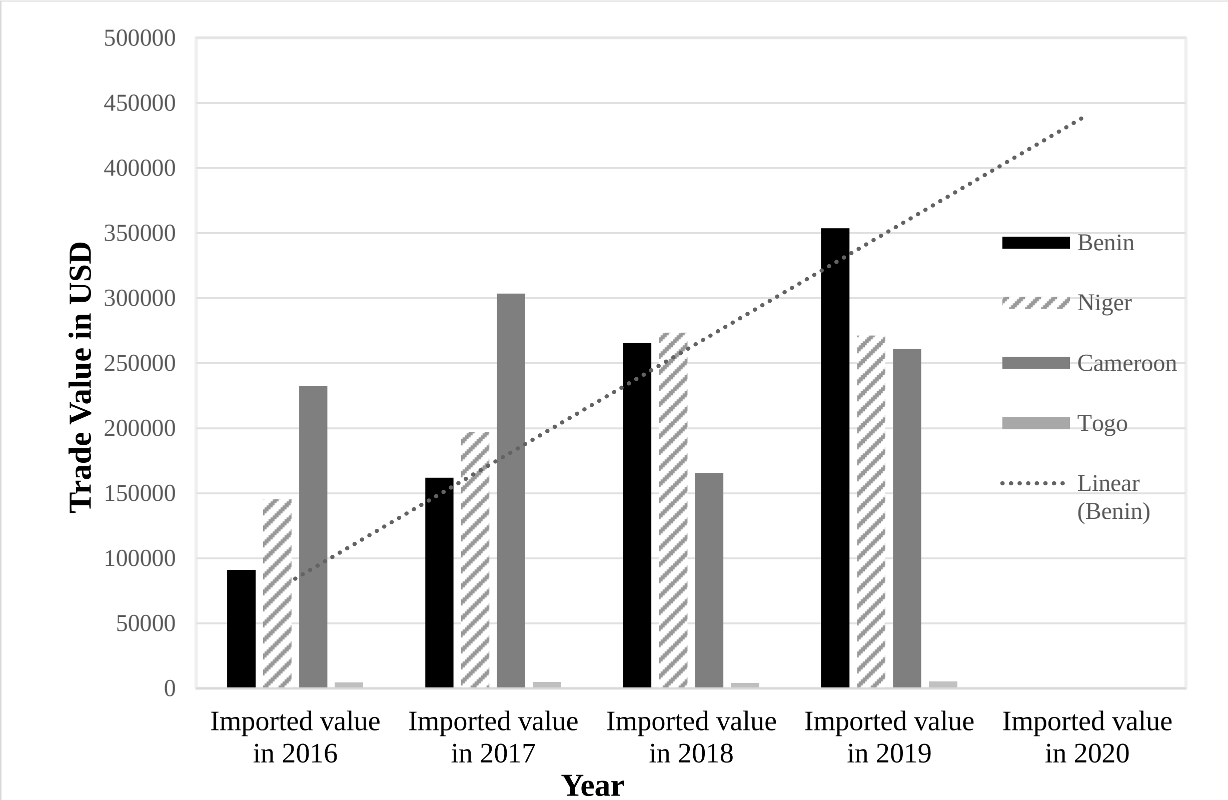
Figure 4.1 Direct Trade Value of Nigeria's Rice Import from Global Markets 2016-2019



Data Source: UN COMTRADE Database

Figure 4.1 shows the total official value of rice imported into Nigeria from 2016 to 2019. Between 2016 and 2019, the Nigerian government increasingly adopted protective and preventive trade policies. From the chart, the highest value of rice imports into Nigeria was in 2016. Between 2016 and 2019, there is a massive decline in the direct trade value of rice imported into Nigeria. The reduction in the value of rice imported into the country positively correlates with the increasing adoption of preventive trade policies in these years.

Figure 4.2 Rice Import into Neighbouring African Countries 2016-2020



Data Source: ITC calculations based on UN COMTRADE and ITC statistics.

Research connects the booming ICBT sector in neighbouring African countries of Niger, Benin Republic, Cameroon and Togo to the restrictive regulatory framework for cross border trade in Nigeria. As noted in existing research, while Nigeria has maintained some of the most restrictive rice import policies in the world, neighbouring countries of Benin Republic, Togo, Niger and Cameroon have "deliberately" maintained less restrictive policies which favour imports.[222] The larger fraction of the commodities imported into these countries are relatively cheaper due to less

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[222] *Benin's Informal Trading with Nigeria*, by Stephen Golub et al (Economic Development & Institutions, 2019) at 8.

restrictive policies. These commodities are subsequently re-exported into Nigeria through ICBT. ICBT therefore provides a source of income and employment for a substantial fraction of the population in these neighbouring African countries.[223] Through informal re-exports, traders in these countries are able to circumvent the numerous requirements for import into Nigeria through formal channels, increase profit margins on the goods which are often subject to restrictive import policies under Nigeria's trade law and access a larger market for their goods.[224] This analysis is supported by the findings of another research which focused on Benin Republic. The findings show that the magnitude of the imports into Benin of certain products which are heavily protected in Nigeria, are far too large to be explained by the domestic consumption in Benin Republic. The research identified rice as the leading product in this category.[225]

Figure 4.2 supports the findings of existing research. As reflected in Figure 4.1, between 2016 and 2019, Nigeria shifted towards restrictive policies for rice. As indicated in official trade report, there was a reduction in the trade value of rice imported into Nigeria through formal channels because of this policy shift. Figure 4.2 conversely shows an increase a sharp increase in the value of rice imported into neighbouring African countries of Niger, Benin Republic, Cameroon, and Togo from the same year 2016 to 2019 when Nigeria shifted towards restrictive policies. The linear line shows the increase in the value of rice imported into the Benin Republic in particular. Cotonou, the

[223] Nancy Benjamin, Stephen Golub & Ahmadou Aly Mbaye, "Informality, Trade Policies and Smuggling in West Africa" (2015) 30:3 Journal of Borderlands Studies 381–394 at 389.

[224] *Ibid* at 381.

[225] *Ibid* at 389.

economic centre of Benin Republic has long served as a major route for informally transporting rice into Nigeria.[226] The increase in the value of rice imported into these countries also corroborate the anecdotal evidence from the press[227] that a significant proportion of rice is still imported informally into Nigeria through neighbouring African countries. From the graph, in 2019, there is a significant increase in the value of rice imported into Benin Republic in particular, a country located South of Nigeria with close proximity to Lagos, the major commercial centre and most populous city[228] in Nigeria. None of the countries provided rice import statistics for the year 2020.

Although Nigeria announced a partial reopening of its land borders in December 2020, a reported interview with trade officials affirms that the border closure has not reduced ICBT in rice. Despite the border closure, millions of metric tons of rice are still imported into Nigeria informally through the help of communities around land borders, taxi and motor bike riders, small boats and border officials.[229] This arrangement is also facilitated by the porous and vast land borders between Nigeria and its neighbours.

Figure 4.3 extends the argument against deterrent regulations through a comparison of Nigeria's official report of its highest rice trade partners and the value of their exports into Nigeria in 2019, with the mirror global report of the countries which were the major rice exporters into Nigeria and

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[226] Nduka Orjinmo, "Nigeria's border crisis fuelled by rice", *BBC News* (31 October 2019), online: <https://www.bbc.com/news/world-africa-50223045>.

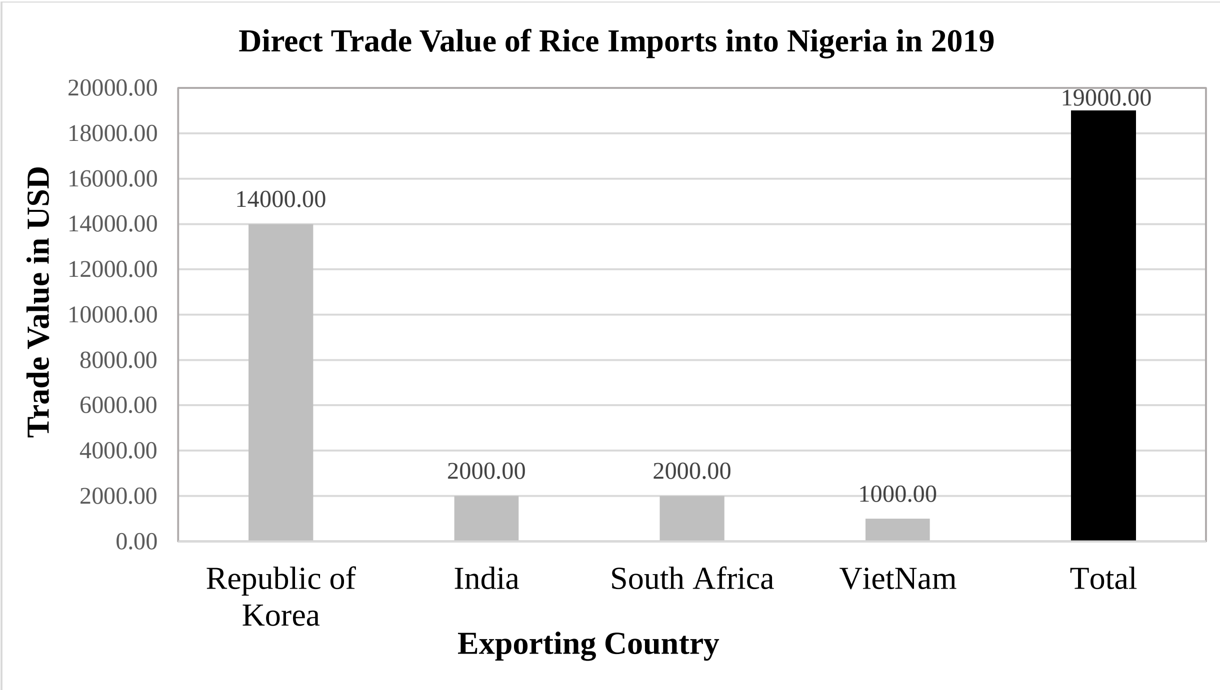
[227] ISSAfrica.org, *supra* note 146.

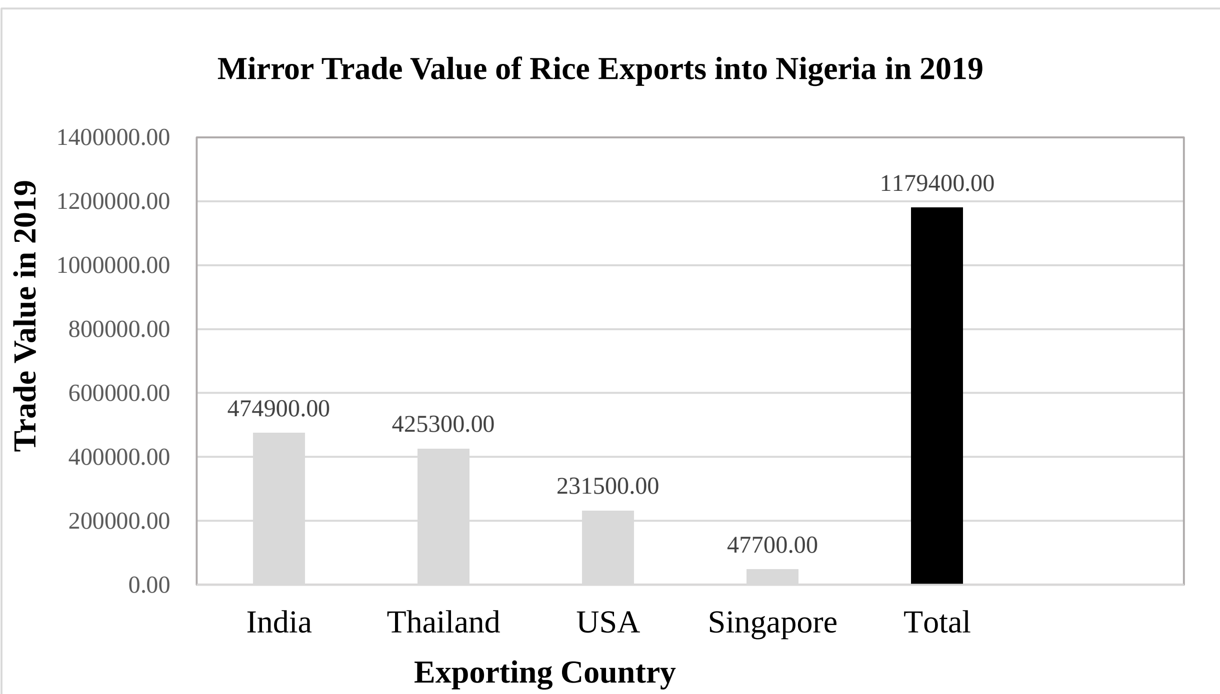
[228] "Nigeria: cities with the largest population 2021", online: *Statista* <https://www.statista.com/statistics/1121444/largest-cities-in-nigeria/>.

[229] ISSAfrica.org, *supra* note 146.

the corresponding value of their exports in the same year. The disparity in the reports is suggestive of unrecorded imports. The graph shows the difference between (i) the direct value of rice reported to have been imported officially into Nigeria in 2019 (valued at USD19000) as well as the exporting countries, and (ii) the mirror value of rice exported unofficially into Nigeria (valued at USD1179400) as well as the exporting countries of the reported mirror values in the same year.

Figure 4.3 Direct and Mirror Trade Value of Rice Imports into Nigeria in 2019

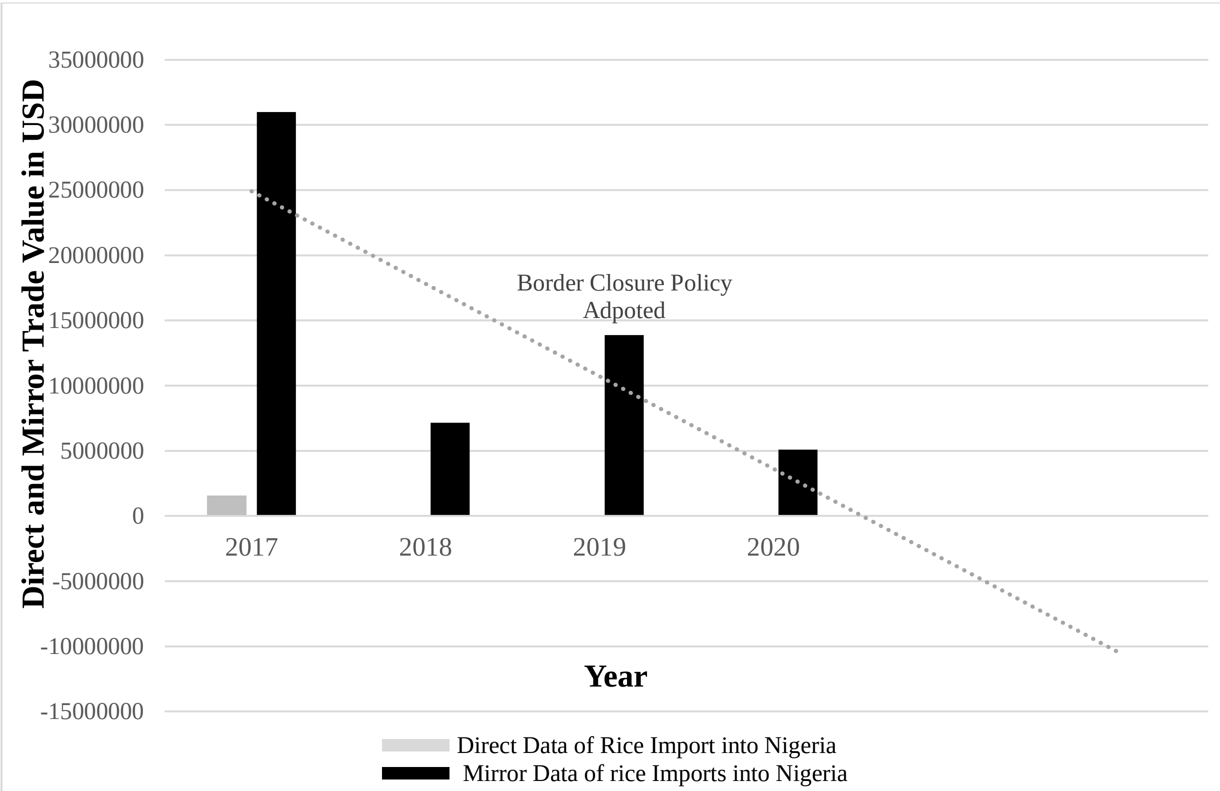




Data Sources UN COMTRADE and National Bureau of Statistics

While direct data reported by Nigeria shows that it imported the largest quantities of rice from the Republic of Korea, India, South Africa and Vietnam in 2019, mirror trade statistics show that India, Thailand, United States of America and Singapore exported the largest quantities of rice into Nigeria in the same year. According to official statistics, most of the rice imported into Nigeria in 2019 was from Republic of Korea, valued at USD14000. Mirror trade statistics however shows that India exported the largest quantity of rice into Nigeria, as India's export trade data shows that the value of rice exported into Nigeria in 2019 is worth USD474900. The huge gap between the reported direct total value (USD19000) and the mirror total value (USD1179400) of rice imports into Nigeria in 2019 is suggestive of huge unrecorded imports, and by extension, ICBT.

Figure 4.4 Direct and Mirror Trade Value of World Supply of Rice to Nigeria 2017-2020



Sources: UN COMTRADE Statistics and National Bureau of Statistics

Figure 4.4 compares the direct total value of rice imported into Nigeria from other countries in the world, from 2017 to 2020, with the mirror total value of rice exported into Nigeria from 2017 to 2020. The graph shows a huge difference between the quantity of exports sent to Nigeria from other countries in the world, and the quantity of imports which is captured by Nigeria's official trade statistics. In 2019 and 2020 when the border closure directive and rice importation restriction was issued, Nigeria's national trade statistics indicates that rice was not imported in years 2019 and 2020. However, mirror statistics of global rice export for the same year shows that rice was exported into Nigeria. The continued partial closure of the Nigerian borders, and the country's recent ratification of the AfCFTA, a treaty to promote free movement of goods across the African continent, has raised some questions in the international community on the country's trade policy direction.

The USDA FAS projects that domestic production of rice in Nigeria for the year 2020/21 will be approximately 7.8 million metric tons. According to USDA FAS, this quantity is still 12 million tons lower than demand. This problem of inadequate supply is further worsened by the disruptions to farming activities because of the Covid-19 pandemic, and the displacement of many rice farmers in Northern Nigeria due to the Boko Haram insurgency. Despite inadequate domestic supply, demand for and consumption of rice in Nigeria continues to increase because of increase in population. It is projected that, despite the continued partial border closure, about 1.75 million metric tons of rice will be imported into Nigeria through ICBT in 2021.[230] With the rising level of food insecurity within the country, estimated at 68 percent in August 2020,[231] it is projected that the limited supply of domestic rice will further increase its cost, making rice imported through ICBT a cheaper and more attractive alternative.[232]

Imposing restrictions on rice importation has only resulted in an increase in the market price of imported and domestic rice. Rice remains a major food in Nigerian households, constituting the daily meal for about 79 percent of the Nigerian population as of 2020.[233] Although Figure 4.4 shows that the quantity of rice imported through formal trade channels has reduced, demand and

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[230] note 220 at 12.

[231] *Ibid* at 2.

[232] *Ibid* at 11.

[233] "Regularly consumed food and beverages in Nigeria 2020", online: *Statista* <https://www.statista.com/forecasts/826233/regularly-consumed-food-and-beverage-products-in-nigeria>.

consumption of rice remains inelastic. The gap in supply is filled through ICBT as shown in Figure 4.4. The informality associated with ICBT however makes accurate data unavailable.

4.2.2 Discussion of Statistical Analysis

The effectiveness of the preventive theoretical framework adopted by the government of Nigeria can be evaluated through different methods. For this research, I analyze the effectiveness of the deterrent theory of regulation using trade data derived from the UN COMTRADE trade statistics database. The trade statistics database provides monthly, quarterly and yearly country-specific data on the imports, exports, trade values, market share and growth rates of goods and services using the Harmonized System of classification (HS code)—a globally standardized method of classifying commodities for ease of identification, taxation and statistics. The database also provides direct (official) trade statistics[234] of each country and the world as a whole, as well as mirror trade statistics for countries which do not or inaccurately report national trade statistics. "Mirror statistics is the use of partner trade statistics to assess trade patterns of a country."[235]

Unlike direct trade statistics which provides a one-sided assessment of a country's trade data using the national statistics reported by the country, mirror trade statistics allows a comparative assessment of the national trade data reported by a country with the export trade data reported by

[234] Direct or official trade statistics is derived from the national trade statistics reported to the UN COMTRADE by countries

[235] Gaël Raballand, Thomas Cantens & Guillermo Arenas, "Mirror Trade Statistics: A Tool to Help Identify Customs Fraud- A Cameroon Case Study" in Thomas Cantens, Robert Ireland & Gaël Raballand, eds, *Reform by Numbers: Measurement Applied to Customs and Tax Administrations in Developing Countries* 73516 (Washington DC: World Bank, 2013) 174 at 103.

such country's trade partners. Thus, for a more accurate assessment of the value of a product imported by a country, the export value reported by the country's trading partner for the same product may be considered. While mirror statistics allows comparison of a broader set of data, its data is limited and subject to the reported exports of trade partner countries. Hence, non-reporting partner countries are excluded. Also, reporting trade partner countries may be different where the objective is to compare trade data across different years.[236]

In order to use mirror statistics to determine the actual value of rice imported into Nigeria from global markets, I compare the value of rice exported into Nigeria from the global rice market with the value of rice reported to have been imported into Nigeria according to Nigeria's national rice trade statistics. From the comparison, the value of rice exported into Nigeria from the global market significantly exceeds the value of rice captured and reported by official trade data in Nigeria. To calculate trade values, I use USD which is also the unit of measurement adopted by the UN COMTRADE database.

To evaluate the effectiveness of Nigeria's policy position in relation to ICBT, and more specifically ICBT in rice, first, I identify the HS code for rice across the global market. Next, I use the HS code to collate data on the direct value of Nigeria's annual rice imports from all its partner countries between 2016 and 2020. My evaluation focuses on the period between 2016 and 2020 because of Nigeria's shift towards preventive regulatory strategies during this period. In Figure

[236] International Trade Centre, "Trade Map - Glossary", (2019), online: *Glossary* <https://www.trademap.org/stGlossary.aspx?nvpm=1%7c566%7c%7c%7c%7c100630%7c%7c%7c6%7c1%7c1%7c1%7c2%7c1%7c2%7c1%7c1%7c1>.

4.1, the direct trade value of rice imported annually into Nigeria since 2016 gradually declined following the shift towards preventive regulations.

In Figure 4.2, I compare the direct trade value of rice imported into Nigeria between 2016 and 2020 with the direct trade value of rice imported into selected neighbouring African countries of Niger, Benin Republic, Cameroon and Togo (all a population of approximately 64.8 million people).[237] This is relevant because Nigeria shares land borders with these countries on the North, South, East and West respectively. With less restrictive rice import policies, trade reports suggest that a substantial fraction of the rice imported into these neighbouring countries are re-exported into Nigeria through informal channels. This assertion is corroborated by the huge investments of these countries in imported rice in spite of the rather small population size. Custom officials also continue to confiscate thousands of metric tons of rice destined for Nigerian markets, transported through the land borders shared with these African countries.[238] Figure 4.2 shows an increase in the value of rice imported between 2016 and 2020 by Niger, Benin, Cameroon and Togo, suggesting that there is an inverse relationship between the quantity of rice officially imported into Nigeria and the quantity of rice imported into these neighbouring African countries.

To evaluate the effectiveness of the border closure policy of 2019 on ICBT in rice in particular, I compare the direct value of rice imported by Nigeria in 2019 and 2020 from all its trade partners, with mirror value of rice exported into Nigeria from all its trade partners. The direct trade statistics

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[237] Beillard & Nzeka, *supra* note 217 at 11.

[238] "Nigeria closes borders in effort to stem rice smuggling", (20 September 2019), online: *RFI* <https://www.rfi.fr/en/africa/20190919-nigeria-closes-borders-neighbours-rice-smuggling-threatens-president-buharis-rice-po>.

show that Nigeria imported most of its rice from Republic of Korea, India, South Africa and Vietnam in 2019. There is no record of import for 2020. However, mirror trade statistics in fact show that in 2019 and 2020, India, Thailand, United States of America and Singapore exported the highest quantity of rice into Nigeria. The trade value of rice exported into Nigeria by these countries is significantly higher than that which is captured by direct trade statistics. Figure 4.3 compares the direct and mirror trade values of rice imported and exported respectively into Nigeria in 2019.

In Figure 4.4, I compare the total value of rice imported annually into Nigeria from other countries in the world, from the years 2017 to 2020 according to direct trade statistics, with the mirror value of rice exported annually into Nigeria, from the years 2017 to 2020 with the yearly time series data collected from the UN COMTRADE database. The comparison reveals a huge discrepancy between the value of rice recorded to have been imported into Nigeria and the actual value of rice recorded to have been exported into Nigeria by the country's rice suppliers. From the graph, there is an abrupt rise in unofficial imports in 2019 when the border closure policy was adopted. In 2020, there is no data for rice import directly into Nigeria suggesting that rice was not imported in this year because of the continued border closure, comparison with mirror data however shows that a substantial quantity of rice was exported into Nigeria from global trade markets through informal channels.

This analysis corroborates my argument that deterrent measures such as border closures and import restrictions have been ineffective in inducing compliance to cross border trade policies as well as curbing ICBT. As an alternative to deterrence, I propose that cross border trade can be more effectively regulated through the Ayres and Braithwaite responsive regulatory approach. In the next Section, I suggest ways in which the responsive regulatory theory can be integrated into trade policy design and implementation in Nigeria.

4.3 Incorporating Responsive Regulation into Trade Policy in Nigeria

Research identifies the different context in which responsive regulatory approach has been successfully applied by regulatory authorities and policymakers, particularly in developed economies. While there are still strong criticisms against the effectiveness of this approach,[239] a publication of the Regulatory Institutions Network identifies the ways in which the responsive regulatory theory has been applied in different industries globally, including public health and safety, environment, social services and welfare, transport, corporations and finance industries to increase compliance.[240]

In identifying exemplary cases in which the theory of responsive regulation has been effectively applied to achieve greater compliance to regulations, Braithwaite and Ivec explain that the responsive regulatory theory is not "an off-the shelf program that can transferred from one context to the other without preparation and consultation."[241] According to Braithwaite and Ivec, while the underlying principles of responsive regulation provide a general framework for its application, the design and implementation of regulations using the responsive regulatory theory must accommodate the peculiar circumstances of the regulatory subjects.[242] This need for contextualization has also been identified by Nielsen and Parker as a limitation to the application

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[239] Braithwaite, *supra* note 190 at 884.

[240] *Applications of Responsive Regulatory Theory in Australia and Overseas: Update*, by Mary Ivec & Valerie Braithwaite (Canberra: Regulatory Institutions Network: Australian National University, 2015) at 5.

[241] *Ibid*.

[242] *Ibid* at 6.

of responsive regulation in empirical research studies and even in practice, particularly in developing economies with weak regulatory capacity.[243] Braithwaite and Ivec suggest that to achieve genuine responsiveness, regulators must listen to and understand the gap the regulation seeks to address, and the perception of the target subjects towards the proposed and existing regulation. Once this understanding exists, the regulatory response must be tailored to address the identified gaps and concerns.[244] Efforts to apply responsive regulatory theory in practice therefore requires intensive planning, and consultation with the subjects of the proposed regulatory policy.

In Chapter 3 of this research, I argued that the deterrent theory of regulation adopted in the design of trade regulatory policy in Nigeria has been ineffective in inducing compliance. I further propose responsive regulatory theory as an alternative and more effective approach. In this Section, I identify ways in which responsiveness can be infused into the existing trade regulatory frameworks in Nigeria drawing on existing examples of responsive regulatory reforms.

Proponents of responsive regulation underscore the significance of *flexibility* in administering regulations. Flexibility enables regulatory authorities to induce compliance through measures proportionate to the risks of non-compliance, rather than the typical general response to enforcement and administration.[245] In the context of ICBT in Nigeria, there is strong proof that

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[243] Vibeke Lehmann Nielsen & Christine Parker, "Testing responsive regulation in regulatory enforcement" (2009) 3:4 Regulation & Governance 376–399

[244] Ivec & Braithwaite, *supra* note 240 at 5.

[245] *Ibid* at 12.

the continuous adoption of deterrent, “one-size fits all” approaches to regulation such as the imposition of import restrictions, strict monetary policies, confiscation and border closure directives has been ineffective in curbing ICBT. This rigid application of the same rules by successive government administration is influenced by the preconceived and unfounded perception of ICBT as a menace to social and economic growth.[246] Flexibility in the design and implementation of the trade regulatory framework includes understanding the realities of the different categories of cross border traders and using the knowledge acquired from this reality to design a more reflective trade regulatory framework. Enforcement efforts should adopt a multi-layered approach comprising diverse and proportionate responses to non-compliance.[247]

The Regulatory Institution Network have also identified that, establishing a *uniform and coherent regulatory framework* infuses responsiveness and also increases compliance among the subjects of a regulation. The report cites the Regulator’s Code of Practice established by the Ministry of Labour in Ontario, Canada, as an example of responsive regulatory approach. The analysis of the level of compliance before and after the design of a harmonised regulatory framework shows that the establishment of the uniform regulatory code helped the Ministry of Labour to “create a more collaborative partnership between the regulators and the regulated community”.[248] This helped to address and eliminate, to the extent possible, the barriers to

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[246] Faleye, “Impact of Informal Cross Border Trade on Poverty Alleviation: Kotangowa Market”, *supra* note 20 at 13.

[247] Ivec & Braithwaite, *supra* note 240 at 17.

[248] *Ibid* at 15.

compliance. In addition, the regulators also infused cooperative approaches into the regulation by giving more attention to the risks associated with non-compliance..[249] Previous analysis of the trajectory of trade policy in Nigeria indicate the absence of a coherent body of regulations or code of practice. This lack of coherence contributes to the difficulty in compliance particularly for traders in the informal economy with limited resources. Currently, trade policy direction in Nigeria is influenced by different government agencies and department. Incorporating responsiveness involves developing a unified approach to trade regulation that is "fair, firm and consistent."[250] A coherent and unified framework will also facilitate transparency on the part of all regulatory actors including the informal cross border traders.

The current approach to ICBT regulation in Nigeria prioritizes the use of punitive and coercive sanctions to enforce compliance. The analysis of the rice import restriction and the border closure policy however shows that this approach has been ineffective. Adopting as an alternative, cooperative and responsive measures, such as providing to the extent necessary, trade facilitation services to informal cross border traders, committing resources to eliminate the factors which prompt non-compliance, providing education on the objectives of proposed policies, providing avenues for traders to provide comments on proposed policies,[251]addressing the bias against

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[249] *Ibid*.

[250] *Ibid* at 20.

[251] *Ibid* at 27.

ICBT in trade regulation and broadening the scope of mainstream trade policy discussions to accommodate ICBT, increases voluntary and often long-term compliance.[252]

As explained in Chapter 3, the theory proposes the application of responsive regulatory pyramid approach in the implementation of regulatory policies. The responsive regulatory pyramid commits more resources to achieving cooperative and voluntary regulation. To achieve this, persuasive and cooperative efforts are initially put in place to encourage voluntary compliance of regulated subjects. Under the responsive regulatory pyramid, coercive and punitive regulatory strategies are sparingly used. Figure 4.5 replicates the responsive regulatory approach in the context of trade policy in Nigeria.

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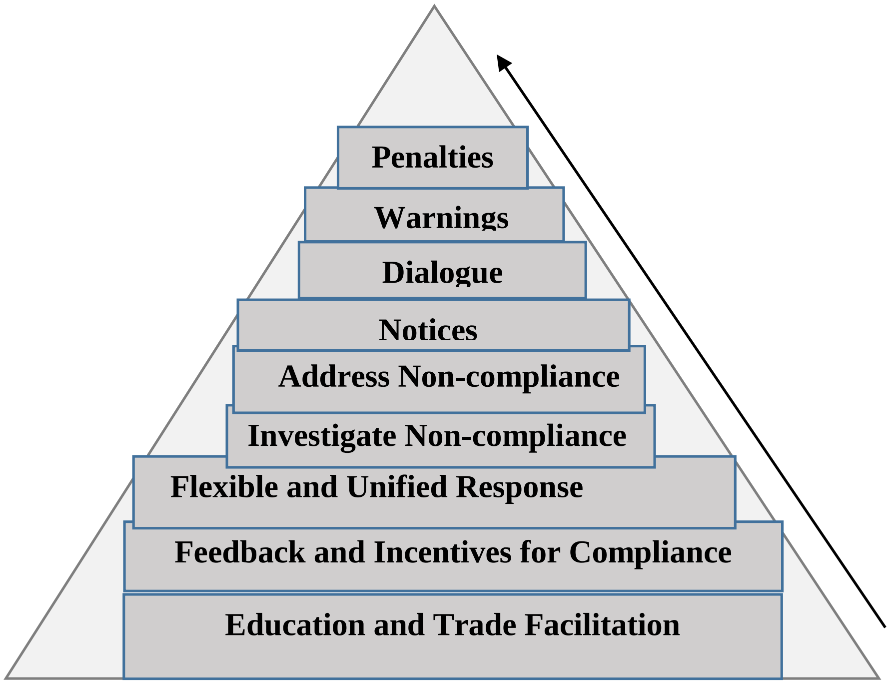
[252] *Reducing the Risk of Policy Failure: Challenges for Regulatory Compliance: Final Version OECD working papers*, by Christine Parker (OECD, 2009) at 74 ISSN 1022-2227.

Figure 4.5 Applying Responsive Regulatory Approach to Trade Policy in Nigeria



Source: ***Ayres and Braithwaite Responsive Regulation: Transcending the Deregulation Debate*** The extent of enforcement activity at each level is reflected in the width of each layer.[253]

There is abundant evidence that cooperative regulatory strategies could be applied in different industries to achieve long-term compliance.[254] While the theory has been successfully tailored to different circumstances, it is not without its shortcomings. Critics of the theory identify some challenges to using cooperative and responsive regulation from the perspective of the regulated subjects. It has been argued that excessive consultation and cooperation between the regulatory authorities and the regulated subjects may lead to regulatory capture and consequently

[253] Ayres & Braithwaite, *supra* note 34 at 35.

[254] Parker, *supra* note 252 at 72.

ineffective regulation. The contention is that, the theory of “responsiveness” allows informal cross border traders influence regulations to serve their interests. In response, proponents of responsive regulation contend that “the cure for capture could be worse than the disease”.[255] In addition to the problem of regulatory capture, it is also argued that the responsive regulatory theory contributes to the indulgence of informal trade actors, and promotion of illegal cross order trade, particularly among informal cross border trade actors looking to exploit the cooperative structure of the regulatory framework.[256]

Another publication investigating the barriers to using cooperative regulatory approaches from the perspective of the target group, suggests that poor level of education, inability to comply as a result of inadequate resources, and distrust of regulatory institutions act as barriers to the effective adoption responsive regulatory theory.[257] According to Braithwaite, it is impossible to consider the challenges of responsive regulatory theory from the perspective of the regulated actors in isolation to the role of the regulatory authorities.[258] Braithwaite maintains that “(r)esponsiveness is enabled by a society with a strong state, strong markets, and strong civil society, where the strength of each institution enables the governance capabilities of the other

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[255] John Mendeloff, “Overcoming Barriers to Better Regulation” (1993) 18:4 Law & Social Inquiry 711–729, online: <https://www.jstor.org/stable/828511> at 712.

[256] Peter Mascini & Eelco Van Wijk, “Responsive regulation at the Dutch Food and Consumer Product Safety Authority: An empirical assessment of assumptions underlying the theory” (2009) 3:1 Regulation & Governance 27–47, online: <http://onlinelibrary.wiley.com/doi/abs/10.1111/j.1748-5991.2009.01047.x> at 29.

[257] Parker, *supra* note 252 at 7.

[258] Braithwaite, *supra* note 190 at 886.

institutions".[259] While it is acknowledged that the absence of these factors may hinder effective adoption of responsive regulatory approach in developing economies, research still suggests that these capacity deficits can be overcome.[260]

4.4 Conclusion

ICBT subsists in spite of the preventive regulatory strategies adopted by the Nigerian government. Small cross border traders who are disproportionately affected by the government regulations have devised less visible and more informal means of trading across the borders of Nigeria. This is corroborated by the mirror trade data which shows a huge gap between the imports which enter Nigeria through formal trade channels and the exports actually supplied to Nigeria by its trade partners.

Using deterrence to regulate amidst widespread problems of extreme poverty, exclusive policies, political instability and weak infrastructure will produce less than desired results.[261] While trade policy may facilitate domestic production, individuals and businesses are also sensitive to other enabling conditions such as the existing support initiatives, level of transparency, available

[259] Valerie Braithwaite & M Levi, eds, "Institutionalizing trust: Enculturating distrust" in *Trust and Governance* (New York: Russell Sage, 1998) 343 at 362.

[260] Braithwaite, *supra* note 190 at 884.

[261] Paul A Dorosh & Mehrab Malek, "Rice Imports, Prices, and Challenges for Trade Policy" in Kwabena Gyimah-Brempong, Michael Johnson & Hiroyuki Takeshima, eds, *The Nigerian Rice Economy* (Philadelphia: University of Pennsylvania Press, 2016) at 159.

infrastructure, the feasibility of the proposed trade policies and the inclusiveness of the entire regulatory framework.[262]

The responsive regulatory theory presents a cooperative and less punitive approach to inducing voluntary compliance and curbing the prevalence of ICBT. Cooperative strategies such as increasing public-private dialogue, allowing small businesses and non-state stakeholders participate in policy design and formulation, tackling corruption and distrust of government through increased accountability and transparency, and investing in trade infrastructure will eliminate hostility and the pervasive culture of resistance to government policies which induces disobedience. High level of trust among members of a society also enhances economic growth.[263]

While it is acknowledged that excessive cooperation between regulatory authorities and private sector entities may foster ineffectiveness in policymaking because of regulatory capture, government policymaking efforts must still be objective, realistic and consistent to be effective. This creates a sense of credibility and commitment to the public. Inconsistencies in policymaking as a result of the political interests of a few creates uncertainty which encourages non-compliance. Household income and welfare is also affected by the frequent changes in trade policies. Narrow focus on preventive and punitive regulatory strategies ". . .may miss the opportunity for low-cost, high efficacy interventions"[264] because regulation thrives better when

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[262] Raballand & Mjekiqi, *supra* note 205 at 210.

[263] World Bank, *World Development Report 2015: Mind, Society, and Behavior* (Washington DC: The World Bank, 2015) at 65.

[264] *Ibid* at 25.

collaboration of government and regulatory institutions with individuals and businesses is neither excessive nor inexistent.

The challenge of regulating cross border trade in Nigeria affects countries across Africa. With the recent ratification of the AfCFTA, it is suggested that the implementation of the AfCFTA across Africa would resolve the challenges of trading within the region including ICBT. In Chapter 5, I consider the implications of the AfCFTA for ICBT in Africa.

Chapter 5: The African Continental Free Trade Agreement and Informal Cross Border Trade: Regional Perspectives to Trade Regulation

5.1 Introduction

In previous chapters, I identified the weaknesses of the trade regulatory framework in Nigeria, connecting these weaknesses to the prevalence of ICBT. Effective regulation of cross border trade is however a challenge affecting countries across Africa including Nigeria. With the establishment of a regional free trade area and the ratification of AfCFTA by countries in the region,[265] it is suggested that intra-African trade[266] will be better regulated. Consistent with this objective, there have been discussions on the need for African countries to align national trade policies with the objectives of the AfCFTA for the vision of a regional free trade area to materialize.

Across Africa, the creation of a regional free trade area has elicited diverse reactions. The majority of existing scholarship identify the numerous constraints to the domestication of the AfCFTA in signatory African countries. Multiple research organizations have also identified the benefits of the AfCFTA to the commodity dependent economy of Africa, and to the women in Africa, who, despite their contribution to intra-African trade, are “underpaid and underemployed

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[265] The words region and continent are used interchangeably in this context to refer to Africa.

[266] In this context, intra-African trade and cross-border trade refer to trade between African countries. It involves informal and formal trade.

compared to men".[267] Indeed, while there is a plethora of obstacles to effective implementation of the AfCFTA, its ratification by 54 out of the 55 countries in Africa signifies a commitment to achieving the objectives of the agreement. Beyond the constraints of domestication by African countries, little consideration has been given to the capability of the AfCFTA to achieve its objectives, including effectively regulating intra-African trade. This discussion is however pertinent, particularly considering the trajectory of efforts to regulate intra-African trade and the persistence of ICBT regardless.

In this chapter, I consider the design and structure of the AfCFTA in relation to its objective of regulating intra-African trade and reducing ICBT. The AfCFTA reflects the documented decision to create a continental free trade area by African countries. It is broadly divided into seven parts with protocols and guidelines to provide step-by-step instructions. Parts one and two comprise the general definition of terms used within the agreement and the objectives; part three and four contain provisions in relation to administration and obligations of member states; part five and six contain provisions regarding third party non-member states and dispute settlement mechanisms; and part seven contains guidelines for adoption and ratification. The agreement applies to (i) trade in goods; (ii) trade in services; and (iii) investment, intellectual property rights and competition policy.

[267] United Nations Economic Commission for Africa, "Africa's free trade area can benefit women equally through targeted measures, says UNECA director | United Nations Economic Commission for Africa", (29 May 2021), online: *AFRICA'S FREE TRADE AREA CAN BENEFIT WOMEN EQUALLY THROUGH TARGETED MEASURES, SAYS UNECA DIRECTOR* <https://www.uneca.org/stories/africa%E2%80%99s-free-trade-area-can-benefit-women-equally-through-targeted-measures%2C-says-uneca>.

Considering the structure of the AfCFTA, this chapter considers the extent to which the AfCFTA incorporates the realities of the informal cross border traders. Put differently, beyond the challenges and benefits of implementing the AfCFTA, to what extent is the AfCFTA an effective regulatory framework for cross border trade? I attempt to answer this question focusing on the extent to which the AfCFTA incorporates ICBT—the predominant form of intra-African trade.

This chapter is divided into four Sections. In Section two, I explain the underpinning ideology behind the AfCFTA and the regional regulation of trade in Africa. Section three builds on the analysis in section two by providing a review of the AfCFTA. In this Section, I evaluate the effectiveness of the AfCFTA as a regional regulatory framework, narrowing my evaluation to the extent to which it incorporates small enterprises and ICBT. I argue that the AfCFTA re-creates a state centric, top to bottom structure which excludes non-state actors from the regional regulatory framework in Africa.

Like previous regional regulatory frameworks, the exclusion of non-state and informal actors from trade policy design and implementation prevents the African continent from effectively integrating ICBT. The vision of creating a continental free trade area and effectively regulating intra-African trade cannot be achieved if the larger proportion of trade in the continent is conducted outside formal channels and excluded from national trade statistics. Furthermore, with the current structure of the AfCFTA, domesticating the AfCFTA in countries like Nigeria where the trade landscape already induces informality may also be counterproductive to the desired objectives. In Section four, I conclude with recommendations for integrating small enterprises and ICBT into national and regional regulatory frameworks.

5.2 Integration and Regulation of Regional Trade in Africa

Regional integration has long been perceived by governments in Africa as beneficial and helpful to the objective of socio-economic development.[268] Beginning with the formation of the Economic Community of West African States in 1975 and the East Africa Community of 1977, many regional economic organizations have been formed on the continent to enhance interactions and increase the volumes of trade and investment among African countries.[269] The most recent of these efforts is the establishment of the AfCFTA, described as the largest free trade area in the world, encompassing about "1.3 billion people across 55 countries with a combined GDP valued at USD3.4 trillion."[270]

Compared with other regions in the world, regional trade integration arrangements have a history of ineffectiveness in Africa. This historical pattern has influenced the reactions towards the recently established AfCFTA. In spite of this, Luke argues that the AfCFTA is a watershed in the history of regional integration in Africa, as it has the capability to convert Africa's "commodity dependent" economy to an industrialized economy.[271] Supporters of the notion that trade

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[268] Fredrik Söderbaum, "What's Wrong with Regional Integration? The Problem of Eurocentrism" (2013) SSRN Journal at 8.

[269] Samuel Ojo Oloruntoba, "Innovation and Regional Integration in Africa: Exploring Theory and Praxis for Socio-Economic Development" in Samuel Ojo Oloruntoba & Mammo Muchie, eds, *Innovation, Regional Integration, and Development in Africa Rethinking Theories, Institutions, and Policies*, 1st ed (Springer International Publishing, 2019) 29 at 29.

[270] World Bank Group, *The African Continental Free Trade Area: Economic and Distributional Effects* (Washington, DC: The World Bank, 2020) at 1.

[271] David Luke, "Making the Case for African Continental Free Trade Area" in David Luke & Jamie MacLeod, eds, *Inclusive trade in Africa: The African continental free trade area in comparative perspective* The international political economy of new regionalisms series (New York: Routledge, 2019) at 5.

integration will facilitate sustainable development in Africa also argue that harmonizing regional trade will facilitate inclusiveness and unity across the continent.[272] Although it is yet to be successfully tested, African leaders and policymakers strongly believe that effective integration and regulation of intra-African trade is the “only” viable option for countries in the continent to overcome several years of poor development.[273]

Globally, regional integration has been explored through several approaches such as market integration,[274] neo-functionalism,[275] development integration[276] and functionalism. There is however no consensus on the most suitable approach for achieving socio-economic development.[277] In spite of compelling evidence connecting integration of regional trade with economic development in other climes, the economic realities in present day Africa reflect otherwise. According to Gibb, the continuous attempts to use market and trade integration to

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[272] African Union, United Nations & African Development Bank Group, eds, *Assessing regional integration in Africa VII: innovation, competitiveness and regional integration* (Addis Ababa, Ethiopia: Economic Commission for Africa, 2016) at 13.

[273] Richard Gibb, “Regional Integration and Africa’s Development Trajectory: Metatheories, Expectations and Reality” (2009) 30:4 Third World Quarterly 701–720 at 703.

[274] See for more discussion Chapter 2 of Walter Mattli, *The Logic of Regional Integration: Europe and Beyond* (Cambridge: Cambridge University Press, 1999)

[275] See for more discussion Carsten Jensen, “Neo-functionalism” in Michelle Cini & Nieves Pérez-Solórzano Borragán, eds, *European Union Politics* (Oxford University Press, 2016).

[276] See for more discussion Kato Kimbugwe et al, “Regional Integration Theory” in Kato Kimbugwe et al, eds, *Economic Development Through Regional Trade: A Role for the New East African Community?* (London: Palgrave Macmillan UK, 2012)

[277] See for more discussion James A. Caporaso, *Functionalism and regional integration: a logical and empirical assessment* (Beverly Hills: Sage Publications, 1972)

achieve socio-economic development in Africa, despite failed attempts, prompts the need to identify and address the reasons for the "track record of failure"[278]

This position of Gibb has been supported by the increasing body of research investigating regional integration and regulation in Africa, and its impact on socio-economic development. Herbst suggests that the desire for regional integration by African governments is driven by political interests, but disguised as efforts to boost economic markets. According to Herbst, while this situation is not peculiar to Africa, the problem of corruption and bad governance across the continent makes the situation more precarious.[279] Contrary to the position of Herbst, Tuluy argues that in addition to the dearth of physical and soft infrastructure, adoption of linear, top to bottom, state-driven approaches to trade integration and regulation has contributed to the failure of regional trade integration efforts in Africa.[280] The rigid adoption of state-led integration approaches has resulted in the creation of a non-inclusive regional trade regulatory framework, and a highly fragmented regional trade landscape.

Söderbaum maintains that regional integration efforts in Africa continue to be unsuccessful because of the rigid adoption of Eurocentrism. According to Oloruntoba, efforts to curb ICBT in order to capture a significant fraction of intra-African trade mirror the "Eurocentric" approach to regional integration and regulation, which involves the "state and its actors negotiating and

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[278] Gibb, "Regional Integration and Africa's Development Trajectory", *supra* note 273 at 705.

[279] Jeffrey Herbst, "Crafting regional cooperation in Africa" in Amitav Acharya & Alastair Iain Johnston, eds, *Crafting Cooperation*, 1st ed (Cambridge University Press, 2001) 129 at 129.

[280] Hasan Tuluy, "Regional Economic Integration in Africa" (2016) 8:3 Global Journal of Emerging Market Economies 334–354 at 340–341.

advancing regional integration agreements".[281] Gathii states that "[f]rom this perspective, integration is regarded as necessarily destined to proceed on a linear path where tariffs and non-tariff barriers are progressively eliminated, the trade regimes of member countries are linked together, and eventually their fiscal and monetary policies are harmonized."[282] Hence, trade integration is presented as a state-centric, top to bottom four-stage process: (i) starting with the creation of a free trade agreement where member countries liberalize trade by eliminating all forms of barriers; (ii) continuing with the fixing of "common external tariffs" for non-member countries; (iii) followed by the emergence of a regional customs union for free movement of goods and services; and (iv) completed with the creation of a harmonized regional economy.[283]

Söderbaum explains that trade regional integration efforts in Africa are "state-centric, and biased in favour of formal and state-led regional organizations, while largely neglecting underlying societal logic".[284] This notion of "formal regionalism" hinders " "informal regionalism" or "regionalism from below" " which is particularly relevant in the African context.[285] With the unequally proportioned economies, and the large number of landlocked countries in the continent, efforts to curb ICBT and increase the level of regional trade would be more effective

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[281] Oloruntoba, *supra* note 269 at 34.

[282] James Thuo Gathii, ed, "African Regional Trade Agreements as Flexible Legal Regimes" in *African Regional Trade Agreements as Legal Regimes* Cambridge International Trade and Economic Law (Cambridge: Cambridge University Press, 2011) 1 at 1.

[283] Christopher C Nshimbi, "Innovating Policy and Systems of Innovation for Regional Integration" in Samuel Ojo Oloruntoba & Mammo Muchie, eds, *Innovation, Regional Integration, and Development in Africa: Rethinking Theories, Institutions, and Policies* Advances in African Economic, Social and Political Development (Springer International Publishing, 2019) at 68–69.

[284] Söderbaum, "What's Wrong with Regional Integration?", *supra* note 268 at 8.

[285] Fredrik Söderbaum & J Andrew Grant, *The New Regionalism in Africa* (London: Routledge, 2016) at 4.

through a bottom to top, multi-stakeholder approach which integrates non-state actors and the informal economy.[286] This is even more so, considering the significance and size of Africa's informal trade sector.

Nshimbi indicates that the narrow understanding of regional trade agreements and treaties as state-led arrangements where the signatory countries establish "formal alliances" to induce compliance and commitment to the objectives of the agreement fails to accommodate the small enterprises and ICBT actors which are also integral to trade integration. [287] The argument that trade integration and regulation efforts have consistently failed in Africa because of the exclusive participation of the State and its representatives has been favoured by the larger proportion of research investigating the reason for the failure of regional integration and regulation in Africa. Thus, it is against this backdrop that I provide an outline of the AfCFTA in the following Section. With consciousness of the likelihood of confirmation bias, I review the AfCFTA focusing on the extent to which it identifies and incorporates the informal economy, and particularly, informal cross border traders into the design, structure and implementation of its clauses.

[286] Tuluy, *supra* note 280 at 335.

[287] Nshimbi, *supra* note 283 at 69.

5.3 Review of the African Continental Free Trade Agreement

The AfCFTA emerged from the decision at the 18th Ordinary Session of the African Union (AU)— an intergovernmental organization of African States with the mandate to promote unity and economic development of all the countries in Africa. In 2012, the heads of government of countries in Africa collectively agreed to create a continental free trade area in order to reduce the fragmented accounts of intra-African trade and increase the level of trade within Africa.[288] The AfCFTA seeks to establish a unified regulatory framework for cross border trade, and eventually create a single market for investment, capital, goods and services in Africa.

Research suggests that the AfCFTA can, if *effectively* implemented, increase cross border trade in Africa "by more than 80 percent".[289] Article 3 of the AfCFTA states that the agreement seeks to (i) increase economic cooperation within the continent by establishing a single market for goods and services; (ii) remove barriers to movement of goods and persons within the continent; (iii) facilitate the development of existing regional economic community agreements; (iv) create a harmonized framework for trade facilitation across the continent; (v) boost Africa's share in global trade; (vi) create a channel for resolving trade-related disputes; and (vii) promote inclusive development.[290] In addition to eradicating extreme poverty which affects at least 30

[288] Omphemetse Sibanda, "The Advent of the African Continental Free Trade Agreement as a Tool for Development" (2021) Foreign Trade Review at 2.

[289] Abrego et al, *supra* note 25 at 7.

[290] *Agreement Establishing the African Continental Free Trade Area*, 2018 at Article 3.

million people in the region,[291] effective implementation of the AfCFTA could lead to inclusive and sustainable development, particularly for low-income economies in the continent.

Prior to the establishment of the AfCFTA, the AU (which was the defunct Organization of African Unity) led the creation of Regional Economic Communities (RECs) for the same purposes for which the AfCFTA has been established. The RECs were designed to liberalize trade among countries located in the same geographical division in the continent.[292] This led to the creation of eight RECs, namely: the Tripartite Free Trade Agreement comprising the Southern African Development Community, Eastern African Community and the Common Market of East and South Africa; the Economic Community of Central African States; the Intergovernmental Authority on Development; the Arab Maghreb Union; the Economic Community of West African States; and the Community of Sahel-Saharan States.[293] These RECs also sought to curb ICBT by removing barriers to trade between African countries. Clearly, the recent establishment of the AfCFTA for the same objective indicates that very little success was achieved.

According to the African trade report of 2020, trade between African countries is low compared with other regions in the world. While regional trade in Europe and Asia account for about 73 percent and 52 percent of the total trade in the regions respectively, regional trade in Africa is

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[291] World Bank Group, *supra* note 270 at 1.

[292] *The African Continental Free Trade Agreement Opportunities and Challenges STUDY*, by Théophile Albert, Keeping Pace with Trade Developments (Geneva: CUTS International, 2019) at 5.

[293] *Ibid* at 5–6.

about 14.4 percent.[294] In fact, the larger proportion of exports from Africa go to Europe and North America. It is further reported that intra-African trade is low because of the large volume of informal trade within the region. The larger fraction of intra-African trade is excluded from national and regional trade statistics.[295]

The report maintains that the domestication and implementation of the AfCFTA by countries in Africa will facilitate the integration of ICBT into national and regional regulatory frameworks.[296] While this assertion indicates an acknowledgement of the contribution of ICBT to intra-African trade, the extent of its veracity remains largely untested in trade development literature and even in practice as the AfCFTA is yet to be domesticated by most of the countries in Africa, including Nigeria. Although governments and policymakers have also identified that informal trade holds the key to unlocking Africa's trade potential,[297] not much attention has been given to informal trade in regulatory design and regional integration.

The AfCFTA is designed as a " "framework agreement" model with a core agreement forming a foundation that will be built out through several phases of negotiation".[298] According to Kuhlmann and Agutu, the incorporation of clauses which reflect the diverse capacity of signatory

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[294] African Export Import Bank, *supra* note 1 at 11.

[295] *Ibid*.

[296] *Ibid*.

[297] David Whitehouse, "Informal sector holds key to unlocking intra-Africa trade, says Afreximbank", (7 June 2021), online: *The Africa Report.com* <https://www.theafricareport.com/57007/informal-sector-holds-key-to-unlocking-intra-africa-trade-says-afreximbank/>.

[298] Katrin Kuhlmann & Akinyi Lisa Agutu, "The African Continental Free Trade Area: Toward a New Legal Model for Trade and Development" (2019) 51:4 Georgetown Journal of International Law 753–808 at 756.

countries makes the AfCFTA distinct from existing regional trade agreements.[299] In addition, the AfCFTA includes special and differential implementation phases which allow case by case consideration to accommodate countries with lower levels of economic development in the continent.[300] Although the AfCFTA accommodates the heterogeneity of African countries, it is designed and structured on the inaccurate presumption that regional integration involves only the African States and its institutions.

The implementation of the agreement is conducted through a hierarchy of institutions which are all representatives of the State. Article 9 indicates that the governing body for the agreement shall comprise, the Assembly of Heads of State, the Council of Ministers, the Committee of Senior Trade Officials and the Secretariat.[301] The Assembly of Heads of State comprises heads of government in Africa, and it has the highest interpretation power concerning the AfCFTA. The next hierarchical organization is the Council of Ministers comprising the Ministers of Trade designated by State parties. The Council of Ministers have the duty to ensure enforcement of the agreement by collaborating with the State and the AU. The third administrative Organ, which is the Committee of Senior Trade Officials, like the other two administrative organs, comprises principal officials designated by the State.[302] These officials have the responsibility to develop action plans to facilitate the implementation of the agreement.

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[299] *Ibid* at 758.

[300] *AfCFTA*, *supra* note 290 at Protocol on Trade in Goods Article 6.

[301] *Ibid* at Article 9.

[302] *Ibid* at Article 11.

Brummer contends that the formality attached to trade agreements and treaties through the participation of heads of governments, and need for domestication by national legislatures, confers legitimacy on the trade treaties, and in a way, reflects the "consent of the governed".[303] It is also argued that the complexities of sustaining trade agreements makes active involvement of the State necessary.[304] With the formality associated with the establishment of the trade treaties, institutional structures which facilitate compliance with the obligations within the treaty are easier to establish.[305] For instance, the AfCFTA provides for the Protocol on Rules and Procedures on the Settlement of Dispute, to induce transparency in dispute resolution.[306] The contention is that, the lead involvement of the State and its representatives is required to induce compliance by parties and achieve legitimacy.[307]

This rigid perception that effective regional integration can only be achieved through the formal, State-led harmonization of regional markets emerges from the dichotomy in the understanding of what formal and informal regional integration entails. Söderbaum explains that formal regional integration is often regarded as involving "official policies and codified interactions, which are often backed by written texts, legal treaties or constitutions" while informal integration is perceived as involving "non-codified series of events based upon mutual understandings,

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303 Chris Brummer, "Why Soft Law Dominates International Finance--and not Trade" (2010) 13:3 Journal of International Economic Law 623–643 at 624.

304 *Ibid* at 625.

305 *Ibid* at 626.

306 *AfCFTA*, *supra* note 290 at Article 28.

307 Brummer, *supra* note 303 at 625.

accommodations and tacit agreements".[308] This problematic division obscures the objective of regionalism, as well as the interdependent relationship between the created divisions.[309] According to Bøås et al.:

> *[R]egionalism is clearly a political project, but it is obviously not necessarily state-led, as states are not the only political actor around. . . Within each regional space there will be several regional projects, several regional ideas, identities and economies, and therefore also more than one actor pursuing regionalization. The state is most often one of the regionalizing actors, but equally important actors can be identified within the two other realms of the state–society–economy triangle: NGOs, new social movements, media, companies, as well as a range of actors based in the second economy or the informal sector*.[310]

While the administrative structure of the AfCFTA rightly underscores the central role of States in regional integration arrangements, the role of non-state actors should also not be ignored. Beyond the State and its institutions, non-state actors in the informal sector such as the informal cross border traders, have well established institutional structures which have developed over time. These informal institutions such as the traders' association, association of money lenders and currency converters are closer to the small, informal traders, and, should as such, be more involved in trade integration and regulation arrangements for effectiveness.

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[308] Fredrik Söderbaum, "Formal and Informal Regionalism" in *The Ashgate Research Companion to Regionalisms*, 1st ed (Routledge, 2011) 51 at 55.

[309] *Ibid* at 7.

[310] Morten Bøås, Marianne H Marchand & Timothy M Shaw, "The Weave-World: The Regional Interweaving of Economies, Ideas and Identities" in Fredrik Söderbaum & Timothy M Shaw, eds, *Theories of New Regionalism* (London: Palgrave Macmillan UK, 2003) 197 at 201–202.

A continental free trade agreement based on a top to bottom, state-centric framework ignores the significant contribution of ICBT and other informal actors to the national and regional economy in Africa. While this hinders the African continent as a whole from harnessing the enormous potential of the informal sector, and ICBT in particular, the report by the UNECA also identifies the negative impact of sidelining informal traders in trade policy discussions.[311] According to the report, recognising ICBT under the AfCFTA will enable the agreement to address the challenges faced by informal cross border traders. Further, from a sustainable development perspective, this would also enhance the protection of the human rights of the informal cross border traders, particularly the women traders who are in the majority. Incorporating non-state actors into AfCFTA and other regional regulatory frameworks, indirectly allows the adoption of a human rights based approach to development. Through this approach, the welfare and employment conditions of ICBT actors can be improved.[312]

Research also suggests that the positive impact of removing non-tariff barriers (like licences, import restrictions and quotas, foreign exchange restrictions), and adopting uniform cross border trade policies may also be undermined by the differences in implementation by African States.[313] According to Babic, the need to maintain national sovereignty and protect domestic economic interests, and the differences in population, size and resources of these member countries may

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[311] *The Continental Free Trade Area (CFTA) in Africa – A Human Rights Perspective* (United Nations Economic Commission for Africa, Freidrich Ebert Stiftung, 2017) at 65.

[312] *Ibid*.

[313] *A System, not an error: Informal Cross Border Trade in West Africa*, by Poorva Karkare et al, Discussion Paper No. 300 (ECDPM, cacid, 2021) at 19.

impact the extent to which member African States are able to implement the AfCFTA.[314] In a publication on ICBT in West Africa, it is suggested that implementing a simplified trade regime in the West African region for example, in order to increase formalization of trade, may be more challenging considering the "strong socio-cultural affinities" shared by traders in the ICBT network in that region.[315] Realizing the gains of the AfCFTA requires a relatively short-term compromise on the parts of member countries, particularly countries with dominant markets in the continent. It has been contended that the differences in levels of development among the member countries may act as a barrier to the realization of the objectives of the AfCFTA, considering its framework.[316]

Establishing a bottom to top approach to integration and regulation will help countries in Africa and the region as a whole, maximize the potential of this vibrant economic sector.[317] In a news publication by *Bridges Africa*, Nshimbi and Sommer argue that "[a]lthough ICBT is not explicitly reflected in the AfCFTA agreement and the separate AU Protocol on Free Movement of People, indirectly, the AfCFTA has the potential to generate significant benefits for informal cross border traders."[318] This pattern of placing the informal sector at the back seat of discussions

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[314] Danilo Babić, "Challenges and Achievements of Integration Processes in Africa in Light of the New Continental Free Trade Agreement" (2020) 71:1179 The Review of International Affairs 77–92 at 87.

[315] Poorva Karkare et al, *supra* note 313 at 8.

[316] Babić, *supra* note 314 at 82.

[317] note 311 at 66.

[318] *The African Continental Free Trade Area: An Opportunity for Informal Cross-Border Trade*, by Lily Sommer & Chris Nshimbi, Supporting Small-Scale Cross-Border Traders Across Africa Volume 7 Issue 4 (Geneva: International Centre for Trade and Sustainable Development, 2018) at 8.

on cross border trade regulation in Africa is a major reason why regional integration efforts have been unsuccessful.

The AfCFTA will be implemented in two phases. The first phase which became effective in January 2021 requires member states to liberalize 90 percent of traded goods and services. In relation to trade in services, the AfCFTA applies to services in the construction, energy, tourism, financial, transport and communication sectors. Olafuyi explains that "[a]s policymakers strive to make it easier for African business executives or tourists to travel around Africa, they also need to make it easier for women to trade fresh vegetables and fabric across borders. While governments discuss cross border movement of capital for multinationals, they also need to discuss ways to facilitate easy cross border payments for SMEs and ICBT actors."[319] The second phase of the AfCFTA which is yet to be implemented seeks to liberalize capital investment, and also provide a uniform competition and intellectual property regulatory framework across the continent. The third phase of the agreement is expected to apply to electronic commercial transactions.

The African Export and Import Bank in its report on the impact of the AfCFTA on ICBT maintains that, with the inclusion of clauses which eliminate non-tariff barriers, impose uniform policies on import quotas and provide guidelines for trade facilitation, ICBT would be incorporated into national trade regulatory frameworks.[320] On the contrary, with the current

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[319] Mariam Olafuyi, "The Informal Economy and the African Continental Free Trade Agreement: Making Trade Work for the Often Overlooked | Afronomicslaw", (15 January 2019), online: *AfronomicsLaw* <https://www.afronomicslaw.org/2019/01/10/the-informal-economy-and-the-african-continental-free-trade-agreement-making-trade-work-for-the-often-overlooked>.

[320] African Export Import Bank, *supra* note 1 at 12.

design of the AfCFTA, its domestication may negatively impact national regulatory frameworks, and further render the existing regulatory frameworks in countries like Nigeria more ineffective.

The AfCFTA, like the existing regional economic community arrangements in Africa, recreates a state-centric, non-inclusive regulatory framework. This fundamental flaw in the design and structure of the AfCFTA militates against the ambitious objectives of the AfCFTA even if domesticated by countries in Africa. As indicated, the second phase of the agreement is still being negotiated. Hence, there is still room for amendments. However, if the objective of curbing ICBT and increasing intra-African trade will be achieved, ICBT should be at the forefront of trade regulatory policy in Africa. In the last Section, I provide recommendations on how national and regional trade regulatory frameworks can incorporate ICBT.

5.4 Establishing Effective Trade Regulatory Frameworks: Recommendations for Nigeria and Africa

There is no gainsaying the fact that ICBT is integral to intra-African trade, constituting more than half of the volume of trade in Africa.[321] Over the years, ICBT and the informal economy as a whole, has been perceived as channels for illegal trade in goods and services. This perception has impacted regulatory attitude towards ICBT and ICBT actors alike. In Nigeria for example, trade regulations have been largely preventive and punitive to discourage ICBT. The case is not exactly different across the African continent. While regional regulatory frameworks have not been as hostile, very little attention has also been given to ICBT in trade policy discussions and initiatives. This has hindered the effectiveness of national and regional trade regulatory structures.

In the report by the International Institute for Environment and Development, it is stressed that that the dynamics of the informal economy remains poorly understood, particularly in developing countries in Africa. Hence, governments and policymakers continue to separate the informal economy from the formal economy in trade regulation and policy design.[322] Although the informal economy is perceived as "a separate marginal sector not directly linked to the

[321] *Ibid* at 18.

[322] *The Informal Economy- A primer for development professionals on the importance of the informal economy in developing countries*, by Muyeye Chambwera, James MacGregor & Antonia Baker (London, UK: International Institute for Environment and Development, 2011) at 2.

formal economy,"[323] the continuous dominance of ICBT despite efforts to curb its prevalence, increasingly shows the level of interconnectedness between the informal and formal economy, and the magnitude of the role occupied by ICBT in the economy as a whole. This is further corroborated by the increasing exchange of goods, services, raw materials and technical skills between the actors in the formal and informal economy.[324]

To date, ignoring ICBT in policy discussions has created a clog in the wheel of efforts of policymakers and governments to utilize trade as a channel for development at national and regional levels. A *responsive regulatory approach* which addresses informal and formal cross border trade as mutually interrelated, as opposed to mutually exclusive, will reduce the largely fragmented nature of intra-African trade, and increase Africa's share of global trade. While it is noted that excessive cooperation between the informal sector and the State regulatory authorities may also create inefficient regulation and regulatory capture, the notion of responsive regulation favors an inclusive approach where the actors which are better informed, and more adversely impacted by the regulatory landscape are allowed to actively participate, and contribute to designing the regulations.

National and regional trade governance structures across Africa should *adopt uniform initiatives* which facilitate ICBT. According to Olafuyi, in East Africa—Kenya, Rwanda and Uganda for

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[323] *Supporting Workers in the Informal Economy: A Policy Framework*, Working Paper on the Informal Economy, by Martha Alter Chen, Renana Jhabvala & Frances Lund, (Geneva, Switzerland: Employment Sector International Labour Office, 2002) at 6.

[324] *The Informal Economy*, by Kristina F Becker (Stockholm Sweden: Swedish International Development Cooperation Agency - Department for Infrastructure and Economic Co-operation, 2004) at 10.

instance—now accept national identity cards in place of international passports for small traders involved in cross border transactions. This initiative was adopted in response to the challenges encountered by cross border traders who often cross the borders to conduct businesses and do not have the resources to obtain travel documents such as international passports which are expensive and are required for border crossings.[325] It is reported that this initiative has led to an increase in the number of cross border traders who use the formal border posts, and an even higher increase in the number of women cross border traders.[326] The African trade report indicates that the implementation of the AfCFTA will provide a uniform channel for collecting data on ICBT through the introduction of a continental simplified free trade regime and an online mechanism for addressing non-tariff barriers (NTBs), which will make it easier for small cross border traders to move goods across African countries.[327] While this initiative is commendable, more attention must be given to the design and structure of the proposed initiative to enable it to achieve the desired objective. This is particularly relevant because similar initiatives like the NTBs reporting and monitoring mechanism, implemented under the Tripartite regional economic agreement in the Eastern and Southern regional economic communities have been subject to debate in terms of effectiveness. Nshimbi and Sommer suggest that for inclusivity, reporting

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[325] Mariam Olafuyi, "The Informal Economy and the African Continental Free Trade Agreement: Making Trade Work for the Often Overlooked | Afronomicslaw", (15 January 2019), online: *AfronomicsLaw* <https://www.afronomicslaw.org/2019/01/10/the-informal-economy-and-the-african-continental-free-trade-agreement-making-trade-work-for-the-often-overlooked>.

[326] *Ibid*.

[327] African Export Import Bank, *supra* note 1 at 12.

channels should be simplified and accompanied with local language translation facilities to enable the less educated small traders communicate their challenges with ease.[328]

National governments should *provide adequate support for small enterprises* in order for Africa to maximize its regional trade potential. Regional efforts should be combined with national efforts particularly in major countries like Nigeria with one of the largest economies in the continent. Beyond the adoption of punitive and protective regulations which have been unsuccessful in protecting domestic industries, *policies should identify and resolve the gender specific challenges* such as the sexual harassment of women at border posts, and limited access to financial and trade support facilities encountered by female cross border traders.[329] Trade regulations should be easy to access and consistent to enable traders comply seamlessly.

Chen and Jhabvala maintain government policies should *address the existing biases towards the formal economy*. Contrary to the capitalist notion that government intervention in the economy leads to distortion and inefficiency, the "principles of equity, efficiency and political economy" require governments to be supportive of the actors in the informal economic sector. ICBT actors and the informal economic sector as a whole, comprise the poor, vulnerable members of the society without sufficient resources to buffer the effect of hostile regulations and discriminatory market conditions.[330]

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[328] Sommer & Nshimbi, *supra* note 318 at 9.

[329] *Ibid* at 6.

[330] Chen, Jhabvala & Lund, *supra* note 323 at 18–19.

Regular collection of data on ICBT improves policymaking. Prior to 2016 when the Department of Statistics of the CBN commissioned research to measure the size and composition of cross border trade across Nigeria's land borders, there was no official data or record on ICBT. Research suggests that a similar study has not been conducted by the Nigerian government or its officials in recent times. While it is noted that the nature of ICBT makes the collection of reliable data challenging, countries like Uganda, Kenya and Rwanda have been using agencies such as the Famine Early Warning Systems Network (FEWS NET), East African Grain Council (EAGC) and the Alliance for Commodity Trade in East and Southern Africa (ACTESA) to collect data on cross border trade.[331] In East Africa in particular, there are decentralized channels for collecting data on informal trade in staple foods.[332] These efforts are laudable and should be replicated in other African countries like Nigeria.

Increasing participation of informal actors in the AfCFTA and the RECs should also occur. The dominance of expert networks in the administration and implementation of the AfCFTA creates the danger of building technocratic and highly complex systems. This negates the objective of facilitating cross border trade which the AfCFTA seeks to achieve.[333] Further, cumbersome policies have greater impact on small enterprises and informal cross border traders. While previous and current regional trade integration and regulation strategies undermine the informal economic actors, Mwaniki maintains that:

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[331] Sommer & Nshimbi, *supra* note 318 at 8.

[332] Bouet A, Pace K. & Glauber J. *supra* note 4 at 5

[333] Anne-Marie Slaughter & David Zaring, "Networking Goes International: An Update" (2006) 2:1 Annual Review of Law and Social Science 211–229 at 220.

> *Several studies conducted indicate that informal contacts strengthen regional integration networks and relationships. Some aspects of integration are taking place especially in Southern Africa through official efforts aimed at strengthening of institutions to keep records on informal trade and implementing policies. Nonetheless there are several other areas that need institutional reform to accommodate informal cross border trade which still remains invisible despite the contribution it makes in the economy. Studies done in the sector indicate that the informal cross border trade is contributing immensely to the process of regional integration. It is building on the informal networks that have been developed by people over years, even if they were not initially meant for trade*.[334]

The informal economy can also facilitate the trade objectives of regional integration.

While a deterrent or exclusive regulatory approach may seem less expensive in the short term, it is ineffective and costly in the long term, preventing the government from maximizing the potential of the vibrant informal economic sector. Effective regulation of regional and national trade requires collaboration of formal and informal economic actors and the government. Efforts to boost national and regional trade competitiveness in Nigeria and Africa respectively will remain pie in the sky without a friendly and inclusive trade regulatory ecosystem.

5.5 Conclusion

In this chapter, I examine the objectives of the AfCFTA in relation to ICBT and evaluate the extent to which the framework of the AfCFTA facilitates the realization of its ICBT-related objectives. My contention is that, while the ratification of the AfCFTA provides an avenue for African countries to strengthen their regional and global trade, the state-centric structure of the

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[334] John Mwaniki, *The Impact of Informal Cross Border Trade on Regional Integration in SADC and Implications for Wealth Creation.* (Intercontinental Lusaka, Zambia, 2004) at 2

AfCFTA may hinder it from achieving its objectives. In Chapter 6, I provide an overview of the questions examined in this research, and how these questions have been answered.

Chapter 6: Conclusion

6.1 Summary

My research investigates the impact of regulatory frameworks on ICBT in Nigeria. In the course of this investigation, I examine the trade policy framework in Nigeria, its underpinning ideology of deterrence and how this impacts ICBT. My analysis combines a theoretical approach with empirical case studies. I draw on the responsive regulatory theory of Ayres and Braithwaite, and secondary sources, including reports of interest organizations, journal publications, texts and UN COMTRADE data on Nigeria's rice imports and exports.

ICBT constitutes the bulk of trade in Nigeria. Yet, there is a literature gap on the "impact of trade regulatory frameworks on ICBT in Nigeria". Mainstream trade policy discussion in Africa also focuses on formal intra-African trade. My research contributes to the discussion on trade in Africa and in Nigeria, focusing on a significant but often ignored Section of the trade industry—the ICBT industry. Using the rice import restriction and border closure policies implemented in 2019 as case studies, my research demonstrates that (i) the trade regulatory framework is Nigeria is non-inclusive of ICBT, (ii) hostility and non-inclusion further drives informality in cross border trade in Nigeria, and in Africa, and, (iii) ICBT actors are crucial to building effective trade regulatory frameworks.

In Chapters 1 to 5, I explain the different perspectives to ICBT in existing scholarship, clarifying the context in which ICBT is used in this thesis, that is, trade in legal, and often low-value commodities by small, vulnerable traders. My analysis underscores the importance of ICBT in Nigeria, and the significant but often overlooked contribution of women to ICBT. From a gender perspective, I discuss the disproportionate participation of women in ICBT, identifying some of the gender-specific challenges which drive women cross border traders to informal trade. In addition to the gender-specific challenges encountered by women cross border traders, I also discuss the general environmental challenges of trading across borders in Nigeria, including poor trade infrastructure, strict currency exchange conditions, inadequate financial support, time-consuming and onerous clearance procedures for goods, combined with hostile domestic regulatory policies and other regional factors. I make a point about why ICBT is prevalent in Nigeria by explaining how the existing regulatory framework incentivizes informality.

I further examine how the underlying ideology behind trade regulation in Nigeria has contributed to the creation of existing regulatory frameworks. My discussion explores the deterrent theory of law and economics, and the Ayres and Braithwaite theory of responsive regulation. I explain that the design of trade regulatory frameworks is driven by "economic analysis of law",[335] resulting in the adoption of deterrent theory of regulation. My analysis of the existing regulatory framework challenges the underlying assumptions of deterrence by proposing an alternative; the responsive regulatory theory. I propose that "deterrent regulatory strategies" should be jettisoned for alternative strategies which allow the regulated entities, including ICBT actors to be actively involved in the design of the regulatory framework. I recommend that the regulatory pyramid blueprint of Ayres and Braithwaite be followed by regulatory authorities and policymakers in the design of trade policies.

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[335] Sanchez-Graells*, *supra* note 117 at 170.

To demonstrate the impact of the trade regulatory framework in Nigeria on ICBT, I evaluate the effectiveness of two of the policies adopted by the government of Nigeria in 2019—the rice imports restriction and border closure policies. I draw on secondary data collected from the UN COMTRADE database to analyze the impact of these policies on rice imports into Nigeria. I compare the value of rice officially reported to have been imported into Nigeria, with the value of rice reported to have been exported into Nigeria at corresponding times by other countries in the global market using Mirror trade statistics. The analysis shows a discrepancy between Nigeria's report of its official rice import statistics and global statistics of rice export into Nigeria. In support of my analysis on why deterrence without more has been ineffective in curbing ICBT, I also provide context on the circumstances surrounding the supply and demand of rice in Nigeria.

With the recent ratification of the AfCFTA by most African countries including Nigeria, and the long-existing, albeit futile efforts to curb ICBT through regional trade integration, I explain how regional efforts to regulate trade drive participation in ICBT. I also identify and discuss the reasons why efforts to use trade integration to curb ICBT have been unsuccessful across the continent. I contend that the adoption of top to bottom, state-led approaches to integration, in place of more responsive approaches which enable equal participation of non-state actors such as the actors in the informal economy, is a major reason for the fragmentation of regional trade.

I maintain that, although the AfCFTA has not been domesticated in Nigeria, the eventual domestication may be counterproductive to the desired objectives as a result of the identified shortcomings. As much as the ratification of the AfCFTA may reduce the barriers to conducting cross border trade, deliberate efforts such as placing the challenges encountered by ICBT traders at the forefront of trade policy discussions, adopting responsive regulatory strategies, providing adequate support to unregistered small businesses, dedicating resources to identify and address the gender-specific challenges of female cross border traders, and regular data collection on ICBT, must be made by national governments, and where possible, at the regional level, in order to harness the potential of ICBT for the collective benefit of all economic actors. According to a recent report entitled "*Conditions for Success in the Implementation of the African Continental Free Trade Agreement*",[336] embracing and accommodating the prevalence of informal trade has been identified as a crucial requirement for the success of the AfCFTA. ICBT provides a source of income and food security for the larger fraction of the African population. Hence, regulatory efforts to maximize trade revenue, or eliminate barriers to trade, should incorporate ICBT to be effective.

6.2 Areas for Future Research

My research contributes to the discussion on developing effective trade policy frameworks in Africa, focusing on ICBT in Nigeria. While questions on how and why the existing trade regulatory frameworks in Nigeria incentivize informal trade have been considered in this research, discussions on ways to develop uniform methods of collecting data to monitor ICBT and how trade policies can empower women, particularly in the informal economy have received little attention in this research and in trade policy development scholarship in general. This

[336] *Conditions for Success in the Implementation of the African Continental Free Trade Agreement (Work commissioned by the African Union Development Agency (AUDA-NEPAD))* (African Union Development Agency; Frederick S. Pardee Center for International Futures, 2020).

research identifies ways in which Nigeria's trade regulatory framework could incorporate the responsive regulatory theory relying on desk review of existing literature.

As indicated in the AfCFTA and the African Union's 2063 Agenda, the "Africa We Want" is an Africa which promotes inclusive development and gender equality,[337] by "relying on the potential of African people, especially its women and youth . . ."[338] Discussions on establishing uniform data collection methods to track and better understand ICBT, and empowering women in the informal economy through gender-sensitive trade policies are central to achieving sustainable and inclusive development.

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[337] *AfCFTA*, *supra* note 290 at Article 3 (e).

[338] African Union, *Agenda 2063: The Africa we want.* (African Union Commission, 2015) at 2.

Bibliography

Treaties

Agreement Establishing the African Continental Free Trade Area, 2018.

African Union, *Agenda 2063: The Africa We Want.* (African Union Commission, 2015).

Books

Ayres, Ian & John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (New York: Oxford University Press, 1992).

Bardach, Eugene & Robert Kagan, *Going by the Book: The Problem of Regulatory Unreasonableness* (New York: Routledge, 2017).

Calabresi, Guido, *The Future of Law and Economics: Essays in Reform and Recollection* (Yale University Press).

Caporaso, James A, *Functionalism and Regional Integration: A Logical and Empirical Assessment* (Beverly Hills: Sage Publications, 1972).

Creutzfeldt, Naomi, Marc Mason & Kirsten McConnachie, eds, *Routledge Handbook of Socio-Legal Theory and Methods*, 1st ed (New York: Routledge, 2019).

De Vaus, David, *Research Design in Social Research*, first edition ed (London: SAGE, 2001).

Galligan, Denis J, *Legal Theory and Empirical Research* (Oxford University Press, 2010).

Leonard, Robert, *Von Neumann, Morgenstern, and the Creation of Game Theory: From Chess to Social Science, 1900–1960* (Cambridge: Cambridge University Press, 2010).

Mattli, Walter, *The Logic of Regional Integration: Europe and Beyond* (Cambridge: Cambridge University Press, 1999).

Odularu, Gbadebo OA, Mena Hassan & Musibau Adetunji Babatunde, eds, *Fostering Trade in Africa: Trade Relations, Business Opportunities and Policy Instruments*, Advances in African Economic, Social and Political Development (Cham: Springer International Publishing, 2020).

Söderbaum, Fredrik & J Andrew Grant, *The New Regionalism in Africa* (London: Routledge, 2016).

World Bank, *World Development Report 2015: Mind, Society, and Behavior* (Washington DC: The World Bank, 2015).

World Bank Group, *The African Continental Free Trade Area: Economic and Distributional Effects* (Washington, DC: The World Bank, 2020).

Law and Corporate Behaviour: Integrating Theories of Regulation, Enforcement, Compliance and Ethics (Hart Publishing, 2015).

Book Sections

Baron, Jonathan & Tess Wilkinson-Ryan, "Conceptual Foundations: A Bird's-Eye View" in Joshua Teitelbaum & Kathryn Zeiler, eds, *Research Handbook on Behavioral Law and Economics* (Edward Elgar Publishing, 2018) 19.

Bøås, Morten, Marianne H Marchand & Timothy M Shaw, "The Weave-World: The Regional Interweaving of Economies, Ideas and Identities" in Fredrik Söderbaum & Timothy M Shaw, eds, *Theories of New Regionalism* (London: Palgrave Macmillan UK, 2003) 197.

Braithwaite, John, "Responsive Regulation" in Peter Drahos, ed, *Regulatory theory: Foundations and applications* (ANU Press, 2017) 117.

———, "Responsive Regulation and Developing Economies" (2006) 34:5 World Development 884–898.

Braithwaite, Valerie, "Closing the Gap between Regulation and the Community" in Peter Drahos, ed, *Regulatory Theory, Foundations and Applications* (Australian National University (ANU) Press, 2017) 25.

Braithwaite, Valerie & M Levi, eds, "Institutionalizing trust: Enculturating distrust" in *Trust and Governance* (New York: Russell Sage, 1998) 343.

Burton, Mandy, "Doing Empirical Research: Exploring the Decision-making of Magistrates and Juries" in Dawn Watkins & Mandy Burton, eds, *Research Methods in Law*, second edition ed (New York: Routledge, 2017) 66.

Craven, Richard, "Socio-legal Studies and Economics" in Marc Mason, Kirsten McConnachie & Naomi Creutzfeldt, eds, *Routledge Handbook of Socio-Legal Theory and Methods*, 1st ed (New York: Routledge, 2019) 179.

Dorosh, Paul A & Mehrab Malek, "Rice Imports, Prices, and Challenges for Trade Policy" in Kwabena Gyimah-Brempong, Michael Johnson & Hiroyuki Takeshima, eds, *The Nigerian Rice Economy* (Philadelphia: University of Pennsylvania Press, 2016).

Drahos, Peter & Martin Krygier, “Regulations, Institutions and Networks” in *Regulatory Theory, Foundations and Applications* (ANU Press, 2017) 1.

“Economic methods and legal reasoning” in *Economic Methods for Lawyers* (Edward Elgar Publishing, 2015) 1.

Englerth, Markus, “Behavioral Law and Economics” in *Economic Methods for Lawyers* (Edward Elgar Publishing, 2015) 177.

Gathii, James Thuo, ed, “African Regional Trade Agreements as Flexible Legal Regimes” in *African Regional Trade Agreements as Legal Regimes* Cambridge International Trade and Economic Law (Cambridge: Cambridge University Press, 2011) 1.

Golub, Stephen & Jamie Hansen-Lewis, “Informal Trading Networks in West Africa: The Mourides of Senegal/The Gambia and The Yoruba of Benin/Nigeria” in *The Informal Sector in Francophone Africa* (Washington, DC: World Bank, 2012).

Gunningham, Neil & Darren Sinclair, “Smart Regulation” in Peter Drahos, ed, *Regulatory Theory - Foundations and Applications* (Australia: Australian National University Press, 2017) 133.

Hanson, Kobena T, “The Impact of Informal Cross-border Trade on Regionalism and Poverty Reduction in West Africa” in *Contemporary Regional Development in Africa* (Routledge, 2015) 115.

Herbst, Jeffrey, “Crafting Regional Cooperation in Africa” in Amitav Acharya & Alastair Iain Johnston, eds, *Crafting Cooperation*, 1st ed (Cambridge University Press, 2001) 129.

Hodges, Christopher, “Criticisms of Deterrence.” in *Law and Corporate Behaviour: Integrating Theories of Regulation, Enforcement, Compliance and Ethics* (Oxford: Hart Publishing, 2015) 107.

———, “Deterrence Theory.” in *Law and Corporate Behaviour: Integrating Theories of Regulation, Enforcement, Compliance and Ethics* (Oxford: Hart Publishing, 2015., 2015) 47.

Jensen, Carsten, “Neo-functionalism” in Michelle Cini & Nieves Pérez-Solórzano Borragán, eds, *European Union Politics* (Oxford University Press, 2016).

Kaplow, Louis & Steven Shavell, “Economic Analysis of Law” in Alan J Auerbach & Martin Feldstein, eds, *Handbook of Public Economics* (Elsevier, 2002) 1661.

Kimbugwe, Kato et al, “Regional Integration Theory” in Kato Kimbugwe et al, eds, *Economic Development Through Regional Trade: A Role for the New East African Community?* (London: Palgrave Macmillan UK, 2012) 76.

Leeuw, Frans L & Hans Schmeet, “Introducing Empirical Legal Research” in *Empirical Legal Research: A Guidance Book for Lawyers, Legislators and Regulators* (United Kingdom: Edward Elgar Publishing, 2016) 320.

———, “Research Problems” in *Empirical Legal Research: A Guidance Book for Lawyers, Legislators and Regulators* (Edward Elgar Publishing, 2016).

———, “Theories and Empirical Legal Research” in *Empirical Legal Research: A Guidance Book for Lawyers, Legislators and Regulators* (Edward Elgar Publishing, 2016) 54.

Luke, David, “Making the Case for African Continental Free Trade Area” in David Luke & Jamie MacLeod, eds, *Inclusive trade in Africa: The African continental free trade area in comparative perspective* The International Political Economy of New Regionalisms Series (New York: Routledge, 2019).

Murphy, Kristina, “Procedural Justice and its Role in Voluntary Compliance” in *Regulatory theories, foundations and application* (ANU Press, 2017) 43.

Nshimbi, Christopher C, “Innovating Policy and Systems of Innovation for Regional Integration” in Samuel Ojo Oloruntoba & Mammo Muchie, eds, *Innovation, Regional Integration, and Development in Africa: Rethinking Theories, Institutions, and Policies* Advances in African Economic, Social and Political Development (Springer International Publishing, 2019).

Oloruntoba, Samuel Ojo, “Innovation and Regional Integration in Africa: Exploring Theory and Praxis for Socio-Economic Development” in Samuel Ojo Oloruntoba & Mammo Muchie, eds, *Innovation, Regional Integration, and Development in Africa Rethinking Theories, Institutions, and Policies*, 1st ed (Springer International Publishing, 2019) 29.

Raballand, Gaël, Thomas Cantens & Guillermo Arenas, “Mirror Trade Statistics: A Tool to Help Identify Customs Fraud- A Cameroon Case Study” in Thomas Cantens, Robert Ireland & Gaël Raballand, eds, *Reform by Numbers: Measurement Applied to Customs and Tax Administrations in Developing Countries* 73516 (Washington DC: The World Bank, 2013) 174.

Raballand, Gaël & Edmond Mjekiqi, “Nigeria’s Trade Policy Facilitates Unofficial Trade but Not Manufacturing” in Volker Treicher, ed, *Putting Nigeria to Work: A Strategy for Employment and Growth* 55023 (Washington DC: World Bank, 2010) 304.

Sanchez-Graells*, Albert, “Economic Analysis of Law, or Economically Informed Legal Research” in *Research Methods in Law Second Edition*, second edition ed (Routledge, 2017) 260.

Söderbaum, Fredrik, “Formal and Informal Regionalism” in *The Ashgate Research Companion to Regionalisms*, 1st ed (Routledge, 2011) 51.

Xiao, Erte, “Punishment, Social Norms, and Cooperation” in Joshua Teitelbaum & Kathryn Zeiler, eds, *Research Handbook on Behavioral Law and Economics* (Edward Elgar Publishing, 2018) 155.

Journals and Articles

Afrika, Jean-Guy K & Gerald Ajumbo, “Informal Cross Border Trade in Africa: Implications and Policy Recommendations” (2012) 3:10 13.

Alayande, Folarin, “Understanding Shifts in Nigeria’s Trade Policy: From Realism to Protectionism” (2020) 45:1 Africa Development / Afrique et Développement 149–162.

Ayres, Ian & John Braithwaite, “Tripartism: Regulatory Capture and Empowerment” (1991) 16:3 Law & Social Inquiry 435–496.

Babić, Danilo, “Challenges and Achievements of Integration Processes in Africa in Light of the New Continental Free Trade Agreement” (2020) 71:1179 The Review of International Affairs 77–92.

Baldwin, Robert & Julia Black, “Really Responsive Regulation” (2008) 71:1 The Modern Law Review 59–94.

Benjamin, Nancy, Stephen Golub & Ahmadou Aly Mbaye, “Informality, Trade Policies and Smuggling in West Africa” (2015) 30:3 Journal of Borderlands Studies 381–394.

Bensassi, Sami, Joachim Jarreau & Cristina Mitaritonna, “Regional Integration and Informal Trade in Africa: Evidence from Benin’s Borders” (2019) 28:1 Journal of African Economies 89–118.

Bhagwati, Jagdish, “On The Underinvoicing of Imports” (2009) 27:4 Bulletin of the Oxford University Institute of Economics & Statistics 389–397.

Brummer, Chris, “Why Soft Law Dominates International Finance--and not Trade” (2010) 13:3 Journal of International Economic Law 623–643.

Casey, Jeff T & John T Scholz, “Beyond Deterrence: Behavioral Decision Theory and Tax Compliance” (1991) 25:4 Law & Society Review 821.

Costa, Antonio, “Multilateralism under threat: Causes, impact, and the policy debate on government intervention in trade” (1985) 7:1 Journal of Policy Modeling 181–217.

Etea, Aso, “Fiscal and Regulatory Considerations in Optimizing Nigeria’s Cross Border Trade” (2016) SSRN Journal, online: <https://www.ssrn.com/abstract=2797213>.

Faleye, Olukayode, “Impact of Informal Cross Border Trade on Poverty Alleviation in Nigeria: Kotangowa Market [Lagos] in Perspective” (2014) 2:1 Crossing the Border: International Journal of Interdisciplinary Studies 13–22.

Feridun, Mete, Folorunso Sunday Ayadi & Jean Balouga, “Impact of Trade Liberalization on the Environment in Developing Countries: The Case of Nigeria” (2006) 22:1 Journal of Developing Societies 39–56.

Gibb, Richard, “Regional Integration and Africa’s Development Trajectory: Metatheories, Expectations and Reality” (2009) 30:4 Third World Quarterly 701–720.

Harel, Arie et al, “Alternative utility functions: review, analysis and comparison” (2018) 51:3 Review of Quantitative Finance and Accounting 785–811.

Jawando, Jubril Olayiwola, Ezekiel Oluwagbemiga Adeyemi & Busoye Oguntola-Laguda, “Survival Strategies of Women in Informal Cross Border Trade Along Lagos-Seme Border Axis” (2012) 12:9 Global Journal of Human Social Science, Sociology, Economics & Political Science 11.

Kalu, Ude Damian & Agodi Joy Agodi, “Does Trade Openness Make Sense? Investigation of Nigeria Trade Policy” (2015) 4:1 International Journal of Academic Research in Economics and Management Sciences 6–21.

Krislov, Samuel et al, “Compliance and the Law: A Multidisciplinary Approach” (1972) 10:2 Criminology 243–243.

Kuhlmann, Katrin & Akinyi Lisa Agutu, “The African Continental Free Trade Area: Toward a New Legal Model for Trade and Development” (2019) 51:4 Georgetown Journal of International Law 753–808.

Leeuw, Frans, “Can legal research benefit from evaluation studies?” (2011) 7 Utrecht Law Review 52–65.

Mascini, Peter & Eelco Van Wijk, “Responsive regulation at the Dutch Food and Consumer Product Safety Authority: An empirical assessment of assumptions underlying the theory” (2009) 3:1 Regulation & Governance 27–47

Mendeloff, John, “Overcoming Barriers to Better Regulation” (1993) 18:4 Law & Social Inquiry 711–729

Moscati, Ivan, “Retrospectives: How Economists Came to Accept Expected Utility Theory: The Case of Samuelson and Savage” (2016) 30:2 The Journal of Economic Perspectives 219–236.

Murphy, Kristina, “Turning defiance into compliance with procedural justice: Understanding reactions to regulatory encounters through motivational posturing” (2016) 10:1 Regulation & Governance 93–109.

Nielsen, Vibeke Lehmann & Christine Parker, “Testing responsive regulation in regulatory enforcement” (2009) 3:4 Regulation & Governance 376–399.

Obi-Egbedi, Ogheneruemu et al, “Effect of Rice Trade Policy on Household Welfare in Nigeria” (2012) 4 European Journal of Business and Management 12.

Olejniczak, Karol, Paweł Śliwowski & Frans Leeuw, "Comparing Behavioral Assumptions of Policy Tools: Framework for Policy Designers" (2020) 22:6 Journal of Comparative Policy Analysis: Research and Practice 498–520.

Paternoster, Raymond et al, "Perceived Risk and Social Control: Do Sanctions Really Deter?" (1983) 17:3 Law & Society Review 457–479.

Scholz, John T, "Cooperative Regulatory Enforcement and the Politics of Administrative Effectiveness" (1991) 85:1 The American Political Science Review 115–136.

———, "Enforcement Policy and Corporate Misconduct: The Changing Perspective of Deterrence Theory" (1997) 60:3 Law and Contemporary Problems 253–268.

Scholz, John T & Wayne B Gray, "OSHA enforcement and workplace injuries: A behavioral approach to risk assessment" (1990) 3:3 Journal of Risk and Uncertainty 283–305.

Scholz, John T & Mark Lubell, "Trust and Taxpaying: Testing the Heuristic Approach to Collective Action" (1998) 42:2 American Journal of Political Science 398–417.

Short, Jodi L, "The Politics of Regulatory Enforcement and Compliance: Theorizing and Operationalizing Political Influences" (2021) 15 Regulation & Governance 653–685.

Sibanda, Omphemetse, "The Advent of the African Continental Free Trade Agreement as a Tool for Development" (2021) Foreign Trade Review.

Silberberger, Magdalene & Jens Königer, "Regulation, trade and economic growth" (2016) 40:2 Economic Systems 308–322.

Slaughter, Anne-Marie & David Zaring, "Networking Goes International: An Update" (2006) 2:1 Annual Review of Law and Social Science 211–229.

Söderbaum, Fredrik, "What's Wrong with Regional Integration? The Problem of Eurocentrism" (2013) SSRN Journal.

Stover, Robert V & Don W Brown, "Understanding Compliance and NonCompliance with Law: The Contributions of Utility Theory" (1975) 56:3 Social Science Quarterly 363–375.

Tedeschi, James T et al, "Power, Influence, and Behavioral Compliance" (1970) 4:4 Law & Society Review 521–544.

Tuluy, Hasan, "Regional Economic Integration in Africa" (2016) 8:3 Global Journal of Emerging Market Economies 334–354.

Ugwuja, Alex Amaechi & Chimdi Chukwukere, "Trade Protectionism and Border Closure in Nigeria: The Rice Economy in Perspective" (2021) 22:1 Unizik Journal of Arts and Humanities 78–106.

Weiss, Carol H, “Research for Policy’s Sake: The Enlightenment Function of Social Research” (1977) 3:4 Policy Analysis 531–545.

Reports

Abrego, Lisandro et al, *The African Continental Free Trade Area: Potential Economic Impact and Challenges (2020)*, Staff Discussion Notes (International Monetary Fund, 2020).

African Export Import Bank, *African Trade Report 2020*, by African Export Import Bank, Informal Cross Border Trade in Africa in the Context of AFCFTA (Cairo: African Export Import Bank, 2020).

Ajayi, Kehinde & Philip Osafo-Kwaako, *Research and Trade Policy Formulation: The Case of Nigeria’s adoption of the ECOWAS Common External Tariff*, by Kehinde Ajayi & Philip Osafo-Kwaako, 78 (Latin American Trade Network, 2007).

African Union, United Nations & African Development Bank Group, eds, *Assessing Regional Integration in Africa VII: Innovation, Competitiveness and Regional Integration* (Addis Ababa, Ethiopia: Economic Commission for Africa, 2016).

Albert, Théophile, *The African Continental Free Trade Agreement Opportunities and Challenges STUDY*, by Théophile Albert, Keeping Pace with Trade Developments (Geneva: CUTS International, 2019).

Analogbei, FCO, *Trade Reforms and Productivity in Nigeria* (Lagos: CBN Press).

Becker, Kristina F, *The Informal Economy*, by Kristina F Becker (Stockholm Sweden: Swedish International Development Cooperation Agency - Department for Infrastructure and Economic Co-operation, 2004).

Beillard, Mariano J & Uche M Nzeka, *Nigeria Grain and Feed Annual 2019 Nigeria’s Imports of Wheat and Rice to Rise*, by Mariano J Beillard & Uche M Nzeka, NG-19002 (USDA Food and Agricultural Service, 2019).

Bouet, Antoine, Kathryn Pace & Joseph Glauber, *Informal Cross-Border Trade in Africa: How Much? Why? And What Impact?* Discussion Paper, by Antoine Bouet, Kathryn Pace & Joseph Glauber, Discussion Paper 01783 (Washington DC: International Food Policy Research Institute, 2018).

Central Bank of Nigeria, Trade and Exchange Department, *Inclusion of Some Imported Goods and Services on the List of Items Not Valid for Foreign Exchange in the Nigerian Foreign Exchange Markets* (2015).

Chambwera, Muyeye, James MacGregor & Antonia Baker, *The Informal Economy- A Primer for Development Professionals on the Importance of the Informal Economy in Developing*

Countries, by Muyeye Chambwera, James MacGregor & Antonia Baker (London, UK: International Institute for Environment and Development, 2011).

Chen, Martha Alter, Renana Jhabvala & Frances Lund, *Supporting Workers in the Informal Economy: A Policy Framework*, Working Paper on the Informal Economy, by Martha Alter Chen, Renana Jhabvala & Frances Lund, Working Paper on the Informal Economy (Geneva, Switzerland: Employment Sector International Labour Office, 2002).

Conditions for Success in the Implementation of the African Continental Free Trade Agreement (Work commissioned by the African Union Development Agency (AUDA-NEPAD)) (African Union Development Agency; Frederick S. Pardee Center for International Futures, 2020).

Damania, Richard, Per G Fredriksson & Muthukumara Mani, *The Persistence of Corruption and Regulatory Compliance Failures: Theory and Evidence*, IMF Working Papers, by Richard Damania, Per G Fredriksson & Muthukumara Mani, IMF Working Papers 2003/172 (International Monetary Fund, 2003).

Dommen, Caroline, *The Continental Free Trade Area (CFTA) in Africa - A Human Rights Perspective*, by Caroline Dommen, (United Nations Economic Commission for Africa, Freidrich Ebert Stiftung).

Economic Commission for Africa, *Gender Equality and Africa Peer Review Mechanism*, by Economic Commission for Africa (Addis Ababa, Ethiopia: Economic Commission for Africa, 2016).

External Sector Statistics Division, *Measuring Informal Cross-Border Trade in Nigeria*, by External Sector Statistics Division (Central Bank of Nigeria, 2016).

Golub, Stephen et al, *Benin's Informal Trading with Nigeria*, by Stephen Golub et al (Economic Development & Institutions, 2019).

Grain and Feed Update, NI2020-0002 (Lagos: United States Department of Agriculture, Foreign Agricultural Service; 2020).

Koroma, Suffyan, Clement Onyango, & Ny You, "Formalization of informal trade in Africa: trends, experiences and socio-economic impact" (2016) Food and Agriculture Organization of the United Nations (Policy Brief 2017) 5.

Hoffman, Leena Kofi & Paul Melly, *Nigeria's Booming Borders: The Drivers and Consequences of Unrecorded Trade*, by Leena Kofi Hoffman & Paul Melly (Britain: Chatham House, Royal Institute of International Affairs, 2015).

Ivec, Mary & Valerie Braithwaite, *Applications of Responsive Regulatory Theory in Australia and Overseas: Update*, by Mary Ivec & Valerie Braithwaite (Canberra: Regulatory Institutions Network: Australian National University, 2015).

Jerome, Afeikhena, *Institutional Framework and the Process of Trade Policy Making in Africa: The Case of Nigeria* (Nigeria: African Economic Research Institutions, 2005).

Lesser, Caroline & Evdokia Moise-Leeman, *Informal Cross-Border Trade and Trade Facilitation Reform in Sub-Saharan Africa*, OECD Trade Policy Working Papers, by Caroline Lesser & Evdokia Moise-Leeman, OECD Trade Policy Working Papers No. 86 (France: Organisation for Economic Cooperation and Development, 2009).

Lesser, Rae, Joyce Malaba & Lis Meyers, *Women Cross-Border Traders in Southern Africa: Contributions, Constraints, and Opportunities in Malawai and Botswana*, by Rae Lesser, Joyce Malaba & Lis Meyers (United States Agency for International Development, 2016).

Mwaniki, John, *The Impact of Informal Cross Border Trade on Regional Integration in SADC and Implications for Wealth Creation.* (Intercontinental Lusaka, Zambia, 2004).

National Bureau of Statistics, *Consumption Expenditure Pattern in Nigeria (2019)*, by National Bureau of Statistics (Abuja, 2020).

Nigerian Office for Trade Negotiations, *A Nigerian Policy RoadMap- Perspectives and Insights*, by Nigerian Office for Trade Negotiations (Nigerian Office for Trade Negotiations, 2020).

OECD, *Regulatory Reform in the Middle East and North Africa: Implementing Regulatory Policy Principles to Foster Inclusive Growth*, OECD Reviews of Regulatory Reform (OECD, 2013).

Parker, Christine, *Reducing the Risk of Policy Failure: Challenges for Regulatory Compliance: Final Version OECD working papers*, by Christine Parker (OECD, 2009).

Poorva Karkare et al, *A System, not an error: Informal Cross Border Trade in West Africa*, by Poorva Karkare et al, Discussion Paper No. 300 (ECDPM, cacid, 2021).

Sommer, Lily & Chris Nshimbi, *The African Continental Free Trade Area: An Opportunity for Informal Cross-Border Trade*, by Lily Sommer & Chris Nshimbi, Supporting Small-Scale Cross-Border Traders Across Africa Volume 7 Issue 4 (Geneva: International Centre for Trade and Sustainable Development, 2018).

The World Economic Forum, *The Global Competitiveness Report 2019*, by The World Economic Forum (Switzerland, 2019).

World Bank Group, *Doing Business 2020: Comparing Business Regulation in 190 Economies (Nigeria)*, by World Bank Group, 17th Series.

World Bank, *World Measuring Rural Access: Update*, by World Bank Group, ACS26526 (World Bank Group, 2019).

Online Articles

"Border closure failed to achieve objectives — Prof AsiwajuVanguard News", *Vanguard News* (19 January 2021), online: <https://www.vanguardngr.com/2021/01/border-closure-failed-to-achieve-objectives-prof-asiwaju/>. (Accessed February 3, 2021)

Childs, Nathan, "USDA ERS - Rice Sector at a Glance", online: <https://www.ers.usda.gov/topics/crops/rice/rice-sector-at-a-glance/#Global>. (Accessed March 25, 2021)

Etienne, Julien, *Compliance Theories: A Literature Review* (Rochester, NY: Social Science Research Network, 2010).

Falayi, Kunle, "Why Nigeria has restricted food imports", *BBC News* (16 August 2019), online: <https://www.bbc.com/news/world-africa-49367968>. (Accessed February 17, 2021)

Fasan, Olu, "Nigeria's import restrictions: A bad policy that harms trade relations |", (17 August 2015), online: *Africa at LSE* <https://blogs.lse.ac.uk/africaatlse/2015/08/17/nigerias-import-restrictions-a-bad-policy-that-harms-trade-relations/>. (Accessed February 17, 2021)

Golub, Stephen, Ahmadou Aly Mbaye & Christina Golubski, "The effects of Nigeria's closed borders on informal trade with Benin", (29 October 2019), online: *Brookings* <https://www.brookings.edu/blog/africa-in-focus/2019/10/29/the-effects-of-nigerias-closed-borders-on-informal-trade-with-benin/>. (Accessed July 2, 2021)

Hofmann, Eva B et al, *Enhancing Tax Compliance Through Coercive and Legitimate Power of Authorities*, (Rochester, NY: Social Science Research Network, 2013).

International Trade Administration, "Nigeria- Prohibited and Restricted Imports", (13 August 2019), online: *Nigeria Country Commercial guide* <https://www.export.gov/apex/article2?id=Nigeria-Prohibited-and-Restricted-Imports>.

International Trade Centre, *The Role of Trade Support Institutions* (ITC, 2021).

———, "Trade Map - Glossary", (2019), online: *Glossary* <https://www.trademap.org/stGlossary.aspx?nvpm=1%7c566%7c%7c%7c%7c100630%7c%7c%7c6%7c1%7c1%7c1%7c2%7c1%7c2%7c1%7c1%7c1>. (Accessed June 19, 2021)

ISSAfricaorg, "Nigeria's border closures haven't served their purpose", (22 March 2021), online: *ISS Africa* <https://issafrica.org/iss-today/nigerias-border-closures-havent-served-their-purpose>. (Accessed April 30, 2021)

Johnson, Joseph, "Nigeria: number of internet users 2025", online: *Statista* <https://www.statista.com/statistics/183849/internet-users-nigeria/>. (Accessed February 12, 2021)

"Nigeria: cities with the largest population 2021", online: *Statista* <https://www.statista.com/statistics/1121444/largest-cities-in-nigeria/>. (Accessed May 18, 2021)

"Nigeria closes borders in effort to stem rice smuggling", (20 September 2019), online: *RFI* <https://www.rfi.fr/en/africa/20190919-nigeria-closes-borders-neighbours-rice-smuggling-threatens-president-buharis-rice-po>. (Accessed March 31, 2021)

Olafuyi, Mariam, "The Informal Economy and the African Continental Free Trade Agreement: Making Trade Work for the Often Overlooked | Afronomicslaw", (15 January 2019), online: *AfronomicsLaw* <https://www.afronomicslaw.org/2019/01/10/the-informal-economy-and-the-african-continental-free-trade-agreement-making-trade-work-for-the-often-overlooked>. (Accessed May 26, 2021)

Orjinmo, Nduka, "Nigeria's border crisis fuelled by rice", *BBC News* (31 October 2019), online: <https://www.bbc.com/news/world-africa-50223045>. (Accessed June 19, 2021)

"Regularly consumed food and beverages in Nigeria 2020", online: *Statista* <https://www.statista.com/forecasts/826233/regularly-consumed-food-and-beverage-products-in-nigeria>. (Accessed April 2, 2021)

Sam Hart, "Clearing Container at Tin Can is the Ghetto.", (17 February 2021), online: *@hartng* <https://twitter.com/hartng/status/1362060565317906441>. (Accessed February 21, 2021)

The World Bank, "Enterprise Surveys, The World Bank", (February 2015), online: *World Bank* <http://www.enterprisesurveys.org/>. (Accessed February 15, 2021)

United Nations Economic Commission for Africa, "Africa's free trade area can benefit women equally through targeted measures, says UNECA director | United Nations Economic Commission for Africa", (29 May 2021), online: *AFRICA'S FREE TRADE AREA CAN BENEFIT WOMEN EQUALLY THROUGH TARGETED MEASURES, SAYS UNECA DIRECTOR* <https://www.uneca.org/stories/africa%E2%80%99s-free-trade-area-can-benefit-women-equally-through-targeted-measures%2C-says-uneca>. (Accessed June 7, 2021)

Whitehouse, David, "Informal sector holds key to unlocking intra-Africa trade, says Afreximbank", (January 4, 2021), online: *The Africa Report.com* <https://www.theafricareport.com/57007/informal-sector-holds-key-to-unlocking-intra-africa-trade-says-afreximbank/>. (Accessed June 7, 2021)

World Bank, "Labor force participation rate, female (% of female population ages 15+) (modeled ILO estimate) - Nigeria | Data", online: <https://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS?locations=NG>. (Accessed February 21, 2021)

———, "World Development Indicators | DataBank", (2019), online: *DataBank, WorldBank Development Indicators*

<https://databank.worldbank.org/reports.aspx?source=2&series=SP.POP.1564.FE.ZS>.
(Accessed February 21, 2021)