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Centre for Trade and Business Environment Advocacy

# MAPPING AND ANALYSIS OF THE FEDERAL POLICIES, LAWS, REGULATIONS AND BILLS RELEVANT TO TRADE AND COMPETITIVENESS OF MSMEs IN NIGERIA.

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# THIS REPORT IS A PRODUCT OF MAPPING AND ANALYSIS OF FEDERAL POLICIES, LAWS, REGULATIONS AND BILLS RELEVANT TO TRADE AND COMPETITIVENESS OF MSMEs IN NIGERIA.

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*Registered Offices*
Friedrich-Ebert-Allee 40, 53113 Bonn, Germany,
Phone: +49 228 44 60-0
Dag-Hammarsjköld-Weg 1–5, 65760 Eschborn, Germany,
Phone: +49 6196 79-0
Email: info@giz.de
Internet: www.giz.de

*Programme*
The Nigeria Competitiveness Project – NICOP, co-funded by the European Union
Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH
Abuja / NIGERIA
Phone: +234 81355157249
Email: sedin@giz.de
Internet: www.sedin-nigeria.net

*Author*
Centre for Trade and Business Environment Advocacy (CTBA)
No 5 Quthing Close, Off Kolda Street, Wuse 2, Abuja.
Phone: +234 8126317786
Email: info@centre-tba.org
Internet: www.centre-tba.org

*Disclaimer*

**This Mapping focuses on the federal policies, laws, regulations and bills that impact the business enabling environment of MSMEs in Nigeria with the view to proposing interventions that could support and promote NICOP's scope of support interventions in Nigeria.**

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## LIST OF ACRONYMS

| | |
|---|---|
| ABP | Anchor Borrowers Programme |
| ACGS | Agricultural Credit Guarantee Scheme |
| AfCFTA | African Continental Free Trade Area |
| APP | Agricultural Promotion Policy |
| AWPP | Accelerated Wheat Production Program |
| BOI | Bank of Industry |
| CACS | Commercial Agriculture Credit Scheme |
| CBN | Central Bank of Nigeria |
| CET | Common External Tariff |
| DVPCS | Department of Veterinary & Pest Control Services |
| EAS | Export Adjustment Scheme |
| ECOWAS | Economic Community of West African States |
| EDF | Export Development Fund |
| EEG | Export Expansion Grant |
| ENFP | Enlarged National Focal Point |
| ERGP | Economic Growth and Recovery Plan |
| ETLS | ECOWAS Trade Liberalisation Scheme |
| FCCPC | Federal Competition and Consumer Protection Commission |
| FMARD | Federal Ministry of Agriculture and Rural Development |
| FMITI | Federal Ministry of Industry, Trade and Investment |
| FMST | Federal Ministry of Science and Technology |
| GCR | Global Competitiveness Report |
| GEEP | Government Enterprise and Empowerment Programme |
| IPPC | International Plant Protection Convention |
| ISA | Investment and Securities Act 2007 |
| ISI | Import Substitution Industrialisation |
| MAN | Manufacturers Association of Nigeria |
| MDAs | Ministries, Departments and Agencies |
| NACCIMA | Nigerian Association of Chambers of Commerce, Industry, Mines and Agriculture |
| NAFDAC | National Agency for Food and Drug Administration and Control |
| NASC | National Agricultural Seed Council |

| | |
|---|---|
| NASME | Nigeria Association of Small and Medium Entrepreneurs |
| NASSI | Nigerian Association of Small Scale Industrialists |
| NAQS | National Agricultural Quarantine Service |
| NBS | National Bureau of Statistics |
| NCTGEP | National Cotton, Textile and Garment Enterprise Policy |
| NCX | Nigerian Commodity Exchange |
| NEDE P | National Enterprise Development Programme |
| NEPC | Nigerian Export Promotion Council |
| NEPZA | Nigerian Export Processing Zones Authority |
| NEXIM | Nigerian Export-Import Bank |
| NILEST | Nigerian Institute of Leather and Science Technology |
| NiNAS | Nigeria National Accreditation Service |
| NIRP | Nigerian Industrial Revolution Plan |
| NIRSAL | Nigerian Incentive-Based Risk Sharing System for Agricultural Lending |
| NIWRA | Nigeria Independent Warehouse Regulatory Agency |
| NNQP | Nigeria's National Quality Policy |
| NOTAP | National Office for Technology Acquisition and Promotion |
| NOTN | Nigerian Office for Trade Negotiations |
| NQI | National Quality Infrastructure |
| NSC | Nigerian Shippers Council |
| NSITF | Nigeria Social Insurance Trust Fund |
| NSMP | Nigeria Sugar Master Plan |
| OGEFZA | Oil and Gas Export Free Zone Authority |
| OLOP | One Local Government, One Product |
| OSOP | One State One Product Policy |
| RIFAN | Rice Farmers Association of Nigeria |
| SEC | Securities and Exchange Commission |
| SEZ | Special Economic Zones |
| SMEDAN | Small and Medium Enterprise Development Agency of Nigeria |
| SON | Standards Organisation of Nigeria |
| TFA | Trade Facilitation Agreement |
| TOGAN | Tomato Growers Association of Nigeria |

| | |
|---|---|
| TRIPS | Trade Related Intellectual Property Rights |
| UNIDO | United Nations Industrial Development Organisation |
| WEF | World Economic Forum |
| WTO | World Trade Organisation |

## EXECUTIVE SUMMARY

According to the SMEDAN National Policy on MSMEs, Micro, Small and Medium Enterprises (MSMEs) are broadly defined as businesses with staff that are less than 200 employees and turn-over of less than NGN1bn. According to the International Council for Small Businesses, MSMEs make up over 90% of all businesses and account for an average of 60% to 70% of total employment and 50% of the Gross Domestic Product (GDP) of any economy. This mapping covered over 110 instruments but those that were considered worthy of some level of analysis in this report are 94. These include 10 general policies and intervention programmes, 10 crop/product specific policies and intervention programmes, 58 laws/regulations/guidelines, and 13 Bills divided into themes that reflect the different issues that affect the competitiveness of MSMEs. The report also examined the impact of Nigeria's trade obligations under ECOWAS (ETLS and CET), the WTO, and the yet to be operationalised AfCFTA. Some of the key findings of the mapping are highlighted below.

On Policies and Special Intervention Programmes:

- Most of the policies reviewed are well articulated. However, they are either abandoned or poorly implemented. There are also the cases of different MDAs having similar but poorly coordinated policies or even one MDA having several policies. Many policies and laws affect the competitiveness of MSMEs in Nigeria, but implementation has not been consistent. Policies are abandoned without formal repeal and replacement. For example, the NIRP has been largely abandoned even before 2019 which was the year it lapsed. Yet, there is no formal pronouncement from the government on the fate of the Plan. None of the Policies reviewed has been consistently implemented.

- The culture of policy monitoring and periodic evaluation is lacking in the public sector. Most policies are implemented (inconsistently) over a long period and then abandoned. This denies the country an opportunity to understand whether policies are succeeding or failing at achieving their goals. As a principle, it is proposed that every MDA should take stock of all the policies and programmes under its remit with the view to review, discard, and update or consolidate as the case may be. It seems that it would be easier to track performance when each MDA has a strategic plan that spans at least five years. The plan would set out the goals/targets of the MDA for the period as well as include a monitoring and evaluation plan which would be used to assess the performance of the head of the agency regularly. Any modification to the plan would require rigorous justification. Every policy/programme of the MDA should derive from this plan. It is only a disciplined approach to policymaking and implementation that could advance the development of the country.

- The MSMEs have not been active in contributing to policymaking and implementation processes due to a combination of reasons. The lack of strong organisational capacity as well as the capacity to conduct analysis and make an evidence-based contribution are key constraints. This does not only affect the ability to advocate or lobby for favourable policies and laws but also the ability to provide independent tracking of the actual implementation of policies and laws.

- The import substitution orientation of successive administrations through which government picks products or crops to support has resulted in the relegation of crops with huge export potential, such as ginger. The process of selecting the industries or

crops to support is not always based on economic considerations. Strong lobby groups and political considerations play an important role.

On Existing laws and regulations:

- The mapping found that most of the laws impacting the operations of MSMEs are obsolete or create overlapping and sometimes conflicting mandates on different agencies over the same issues. Some of the obsolete laws include the *Hides and Skins Act* enacted in 1942, the *Produce (Enforcement of Export Standards) Act* enacted in 1959, and the *Customs and Excise Management Act* which was enacted in 1958.

- On general quality and standards regulation, the overlapping mandates of NAFDAC and SON are still an issue mainly because the agencies have not devised an effective cooperation mechanism. Furthermore, conflicts exist between NAQS and NAFDAC about the regulation of certain chemicals that are used in farming.

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

- Specific to sanitary and phytosanitary (SPS) measures, the powers of the NAQS Act of 2018 contains mandates over animal disease control and quarantine that are already vested by the *Animal Diseases Control Act* on the "Director" which the Act defines as “the Veterinary Officer who has overall responsibility of the Federal Livestock Department”. This power is now assumed by the Director in charge of the Department of Veterinary & Pest Control Services (DVPCS), Federal Ministry of Agriculture & Rural Development.

- The report makes a case for consolidation of the laws relating to quality standards, including health and safety standards (SPS), and their various mandate. This would also mean the repeal of the old laws that speak to a different era in the country’s development trajectory. The new system for quality and standards for export and import of produce should revolve around NAQS, SON, and possibly the Pre-Shipment Inspection Agents. This system should include a clear demarcation of roles and procedures to ensure quick turn-around time for exporters and importers.

- Laws that underpin the operations of the Commodity Marketing Boards regime are still alive in the statute books even though Nigeria long abandoned the commodity boards regime. These include the *Export of Nigerian Produce Act* which makes it illegal for a person other than the Commodity Marketing Company Ltd to purchase produce for export or to export the products so purchased. The *Commodity Boards Act 1977* is

also still part of the laws of the land. These laws serve no purpose in the present era and should be repealed.

- The *Price Control Act of 1977* is also relevant to this list. It seeks to enforce price control over a range of commodities listed in it. These include bicycles and spare parts; flour; matches; milk; motorcycles and spare parts; motor vehicles and spare parts; petroleum products; salt; sugar; while the Board also has the power to add to the list of controlled commodities. The need for a legislative resolution of this matter remains important.

- In the same league of obsolete and redundant laws is the Export Prohibition Act of 1987. This is yet another relic from the past. This law was first enacted as a military Decree No. 17 of 1989. It aimed to prohibit the "exportation of certain foodstuff from Nigeria and the trial of offenders…" It placed an absolute prohibition on the exportation from Nigeria of certain foodstuffs listed in the Schedule. The list of foodstuffs prohibited from export include beans; cassava tuber; maize; rice; yam tuber; all products or derivatives of these items; and all imported food items. The fact that the government is actively promoting the export of some of these items like yam, cassava derivates, beans, etc brings out the contradiction foisted by the survival of this legislation in the statute books.

- The laws in the category of those containing conflicting provisions are the *Nigerian Export Processing Zones Act* (NEPZA Act) and the *Oil and Gas Export Free Zones Act* (OGEFZA Act). The wordings of the OGEFZA Act seem clear as to the fact that the mandate of OGEFZA is limited to the Onne/Ikpokiri Oil and Gas Free Zone but one provision in Section 5(2) in the Act empowers OGEFZA to "take over and perform such other functions being hitherto performed by the Nigeria Export Processing Zones Authority as they relate to the export of oil and gas from any of the Nigerian Export Processing Zones established by the Nigeria Export Processing Zone Act". This confusion and the resultant turf war between the two agencies subsist despite all attempts to find a political resolution to it.

- On trade facilitation, two key legislations stand out: One, the Customs and Excise Management Act (CEMA) which we have already pointed out as one of the obsolete laws. The Act has no provision for most of the modern customs concepts and practices applied by the Nigerian Customs Service today such as the electronic filing of documents, pre-arrival assessment report, etc. Two, the Nigerian Shippers Council Act establishes the Nigerian Shippers Council (NSC) with the mandate to protect the interest of Shippers. The designation of the NSC as the "economic regulator" of the ports needs stronger legal backing to enable the NSC to sanction erring shipping lines and terminal operators.

- The Operation of the Export Expansion Grant (EEG) under the *Export (Incentives and Miscellaneous Provisions) Act* has some legal shortcomings. The law provides certain incentives "to manufacturing exporters of exportable products". The Act covers all "manufactured" non-oil export businesses. The 2017 Guideline has sought to improve the administration of the EEG but has ended up introducing procedures and elements alien to the Act. For example, the introduction of "merchants/primary agricultural commodities (including commodities and solid minerals)" is against the clear provisions of the Act. The law is explicit that the EEG applies to "manufacturing

exporters of exportable products". There are also other provisions of the Guideline that contradict the clear provisions of the law in terms of its administration and mode of payment to the eligible exporters.

- There is a need to update the legislations on intellectual property rights (IPR) protection. These laws are obsolete and lack the modern concepts and practices in IPR protection. The principal laws are the Patents and Designs Act (PDA), the Trade Marks Act (TMA), the Copyrights Act (CA). Few of the gaps include the non-recognition of services marks and geographical indication under the TMA; prohibition of patentability of plant varieties and animal breeds under the PDA and the absence of a sui generis law in that regard; the need for stronger provisions relating to the protection of digital contents and software under the Copyrights Act; etc. It is important to note that none of these legislations meet Nigeria's obligation under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Beyond these necessary updates to the IPR legislation, there is a more fundamental debate (consensus?) on the need to consolidate the administration of the various legislations under one entity.

- On tax and tax administration, the mapping found that the challenges of the tax system in Nigeria is double-edged. On the one part, the government is unable to achieve a decent tax to GDP ratio which was reported to be six per cent as of 2018; and on the other part, MSMEs are besieged with multiple taxations and little corresponding infrastructural development to support their businesses. Total taxes due by MSMEs depend on the states where they carry out operations. Some states levy taxes similar to federal taxes, and though the courts have awarded judgments against state governments, state levies significantly increase tax burdens. The 2015 Order made pursuant to the *Taxes and Levies (Approved List for Collection) Act* was supposed to harmonise taxes by listing the taxes and levies accruing to the local, state and federal governments. However, the outcome seems to have been a multiplication of taxes, further aggravating the problem of multiple taxations. The list of states' taxes increased from 11 to 25 all in the attempt to accommodate different tax and levies charges by different States, even when the substance of those different taxes is the same. The report also found that the Federal High Court declared the Order null and void in May 2020. According to the Court, the power granted the Minister of Finance under the Act to amend the Schedule containing the list of taxes, levies and charges is a usurpation of the constitutional powers of the National Assembly to make laws.

- The Finance Act 2020 was identified as a major boost to MSME development in that it contains provisions aimed at addressing the tax burden on MSMEs. The Act defines a small-sized company as one with a gross turnover of fewer than N25m per annum and a medium-sized company as one with a gross turnover of between N25m and N100m per annum. Small-sized companies are exempt from paying CIT, neither do they need to register for VAT. Medium-sized companies have their CIT rate reduced to 20% while that of big companies (gross turnover above N100m) remain at 30%.

- On Nigeria's external trade agreements, the report found that Nigeria needs to work hard at taking advantage of external trade agreements that it is a signatory to by ensuring a conducive business environment within the country. Generally, the factors that determine whether the MSMEs in a particular country would gain or lose from a trade liberalisation agreement has more to do with the domestic competitiveness of the economy. Economies that provide the enabling environment and incentives for

business growth and export orientation are better placed to take advantage of trade liberalisation agreements. Similarly, competition in the import and export market could lead to improved competitiveness of the local MSMEs in the face of appropriate government policies. There is also the need for continuous education of MSMEs on the implications of these agreements in terms of opportunities and threats.

A complex web of policies, legislations, and regulations make it difficult for businesses to navigate the ecosystem, and substantially increases the cost of compliance. The complexity also creates room for rent-seeking behaviour on the part of government officials who would either offer businesses an escape route or simply mount tolls for extortion. The result is that businesses are not able to thrive. A fundamental danger in allowing obsolete and redundant legislations or policies to remain unrepealed is that these legislations or policies could become weaponised by unscrupulous officials to intimidate a business. For example, an MSME exporting yams would be in serious jeopardy if a government official decides to cripple its business by enforcing the Export Prohibition Act.

On proposed laws (Bills) and Regulations:

- On the commodity exchange ecosystem, the mapping considered the Bills before the National Assembly such as the *Commodities Exchange Bill, 2019, Nigeria Independent Warehouse Regulatory Agency (Establishment) Bill,* and *the Warehouse Receipt Bill.* Comparing the model obtainable in other countries like Ethiopia and Ghana, the report recommends three possible approaches to reforming the commodity exchange ecosystem in Nigeria: one, establish a new regulatory body for commodity exchange in Nigeria; two, retain the powers of SEC in respect of commodity exchanges but enact the Warehouse Receipts Bill to enable the utilisation of the warehouse receipt system within the commodity exchange ecosystem in Nigeria; three, retain the regulatory powers of SEC in respect of commodity exchanges, then issue new regulations to elaborate on SEC's commodity exchange mandate, while including warehouse receipt system as part of the overall commodity exchange regulation.

- The idea of legislating the NIRP through the *National Industrial Revolution Plan Bill 2019* is a commendable one. However, the NIRP has lapsed without a definite statement of the government's intention on it – whether to extend, review and amend or discontinue. Hence, technically, the Bill is standing on nothing. In any case, the NIRP has hardly received much attention since the inception of President Buhari's administration in 2015.

- The analyses in the Report show that special economic zones could provide a more favourable business environment for (as well as serve as a catalyst for new investment in) processing of agricultural produce as well as other forms of light manufacturing (garments and leatherworks). However, it is doubtful whether the proposal to establish the Agriculture Export Authority under the *Agriculture Export Processing Zones Bill* is the right approach. The need rather is for a consolidation of the regulatory framework for special economic zones (SEZ), or at least a clear definition of mandates between the NEPZA and the OGEFZA. It is also doubtful whether the Bills seeking to repeal and re-enact the NEPZA and OGEFZA Acts, respectively have addressed that need. The proposal for agriculture SEZs can be actualised under the existing NEPZA Act, with appropriate regulation, if need be.

- On IPR, the Industrial Property Commission Bill answers to most of the gaps highlighted on the IPR regime. It proposes a change in the structure for the administration of intellectual/industrial property in Nigeria while updating the relevant laws and introducing a new law to cover plant varieties and animal breeds.

- On access to finance, the report finds that the proposed *SEC Regulation on Crowdfunding* is important in sanitising and deepening the crowdfunding scene in Nigeria. It is particularly important for providing a certain legal basis for innovative financing of agricultural activities. The proposed regulation requires wider stakeholders' consultation and input.

- Similarly, the passage of the *Factoring Assignments (Establishment, Etc) Bill, 2019* is important in this season of economic downtown where businesses are struggling with cash flow. Passage of the Bill would go a long way in solving the working capital financing needs of MSMEs and give rise to an entirely new market for financial intermediation and access to finance.

- The Franchise Bill provides an innovative route to the market for MSMEs. Apart from the obvious importance of franchising to fashion-oriented value chains (garment/textiles, leather), it could also be a tool for the accelerated growth of MSMEs in Nigeria.

The mapping notes that there are often multiple Bills on the same subject. In some instances, the provisions of the different Bills are the same, in other instances, there are substantial differences in the provisions. Efforts should always be made to harmonise/consolidate these Bills at the earliest stage (ideally, after the first reading) so that the National Assembly does not dissipate time and resources on two Bills covering the same subject. The report proposes a procedure for solving this problem.

Some of the Bills identified as having the most impact on MSMEs in general, and NICOP value chains, in particular, include the Franchise Bill, Factoring Assignments (Establishment, Etc) Bill; Regulation on Crowdfunding issued by the Securities and Exchange Commission (all of which seek to cover subjects not covered by existing legislation/regulation). There is also the Industrial Property Commission Bill, which seeks a radical change in the content and institutional structure for the administration of intellectual property rights in Nigeria. These are all developments in the right direction. There is a need to ensure that the right stakeholders make inputs into these Bills and draft Regulations and that they are subject to robust debate before being passed/adopted.

# CHAPTER 1

# INTRODUCTION

CTBA was commissioned by GIZ under the Nigeria Competitiveness Programme (NICOP) to undertake mapping and analysis of the major existing and pipeline rules and regulations with effect on trade and competitiveness of MSMEs at the federal level in Nigeria. NICOP is the Nigerian component of the wider West Africa Competitiveness Programme that is being implemented by the 11th EDF of the Regional Indicative Plan (RIP) 2014 – 2020. The regional program includes the regional and national components and is implemented by the GIZ-SEDIN program with the Federal Ministry of Industry, Trade and Investment (FMITI) as the main partner.

The overall objective of the EU's co-financed action is to strengthen the competitiveness of Nigeria and enhance the country's integration into the regional and international trading system. This is achieved through interventions at micro and meso levels that are geared towards improving the performance, growth, and contribution to the industry, regional trade, and exports of selected value chains. Besides, the action focuses on activities geared towards policy initiatives to improve the business climate for businesses at federal, state, and local levels. The support for an enabling environment also includes activities improving the access to finance and inclusion in the financial system for entrepreneurs in selected value chains.

The focus value chains are tomato (and horticulture), ginger, leather, and garment. Focus states are Kano, Kaduna, Plateau, Ogun, Oyo, Lagos, and Abia.

## 1.1. Context

NICOP is working to enhance the competitiveness of MSMEs, promote trade and exports in selected value chains. However, improving the business environment by lifting constraints and filling gaps in the regulatory and administrative support mechanisms at national, state, and local levels is central to any comprehensive competitiveness strategy for the targeted value chain.

NICOP, therefore, looks to address specific constraints affecting all areas of the selected chain. In achieving this, NICOP will carry out mapping and analysis of major existing and pipeline rules and regulations with effect on trade and competitiveness for MSMEs at federal, state, and local levels. This assignment, therefore, is aimed at supporting NICOP to carry out mapping and analysis of major existing and pipeline rules and regulations with effect on trade and com

## 1.2. Objectives of the Assignment.

The objectives of this assignment are:

• Map and analyse major existing and pipeline rules and regulations with effect on trade and competitiveness for MSMEs at the federal level. This should build on existing reports like the Comprehensive Review of the Institutional, Regulatory, Legislative & Associated Instruments Affecting Businesses in Nigeria but also look at new regulations (Acts), pipeline regulations (bills), guidelines and policies, and unregulated issues that require regulations. The regulations for the purpose of trade and competitiveness for MSMEs should cover comprehensive areas of enabling environment, trade policy and export regulations.

• Streamline regulations and policies to those with direct relevance on selected value chains and further recommendations which could include legislative reform (in this case the proposal for reform should be made), policy awareness, advocacy for implementation among others depending on the highlighted gaps and challenges.

• Facilitate two days validation workshop on the report of mapping and analysis of regulations with direct relevance for selected value chains. Participants at the workshop should agree on at least 6 areas where a comprehensive position paper or policy brief should be developed and make input on these.

• Produce at least 6 detailed position papers/policy briefs on regulations with direct relevance for the selected value chains.

### 1.3. Methodology/Approach

The assignment started with an inception meeting between the consultants and NICOP Senior Advisor, Trade Policy and Enabling Business Environment, Omoware Akinropo. The meeting agreed on the approach and reviewed the timeline for the activities. Subsequently, the reviewed timeline was shared and approved by GIZ. The approach involved the following processes:

a. Review of extant reports on MSMEs performance and overall enabling business environment in Nigeria: Reviewed reports include: the SMEDAN/NBS MSMEs Survey for 2013 and 2017, the World Bank's Doing Business Report for 2019 and 2020 and the World Economic Forum's Global Competitiveness Report for 2018 and 2019. This review did not only help to throw up the various constraints (including policy and regulatory) the MSMEs have faced in Nigeria over the years, but also show the contribution of MSMEs to the economy. This review was also useful in showing the extent and limitations of various attempts by different actors to solve some of these constraints over the years, thereby providing an important resource to guide future efforts at improving the competitiveness of MSMEs in Nigeria.
b. Review of extant policies, laws, and subsidiary legislations (regulations): This mapping covered over 110 instruments but those that were considered worthy of some level of analysis in this report are 94. These include 10 general policies and intervention programmes, 10 crop/product specific policies and intervention, 58 laws/regulations/guidelines, and 13 Bills divided into themes that reflect the different issues that affect the competitiveness of MSMEs. The report also examined the impact of Nigeria's trade obligations under ECOWAS (ETLS and CET), the WTO and the yet to be operationalised AfCFTA.
c. Review of proposed laws (Bills): The consultants reviewed a total of 13 Bills drawn mostly from the immediate past (8$^{th}$) as well as the present (9$^{th}$) National Assembly. Some of these Bills in the 8$^{th}$ National Assembly have been reintroduced in the 9$^{th}$ and as experience has shown, many more of the Bills from the 8$^{th}$ National Assembly will be reintroduced in the 9$^{th}$ National Assembly. This makes the broadened scope of review useful as a ready tool to engage on those Bills when they eventually surface in the 9$^{th}$ National Assembly. It is important to note that many of these Bills are proposing amendments to existing laws.
d. Streamlining the reviewed policies, laws, regulations and Bills to NICOP priority value chains: The Consultants identified the reviewed instruments that are likely to have more impact on the select value chains and highlighted this fact with appropriate

recommendations for action. This is contained in the matric attached as Annexure 1 to this Report.

e. Recommendations: The Report contains recommendations relating to all the instruments reviewed. The recommendations include a proposal for changes or repeal of policies, laws, and regulations. In other cases, the recommendation relates to improved implementation of the policies or laws for better impact. Where a proposal relates to the amendment or repeal of existing laws or regulations, the justification is stated. For Bills before the National Assembly, the recommendations also cover proposals for streamlining/merging certain Bills, abandoning certain Bills, and proposing a scheme of prioritisation of Bills for advocacy for their passage.

In the course of the assignment, the CTBA team worked with the NICOP team to facilitate a roundtable forum on trade policy and business enabling environment on the 9th of July 2019, as well as made a presentation of the preliminary findings of the report to a similar workshop organised by the NICOP unit at FMITI. The two roundtables allowed the CTBA team to harvest the comments and concerns of the stakeholders on the current regulatory and policy challenges affecting MSMEs in Nigeria.

### 1.4. Overview of MSMEs in Nigeria

According to the SMEDAN National Policy on MSMEs[1], Micro, Small and Medium Enterprises (MSMEs) are broadly defined as businesses with staff that are less than 200 employees and turn-over of less than NGN1bn. According to the International Council for Small Businesses, MSMEs make up over 90% of all businesses and account for an average of 60% to 70% of total employment and 50% of Gross Domestic Product (GDP) of any economy[2].

The National Survey of Micro Small and Medium Enterprises (MSMEs) 2013[3] was the first-ever publication providing data on the composition of MSMEs in Nigeria. The Survey provided broad insights into the structure, contributions and challenges of MSMEs in the country. The 2013 survey report indicated that the total number of MSMEs in the country stood at 37,067,416 with micro-enterprises at a total of 36,994,578, small enterprises at a total of 68,168, and medium enterprises at a total of 4, 670.

The Survey was repeated in 2017 across the 36 states of the federation, including the Federal Capital Territory (FCT) Abuja. Both urban and rural enumeration areas (EAs) were covered. 22,000 households were sampled with 600 households with Micro enterprises interviewed per state. 4,000 SMEs were visited across all states including the FCT.
The subject areas of the SMEDAN survey include:

- Ownership Status
- Employment Information and Educational Qualification
- Operating Cost
- Capacity Utilization
- Revenue
- Establishment Growth

The 2017 survey report, conducted a year behind schedule, puts the total number of MSMEs in the country at 41,543,028. Micro-enterprises constitute 99.8% of this figure with a total number of 41,469,974 and small enterprises standing at 71,288 representing 0.17% while medium enterprises stood at 1,793 enterprises representing 0,004%. Most (c.25%) of these

enterprises are in the South West – Lagos, Oyo, and Osun states while the fewest SMEs were located in Yobe, Bayelsa and Borno. MSMEs in Nigeria have contributed about 48% of the national GDP in the last five years. They account for about 50% of industrial jobs and nearly 90% of the manufacturing sector, in terms of the number of enterprises. Despite the potential that these businesses possess, the Nigerian economy is still plagued with several issues and challenges that negatively affect their growth.

The makeup of MSMEs in Nigeria according to the SMEDAN/NBS report when compared with the 2013 report indicates that micro-enterprises grew by 12.1 %, small businesses grew by 4.6% while medium enterprises decreased by 61%. The analysis as published indicates a drop in the total number of medium enterprises by a margin far more than that gained in the micro and small businesses sector. This would be symptomatic of a stressed sector and one unable to support the upward movement of businesses from the micro to small and from small to medium enterprises.

The 2017 report revealed that there are no medium-sized agribusinesses as of 2017 in Nigeria. It further indicates that there is a negligible 1% in the small-sized business space and 20.9% in the micro-enterprise space. This analysis is almost recurring for all other sectors as micro-enterprises are the majority of enterprises in the country and their ability to scale and move up is extremely limited.

The report also indicates that wholesale/retail trade, agriculture and other services make up 76.3% of micro-enterprises in the country. This points towards an economy largely driven by micro-enterprises who are active in sectors with little potential to drive sustainable economic development.

According to the report, wholesale and retail trade constitute a bulk of micro-business operations in Nigeria while education services account for the highest in terms of small enterprise operations. 43% of medium scale businesses in Nigeria engage in manufacturing operations. This is unsurprising considering the capital-intensive nature of such businesses.

The study revealed that the majority of the micro businesses started with less than N50,000 with only 47% starting with more than N300,000. Also, 75% of SMEs start their businesses with less than N10.0m in capital with just c.6% starting with over N40.0min capital. Personal savings accounted for 60% of the source of capital while loans, family, and bank credits account for the other sources of capital.

While the number of MSMEs in Nigeria is growing at a fast pace, the survey revealed that the operational structure of these businesses is faulty and is mainly characterized by a lack of planning and bookkeeping. This has contributed to a high rate of failure as well as the reluctance of investors/banks in providing capital/loans. Interestingly, these businesses are exposed to a numerous f business risks without insurance cover - 96.6% of micro-businesses are uninsured while 64% of SMEs are uninsured. Also, 75% of micro-businesses and 65% of SMEs do not have a business plan while 97.8% of micro-businesses are not registered.

This report identified two major challenges faced by MSMEs in Nigeria, viz:

Access to Finance: 68% of SMEs and 91% of MEs have cited access to finance as a top priority area and critical issue faced by their businesses. Commercial banks, microfinance banks as well as investors are reluctant to provide capital and loans due to the nature of the Nigerian economy

and the questionable ability of these businesses to thrive. Also, a lot of these businesses do not have a business plan or historical financial data as stated earlier.

Structural and Policy Issues: Lingering problems faced by these businesses are as a result of fiscal policy issues in Nigeria such as poor infrastructure, epileptic power supply which have a direct negative impact on productivity, poor road network, coupled with high-interest rates (for loans).

### 1.5. Review of Other Reports on MSMEs Competitiveness in Nigeria

Nigeria has featured in some global rankings that relate to the competitiveness of MSMEs. The two most prominent of these include the annual World Bank Doing Business Report and the World Economic Forum Global Competitiveness Report.

#### a. *World Bank Doing Business Report*

The World Bank Doing Business Report presents data both for individual indicators and for two aggregate measures – the distance to frontier score and the ease of doing business ranking- to provide different perspectives on the data.

The ease of doing business report is one that has continued to shape business reforms across several developing and developed countries, providing information across eleven key indicators namely: starting a business; dealing with construction permits; getting electricity; registering property; getting credit; protecting minority investors; paying taxes; trading across borders; enforcing contracts; resolving insolvency; labour market regulation.

The report's ranking of countries has been a key determinant of where investors find receptive of their investible funds and as such, several countries including Nigeria, have continued to work towards moving up on the rankings of the report as it measures the competitiveness and/or otherwise of economies across the world.

Nigeria has shown some improvement in the World Bank Doing Business ranking. In 2016, the report ranked Nigeria 169 0f 189 countries with a 44.69 score. By 2020, it ranked Nigeria 131 of 190 countries with a score of 56.9. Also, the country was listed as a top ten reformer in 2018 and 2020.

The ease of doing business report has continued to provide insight on the ease of starting and keeping a business running across 190 countries in the world. It has also proven to be a push-for-reform publication as its findings have triggered several countries to undertake some reforms that have pushed them up on the ranking.

The Nigerian case is not different. The present administration in its resolve to move up on the ranking in the early months of its first tenure – precisely in 2016 – set up the Presidential Enabling Business Environmental Council (PEBEC) that has assiduously worked to move Nigeria to its present ranking. However, the reforms remain a scratch on the surface when compared to the various policy and regulatory challenges facing MSMEs in Nigeria today.

#### b. *World Economic Forum Global Competitiveness Report*

The WEF Global Competitiveness Report (GCR) presents the Global Competitiveness Index (GCI) on an annual basis. It measures the performance of countries across twelve (12) pillars and 98 indicators of competitiveness, using data derived from international organisations as well as from the World Economic Forum's Executive Opinion Survey. The GCR defines

"competitiveness" as "…the attributes and qualities of an economy that allow for a more efficient use of factors of production."[4]

These are organised into 12 pillars in the GCI 4.0, reflecting the extent and complexity of the drivers of productivity and the competitiveness ecosystem. The pillars are: Institutions, Infrastructure, ICT adoption, Macroeconomic stability, Health, Skills, Product market, Labour market, Financial system, Market size, Business dynamism, and Innovation capability.

The 2019 ranking from the WEF GCI ranked Nigeria as the 116th country from a list of 140 countries, with a score of 48.3 out of 100. Though Nigeria dropped one point in the ranking from the 2018 rank of 115th, the 2019 performance showed a marginal improvement as shown by the score, compared to the 2018 figure of 47.5[5]. The GCI covers broader issues of competitiveness and could be said to be a better representation of the operating environment of business in Nigeria.

*Figure 1:* Nigeria's performance across the 12 Pillars of the GCI 2019.


*Source: Global Competitiveness Report 2019*.

The five Pillars where Nigeria scored the least are innovation (32), ICT adoption (33); Infrastructure (40), Skills (40), and Institutions (41). In the ranking, Nigeria performed poorly in the following five pillars: Financial system (131st), Infrastructure (130th), Macro-economic stability (130th), Skills (129th) and Institutions (128th). These are the various issues that constrain productivity in the economy and such demands attention from the government. This mapping focuses on the policy and regulatory issues that impact the competitiveness of businesses in Nigeria, with the view of proposing interventions that could boost the competitiveness of MSMEs in Nigeria.

# CHAPTER 2

## 2. OVERVIEW OF GOVERNMENT POLICIES AND INITIATIVES THAT ARE RELEVANT TO MSMEs

This chapter analyses policies and initiatives of the government that impact on MSMEs, starting from the overarching national economic development strategy (the Economic Recovery and Growth Plan) to other sectoral policies covering trade, industry, agriculture, and science and technology. The chapter covers special intervention programmes aimed at improving the competitiveness of MSMEs or driving export growth. These special intervention programmes include quality infrastructure/policy, enterprise development plan, zero oil plan, one state one product (OSOP) initiative, one local government one product initiative (OLOP). Crop or product-specific policies and intervention programmes are also covered in the chapter, featuring all the NICOP value chains and a few other value chains.

### 2.1. Economic Recovery and Growth Plan 2017-2020 (ERGP)

***Overview***

The ERGP[6] is the economic development strategy of the Muhammed Buhari administration. It was primarily a response to the failing economic fortunes of Nigeria at the inception of the administration. One of the cross-cutting strategies enunciated under the ERGP is to enhance the support of MSMEs. A goal was set to "…prioritize MSMEs in all key sectors to make them a major source of growth and contribution to long-term national development". The broad "policy objectives" include to: "support MSMEs to maximize their contributions to growth, employment creation and export earnings"; and "increase MSMEs' contribution to export earnings from 7.27 per cent to a minimum of 15 per cent by 2020". To achieve this, the ERGP set out a few key activities as follows:

- Provide dedicated infrastructure and common facilities to MSME clusters.
- Reduce regulatory obstacles facing MSMEs, e.g., through more information and structured interface with MDAs.
- Enable financial service providers (e.g., deposit money banks) to grant loans to MSMEs against their pension assets as collateral.
- Enhance access to the N250 billion CBN MSME fund by reviewing its design and implementing enabling initiatives to encourage on-lending.
- Provide micro-loans for women through the GEEP[7] and Women Empowerment Fund
- Partner with international development banks and the Global Impact Investing Network to promote and facilitate impact investments for MSMEs in Nigeria
- Continue to scale up and roll out credit to critical sectors of the economy, in particular by increasing the funding available to the collateral registry

***Key issues***

It is difficult to know the performance of the ERGP without a proper evaluation of the set objectives. However, anecdotal evidence suggests that the ERGP has not met most of its targets in terms of economic growth and diversification. For example, the economic growth target of 4.62% per annum has not been met. Similarly, the non-oil export value is still below the range from 2011 to 2014.

***Recommendations***

There is a need for an independent evaluation of the ERGP with a focus on the impact on MSMEs. This evaluation is important as the government moves towards the development of a replacement development strategy. The evaluation would produce insights and highlight areas that require more attention to enhance the development of MSMEs in Nigeria. The outcome of the evaluation would form the basis for MSMEs to engage the government in the design of the successor national economic development strategy.

## 2.2. Nigeria's Trade Policy

***Overview***

A country's trade policy is aimed at supporting the competitiveness of businesses in the country. It addresses a broad spectrum of issues that affects the productivity of domestic firms and how they compete in the domestic and export markets[8]. Nigeria's last trade policy document was adopted in 2002, and rightly so, no one reckons with it again. Nigeria's trade policy can be gleaned from several policy and programme documents, directives and pronouncements of government officials. These include the ERGP, the various intervention programmes discussed in this Report, CBN forex restrictions, the operations of international and regional trade agreements, etc.

Between 2011 and 2015, Nigeria attempted to draft a new trade policy document to replace the 2002 document. The process was heavily supported by DFID, GIZ and subsequently by USAID but never got approved by the President Jonathan administration which undertook the process. Since the beginning of the Buhari administration in 2015, there has been no definite pronouncement on the draft policy. Interestingly, the draft National Trade Policy came with an implementing document (Nigeria Trade Strategy), which attempted to lay down a series of initiatives that would ensure the realisation of the objectives of the policy, if it were eventually adopted.

Both documents acknowledged the importance of enabling business environment as a major driver of economic development. More specifically, the draft Nigeria Trade Strategy emphasised the improvement of the competitiveness of MSMEs through strengthening institutions and initiatives around access to finance, markets, logistics, skills, etc. The key objectives of the Trade Strategy were stated as follows:

- Develop appropriate market strategy for domestic trade.
- Diversify Nigeria's export base to lessen the dependency on oil and gas.
- Promote labour-intensive sectors both for the domestic and export markets.
- Create opportunities for Nigerian products in ECOWAS, Rest of Africa (ROA) and International market.
- Create conducive business environment for Nigerian companies engaged in the production of high value-added products for domestic and export markets

The trade policy components of the ERGP is a mix of import substitution and export-oriented policies. It recognises the role of "greater export orientation" in improving "macroeconomic conditions, restore growth in the short term and help to create jobs and bring about structural change" (ERGP, 2017:12). It also seeks to continue supporting existing import substitution policies in rice, sugar, etc while trying to promote exports. One of the strategies proposed to attain macroeconomic stability is to promote "exports, support local production and reduce reliance on imported goods". The plan also states that "by 2020, Nigeria is projected to become a net exporter of key agricultural products, such as rice, cashew nuts, groundnuts,

cassava and vegetable oil". The government's export orientation is hinged on the "Zero Oil Initiative" of the Nigerian Export Promotion Council which is highlighted in the ERGP. What this shows clearly is an attempt to balance import substitution with export orientation strategies. The danger is that one would always overshadow the other – and it is easy to see which has been overshadowed.

***Key issues***

Since the Policy was meant to run from 2013-2017, it is safe to assume that it is already overtaken by events. In 2018, the Nigerian Office for Trade Negotiations (NOTN) announced that they had started the process of drafting what they termed "A Twenty-First Century Trade Policy for Nigeria"[9]. They published a call for memoranda from interested stakeholders, but nothing has been heard of this process ever since. The status of implementation of the various policies and programmes forming part of the trade policy of Nigeria is discussed under those policies.

The challenges associated with trade policy in Nigeria can be categorised into three, namely: challenges relating to the *policymaking process*; challenges relating to the *orientation/content* of policy; and challenges relating to *policy implementation*.

From the perspective of ***policymaking***, the major issues are the non-utilisation of sound evidence to underpin policy as well as the weak stakeholders' consultation culture in the policymaking process. Ordinarily, there is a standing multi-stakeholders body that plays an advisory role in trade policy and trade negotiations. This is called the Enlarged National Focal Point on Trade (ENFP) hosted by the Federal Ministry of Industry, Trade and Investment (FMITI). The ENFP is a standing stakeholders' forum saddled with the responsibility of articulating Nigeria's position during negotiations as well as harvesting inputs of key stakeholders on trade-related policies of the government, particularly during policy formulation stages. ENFP membership comprises of key economic Ministries, Departments and Agencies (MDAs), members of the Organised Private Sector (OPS), labour, academia, professional bodies and legislators.

The ENFP has sub-committees such as Trade in Services, Trade in Goods and Trade-Related Intellectual Property Rights (TRIPS) which are further categorized into fifteen sub-committees which include among others, Non-Agricultural Market Access, Agriculture, Trade Facilitation & Capacity Building, Trade & Development, and Trade Rules as approved by the Federal Executive Council (FEC). The ENFP provides the widest base for stakeholder consultation and consensus building in the trade policy process in Nigeria. The ENFP was initially known as the National Focal Point on Trade. It was set up first in 1994 but was reconstituted and approved by the Federal Executive Council in 2001 as the Enlarged National Focus Point, having been expanded to accommodate more stakeholders. The ENFP is retained in the draft trade policy (2011-2017) as a critical organ for trade policy formulation, negotiation, and implementation for Nigeria.

However, the ENFP has its challenges. The different government agencies and non-state actors that are represented on the ENFP lack the requisite capacity to properly advise on Nigeria's trade policy and regional integration engagements. The lack of capacity across the board means that policy processes are susceptible to being hijacked by vested interests who possess the political clout to do so. Furthermore, there is no legal obligation on the Minister or

the President to accept the advice of the ENFP or to state a reason when it deviates from the advice.

The ENFP hardly holds meetings. FMITI officials say that ENFP meetings and activities need funding which is not always available. The sub-committees also need to meet often to advance their work-plan, engage external experts for studies and advice, etc. Besides funding, ENFP members also need to understand emerging trade policy issues and negotiations. A former senior official of FMITI agrees that funding is a major constraint to the work of the ENFP. He observed that even though there is a budget line in FMITI's budget for ENFP, the money is usually spent by FMITI on other items. He believes this should be checked. Beyond the lack of funding, he thinks that the bigger problem is the lack of basic understanding of trade policy issues by the members of the ENFP. To address this, he advocates a change of approach where briefing notes are sent to members at least one month ahead to enable them to digest the issues and formulate positions before the meeting. He stated that there is a need for continuous capacity building and direct engagement with members who still find it difficult to follow the discussions. Finally, he thinks FMITI should avoid the practice of calling for meetings only when there are major external engagements or negotiations on the horizon. Rather, they should have a standing mechanism for sending out regular briefings and holding regular meetings, especially with the private sector.

Even though the private sector is well represented in the ENFP at the industry association level by the Manufacturers Association of Nigeria (MAN), National Association of Chambers of Commerce, Industry, Mines and Agriculture (NACCIMA), National Association of Small and Medium Enterprises (NASME) and National Association of Small Scale Industrialists (NASSI), it is doubtful whether most private companies and even the board members of these industry associations are aware of the existence and activities of the ENFP. For example, it is common to hear most private sector leaders talk about the need for a standing consultative body between the government and the private sector, without showing any sign of knowledge of the existence and activities of the ENFP.

In terms of the ***content*** of the trade policy, it is often difficult to understand the orientation of Nigeria's trade policy. There seems to be a dissonance between the official comments (including external commitments to liberalisation) and the actual practice on the ground. Nigeria has a legacy of protectionist trade/industrial policy. The first two development plans post-independence (1962 -1968 and 1970-1974) were based on Import Substitution Industrialisation (ISI), with reliance on restrictive trade measures as a tool to protect domestic industries. The oil price boom from 1973 marked a slight relaxation of import restrictions but this died off as quickly as the oil price boom ended. By the fourth development plan (1981-1985), the country was already having a foreign exchange and debt crisis because of the fall in oil prices. This led to the reintroduction of import licenses, foreign exchange controls and other forms of controls aimed at restricting imports. World Bank-backed Structural Adjustment Programme (SAP) saw to the devaluation of the currency and the introduction of liberalisation and deregulation policies. Foreign exchange rules were relaxed, same for import and export prohibitions[10]. It has been observed that the Nigerian leaders never accepted SAP wholly with a resultant tension between what they signed up to and profess and what they implemented. This tension remains today and manifests in the dissonance between what officials proclaim about trade liberalisation and what they do when it comes to implementation[11].

From the dawn of the Fourth Republic in 1999 when President Olusegun Obasanjo reintroduced import substitution industrialisation in targeted sectors (such as cement), Nigeria still maintains import substitution policies in some sectors/industries such as cement, rice, automobiles, sugar, poultry, wheat, etc. Indeed, more products such as tomatoes and dairy have been added to the list between 2019 and 2020. The import substitution policy is driven by a combination of import prohibitions, high tariffs, and "intervention funds" from the government. These measures have been accommodated within the ECOWAS CET, thereby resulting in the exceptions such as Import Adjustment Tax and National List. It is instructive to note that the reason often given by the government for selecting particular industries/products to support is comparative advantage. According to the National Industrial Revolution Plan (NIRP) 2014,

> *[T]he criteria used for selecting the focus sector groups are: (i) Existing Skills and Installed Capacity; (ii) Natural Endowments; (iii) Competitive Cost Base; (iv) Labour Intensity; (v) Potential for linkages with other industries; (vi) Local and regional demand; (vii) Ability to export to developed markets. In addition, all sectors have also been evaluated based on their potential for economic impact, job creation, and opening up of new non-oil export markets for Nigeria.*

However, there are indications that the decision on which sector/industry/product to support is not purely an economic decision. Interest groups often lobby for the inclusion of their industries or continued retention among the "favoured" ones. A typical example is the case of tomatoes and dairy products cited above. Usually, when the media is awash with reports showing how much the country loses from the importation of any item, that is an indication that some interest groups are pushing for protection from import competition, or access to intervention funds to aid the development of that industry/sector[12]. There is no special consideration for MSMEs in the selection of products or industries to protect.

Ultimately, what the government accepts to protect would depend on the clout of the interest groups and sometimes, the individual sentiments of the politicians in power. For example, Aliko Dangote revealed in a Financial Times interview that it was the interest of President Obasanjo to resuscitate cement manufacturing in Nigeria that transformed the Dangote Cements from an importer of cement to the largest manufacturer of cement in Nigeria today[13]. At other times, the personal business interest of the political leader(s) may be a contributing factor[14].

***Policy implementation*** remains a challenge. Often, policies are implemented haphazardly or outrightly abandoned midway without any official statement rolling back the policy. While poor bureaucratic capacity can account for some of these implementation failures, sometimes the problem results from the changing focus – or lack of focus – of the political leadership. Examples include the stalled implementation of the NIRP, the abandoned Commerce 44 initiative, the undue delay in processing payments under the Export Expansion Grant (EEG)[15], the abandoned Cassava flour policy, etc.

***Recommendations***

The lessons and recommendations for MSME development include: (a) the need to ensure that MSMEs are adequately represented in the trade policy-making process (b) enhance the capacity of MSMEs to carry out evidence-based advocacy/lobbying towards advancing their interests in the policymaking process; and (c) the need to constantly engage the government

officials and politicians towards a proper understanding of basic principles of policy formulation and implementation; and (d) On the future of the Nigerian Trade Policy document, the processes must be picked up and completed – of course with strong participation from MSMEs.

### 2.3. The Nigerian Industrial Revolution Plan (NIRP) 2014-2019.

***Overview***

The NIRP[16] is arguably one of the best policy documents Nigeria has produced. It sets out a vision of industrial revolution for Nigeria following a two-pronged approach. On the one hand, it identifies sectors where Nigeria could "truly win and dominate, based on an assessment of our country's comparative advantage". It designs interventions to support these sectors to grow. On the other hand, it seeks to provide "cross-cutting interventions that address competitiveness of the entire manufacturing sector in Nigeria".

The NIRP was set to achieve the vision of making manufacturing the dominant job creator and income generator over the five years of its lifespan. It would also ensure that Nigeria becomes:

a. The preferred manufacturing hub in West Africa.
b. One of the top 2 manufacturing hubs in West Africa.
c. The preferred source for supplying low and medium-technology consumer and industrial goods domestically and regionally.

The priority sectors identified for targeted intervention include agribusiness and agro-allied; solid minerals and metals; oil and gas-related industries; construction, light manufacturing and services. It also planned to use the value chain approach to create linkages between the MSMEs and larger companies. The NIRPS contained clear linkages and integration with various aspects of economic policy such as macroeconomics, trade and investment, etc. It also came with a detailed implementation strategy and governance framework.

***Key issues***

The implementation of the NIRP could not firmly take off before the change of administration in 2015. The administration of President Muhammadu Buhari has often referred to the document but failed to implement it as envisaged by the drafters. The NIRP expired in 2019 but there has been no official statement from the government to indicate whether the document would be reviewed or discarded for a new one.

***Recommendations***

There is a need to raise the issue of the NIRP with the Honourable Minister, FMITI so that a formal position could be taken by the government on the future of the policy. It may also be useful to harvest elements of the NIRP for inclusion in the National Trade Policy under preparation.

### 2.4. Agricultural Promotion Policy (APP)

***Overview***

The Agricultural Promotion Policy[17] launched in June 2016 as the overarching policy for the agriculture sector in Nigeria, replaced the Agriculture Transformation Agenda of the previous administration and is designed as a four (4) year policy intervention for the sector. The four priorities of the APP are food security; import substitution; job creation; and economic diversification. The principles guiding the implementation of the programme are: agriculture

as a business, agriculture as key to long-term economic growth and security, food as a human right, value chain approach, prioritising crops, market orientation, factoring climate change and environmental sustainability, participation and inclusiveness, policy integrity, nutrition-sensitive agriculture, and agriculture's linkages with other sectors.

The intervention plan of the policy was grouped into three organising themes: productivity enhancement, crowding in private sector investment and institutional reforms within the Ministry.

*Figure 2:* Three Organizing Themes for APP

| Productivity Enhancements | Crowding in Private Sector Investment | FMARD Institutional Realignment |
|---|---|---|
| 1. Access to Land<br>2. Soil Fertility<br>3. Access to Information and knowledge<br>4. Access to Inputs<br>5. Production Management<br>6. Storage<br>7. Processing<br>8. Marketing & Trade | 9. Access to Finance<br>10. Agribusiness Investment Development | 11. Institutional Setting and Roles<br>12. Youth and Women<br>13. Infrastructure<br>14. Climate Smart Agriculture<br>15. Research & Innovation<br>16. Food, Consumption and Nutrition Security |

*Source: Agriculture Promotion Policy 2016*.

The policy sought to broadly support smallholder farmers with improved access to finance; extension services; value chain support; capacity building training.

***Key issues***

The policy's impacts on smallholder farmers are not readily known or published. However, what is in the public space is a plethora of interventions undertaken under the policy for the support of smallholder farmers to improve their capacity to take on the value chain potentials of their enterprises. One of such is the Anchor Borrowers' Programme.

The APP intervention for youth in agriculture which was initially designed in partnership with the International Institute for Tropical Agriculture (IITA) has not lived up to the expectations built around it. Beyond a couple of capacity building training undertaken in the first twenty-four months of the operations of the initiative not much has been heard of the "youth in agriculture" program of the policy which would have impacted MSMEs in the sector.

The policy is still unable to address key input sourcing and delivery challenges smallholder farmers are faced with. Failing to properly frame what the initial challenges were, the APP set out on an overly optimistic outlook but as reality set in, it became apparent that the policy was not been driven/ implemented in a manner that will deliver positive results for smallholder farmers.

***Recommendations***

Like most government policies, the APP needs independent tracking on an ongoing basis as well as periodic evaluation to ensure that its objectives are being realised. The result of this evaluation would feed into advocacy for the strengthening or review of the Policy.

## 2.5. Science Technology and Innovation Policy 2012

***Overview***

A National Science and Technology (S&T) Policy was formulated and launched in 1986. The objectives of this policy were to increase public awareness of S&T and its vital role in national development and well-being; direct S&T efforts along identified national goals; promote the translation of S&T results into actual goods and services, and to create, increase and motivate output in the S&T community. The S&T policy marked the beginning of the recognition of S&T efforts as a vehicle for successful industrial development in Nigeria. To facilitate the achievement of the 'self-reliance' aspiration of the S&T policy, the Raw Materials Research and Development Council, was established by Decree No. 39 in 1987. The Standards Organisation of Nigeria (SON) was also established to ensure standardization and adequate quality control in industrial production. The S&T policy emphasized the transfer of foreign technology to local firms, via the licensing and registration of patents, trademarks, technical assistance arrangements, research and development, training, and operations.

***Key issues***

There is, however, little evidence that the S&T policy was successful. Some of the plausible reasons for the non-performance of the S&T policy include:

- Absence of a singularity of approach. S&T Institutions were operating independently of each other, with little or no interactions, leading to duplication of efforts and wastages.
- Narrow base of S&T research. There has continued to be a narrow base of research in the science and technology sector, several years after the policy was launched, the parent ministry spearheading its drive and push is still battling to advance technological advancement on pencil production.
- Isolation of the manufacturing sector from R&D activities and therefore non-commercialization of ideas; and
- Insufficient funding for the S&T sector.

It could, therefore, be argued that innovation was absent in this era of industrial development, to the extent that although the role of S&T was peremptorily acknowledged, its deeper implications were not grasped and fully appreciated. The important issues which the era of S&T policy in Nigeria missed was how S&T translates or influences the broad process of industrial development and how such influences may be improved upon, i.e., a recognition of the need to transit from S&T to science, technology, and innovation (STI).

In the third review of the S&T policy in 2012, the government renamed it the National Policy on Science, Technology and Innovation (STI)[18] with a clear focus on the Triple Helix model – creating linkages among government, industry and university/research institutions. The STI has sectoral strategies for agriculture, water resources, biotechnology, health (medicine, natural, and pharmaceutics), energy, raw material development, ICT, transport, women & youths, Technology Transfer. Out of the five "focal technologies", two are of importance to

NICOP value chains, viz, biotechnology (food security, seed multiplication, genetic engineering, etc) and leather technology (shoes, football, indigenous technology, etc).

The Minister of Science and Technology, Dr. Ogbonnaya Onu has recently credited the implementation of the Policy for the creation of over nine hundred thousand jobs. He further alluded that the implementation of the Policy is responsible for the over NGN1 Trillion saved through the reduction in imports of raw materials in the years 2017 and 2018[19]. Beyond these claims, there is little information on the implementation of the Policy.

***Recommendations***

There is a need for a review of the Policy starting with an evaluation of its performance. The Ministry's website shows that the process of reviewing the policy is underway[20]. This is a good opportunity for MSMEs stakeholders to make input into the process.

## 2.6. Draft Nigeria National Quality Policy

***Overview***

The Department of Trade, Federal Ministry of Industry, Trade and Investment (FMITI), Standards Organisation of Nigeria (SON) and Nigeria National Accreditation Service (NiNAS) in 2013 led in the development of the draft of Nigeria's National Quality Policy (NNQP) which aims to strengthen the country's quality infrastructure in support of the National Industrial Revolution Plan (NIRP). This policy framework is critical for especially small and medium industries, agriculture, and services sectors, which must be prepared to survive and compete in the global market. In recent times, Nigeria has had difficulties in demonstrating compliance with international qualities necessary for global competitiveness. NNQP hopes to support and boost the Nigerian private sector's competitiveness and entrench consumer protection in line with the country's industrialization plan. An important outcome is that the NNQP will facilitate the establishment of functional National Quality Infrastructure (NQI) and thereby catalyse Nigeria's entry into international trade in line with global best practices – hence enabling competitiveness of locally made products at the world market.

***Key issues***

The draft NNQP document, which was the result of several consultations and inputs from stakeholders across the geopolitical zones, has been developed with an implementation schedule built into it. Since the development of the draft, there has been little effort to move the policy from the draft stage to a fully ratified policy document awaiting implementation.

However, it is relevant to note that an NNQP will also not exist in isolation. It will have to integrate with the regional, continental and global standards. Therefore, there is still a long way to go toward maintaining a solid industrial structure that is globally competitive, environment friendly and capable of significantly improving the living standards of the people.

***Recommendations***

There are indications that the government is set to adopt NNQP. However, there remains the need for stakeholders to be educated on the implications of the Policy and empowered to monitor the implementation.

## 2.7. National Enterprise Development Programme (NEDEP)

***Overview***

The NEDEP program was designed to address the challenges stifling MSME growth in Nigeria. It aimed to pull together public sector capacity and private sector expertise in addressing these challenges. It had ambitious plans to create an average of one million jobs per year. Under the program, stakeholders were to adopt a holistic framework to address the identified barriers working in synchrony. For example, the Industrial Training Fund (ITF) will ensure that MSMEs have the requisite skills; the Small and Medium Enterprise Development Agency of Nigeria (SMEDAN) will provide business support services, working with MSMEs to prepare bankable business plans and the Bank of Industry (BOI) will provide funding for eligible small businesses[21].

***Key issues***

The NEDEP was a well-conceived enterprise development programme that sought to align the operations of the three government agencies to achieve a common goal. Unfortunately, there is no sign that the policy is still being implemented as conceived. There is no recent mention of the policy in the news nor any sign of any activities around it on the website of the coordinating agency, SMEDAN.

***Recommendations***

There is a need for a definite government pronouncement on the status of this programme. This would mean cancelling it or reviewing it to enhance its implementation.

## 2.8. Zero Oil Plan

***Overview***

According to the National Bureau of Statistics (NBS), the oil and gas sector still accounts for almost 10 per cent of the country's gross domestic product, 70% of government revenue and over 90% of total exports revenue. Apart from petroleum, Nigeria's other natural resources include natural gas, tin, iron ore, coal, limestone, niobium, lead, zinc and arable land. Agricultural commodities with export potentials include cocoa, rice, cotton, ginger, rubber, shea nuts, cashew, groundnut etc.

The Zero Oil Plan is one of the key components of the country's Economic Recovery and Growth Plan (ERGP). The initiative provides a template for the replacement of oil and gas as major exports with other natural resources including agricultural commodities. According to the ERGP, every geo-political zone and State has unexplored or under-utilized mineral deposits. The goal is to grow national earnings from non-oil exports first to US$8billion and eventually US$30 billion. The plan includes selecting 11 export products including cotton, rice, leather, gold, soya, sugar, cocoa, petrochemicals and fertilizer, palm oil, rubber, and cement to generate USD30 billion in foreign exchange to replace lost national revenues within a reasonable investment cycle.

The Zero Oil Plan also aims to diversify the country's export base away from exporting raw commodities to value-added products, increase participation of SMEs in export trade by 50%, achieve $706 million in non-oil export to the West Africa Sub-region and create 1.5 million new jobs in the SME sector by 2020. Recall that before and after Nigeria's independence, non-oil export which was mainly agricultural commodities and solid minerals constituted over 90% of

government revenue. Groundnut, cocoa, cotton etc. were major commodities commanding foreign exchange. However, in recent times, the share of non-oil export has dropped to barely 5%. In the third quarter of 2018, crude oil remained the highest exports at 85.4 per cent. The non-oil products accounted for only 3.4 per cent while other oil products accounted for 11.20 per cent of total exports.

***Key issues***

Unfortunately, there seems to have been no serious commitment to achieve this initiative as the government is still spending huge sums of money prospecting for oil even in the Northern part of the country, especially the Lake Chad Basin with little recourse to the global shift to renewable energy and alternative energy source. The implementing agency, NEPC, would keep doing the much they can do within the limited resources at their disposal.

***Recommendations***

The Zero Oil Plan ought to be one of the most important policies of the government given its potential to achieve Nigeria's need for economic diversification. An online search for a document detailing this Plan returned no hits. There is a need for NEPC to publish the Plan so that stakeholders can buy into it and track its implementation.

## 2.9. One State One Product Policy (OSOP)

***Overview***

The One State One Product initiative (OSOP)[22] is an essential component of the "Zero Oil" export plan, where all states of the Federation identify at least one strategic export product based on their comparative advantage from which Nigeria can earn foreign exchange.

In 2013, the Nigerian Export Promotion Council (NEPC) initiated a campaign for the development of a One State one Product (OSOP) program aimed at establishing one non-oil export product per state as well as the FCT. The OSOP idea was for states to prioritise the development of products of comparative and competitive advantage in terms of production and commercialisation as the focus for development and promotion for exports. The OSOP was adopted by the National Executive Council (NEC) and a committee of the NEC was appointed to drive the initiative. The committee is chaired by one of the state governors and is expected to have representation from each state.

***Key issues***

It is not clear how well the implementation of this initiative has progressed and the extent of support it has received from the state governments. The status of this initiative is unclear, and it has not gone beyond the conceptual stage even after many years.

It is important to note that across the length and breadth of the country are a plethora of natural resources with trade and export potentials as well as different agricultural commodities cultivated in the soils of the regions and state. Also, some states have shown strong capabilities to transform and add value to various natural and agricultural raw materials. Therefore, it can be said that no region or state is short-changed with regards to potentials or the availability of agricultural commodities or natural resources that have potential for local

trade and export. However, many states have either ignored or neglected the development of these commodities and have focussed on the monthly allocations from federal oil revenue.

***Recommendations***

The government needs to make a formal pronouncement on the status of this policy. There may be the need to review its implementation to determine whether the policy should subsist or be formally withdrawn.

## 2.10. One Local Government, One Product (OLOP) Programme

***Overview***

In April 2009, SMEDAN had launched the One Local Government, One Product (OLOP) programme[23] to mobilize local people to translate naturally available resources (i.e., raw materials and unique skills) of rural communities into value-added, economic activities/products or services. The OLOP initiative, if well implemented, can be an industrialization strategy toward achieving greater global competitiveness in the production of processed and manufactured goods.

The objectives of OLOP include:

- To identify/galvanize rural communities around their natural endowment for wealth creation.
- To enhance technical, technological & business management skills of MSEs (esp. existing) as a basis for expanding business opportunities of local communities.
- To facilitate emergence of value-added products, with emphasis on quality control, packaging and branding.
- To promote market linkages between MSEs and local/regional markets.
- To promote revitalisation of the rural economy in Nigeria.
- To minimise rural-urban drift and generally create a new sense of satisfaction/well-being in rural communities.

Through the OLOP programme, SMEDAN provides training and grants to community-based cooperatives and actors to improve their skills and production processes. SMEDAN is still implementing the OLOP with the last call for application from participants made in December 2019.

***Key issues***

There are no regular updates from SMEDAN on the implementation and results of this Policy. If government agencies do not provide regular updates on their website about the policies they are implementing, there is no way citizens can rate their performance.

***Recommendations***

There is a need to undertake an independent evaluation of this programme to determine the impact so far and the continued relevance. There is also a need for synergy with the Zero Oil initiative and the One State One Product (OSOP) programme of the NEPC.

## 2.11. Product/Crop Specific Intervention Programmes

There are government policies and interventions targeted at specific crops/products or industries. These are in form of import substitution measures aimed at supporting local production and discouraging imports. Usually, the crops/products/industries that receive

support are those with high domestic consumption, import competition and a considerable capacity for domestic production. There is no crop/product that has been supported in the same manner primarily for its export value. This trend is deeply rooted in Nigeria's political economy which emphasises domestic production and consumption, with marginal attention paid to export, usually in the context of the foreign exchange crisis. As would be seen from this section, all but one of the NICOP value chains have special policies/interventions. The odd one is ginger, and its marginalisation can be explained in terms of it being primarily an export crop. Besides the NICOP value chains (tomatoes, leather, ginger, textile, and garments), this section also considers policies and interventions on other crops such as rice, wheat, sugar, oil palm, and cassava.

### a. *Tomatoes*

***Overview***

Tomato has remained a political crop in Nigeria over the past decade, with successive administrations launching interventions for the crop, all aimed at pushing up yield for smallholder farmers and supporting industrial-scale production of the crop in Nigeria.

The Federal Government approved the Tomato Policy Guidelines in 2017. The Federal Ministry of Agriculture and Rural Development and that of Industry, Trade and Investments are yet to roll out the policy document.

Approved in March 2017, the policy was to become effective on May 7, 2017, and to be implemented by the Federal Ministry of Industry, Trade and Investment, in collaboration with the Federal Ministry of Agriculture and Rural Development; Federal Ministry of Finance; Federal Ministry of Water Resources; Central Bank of Nigeria; Bank of Industry; and National Agency for Food and Drug Administration and Control (NAFDAC). The inability of the listed Ministries, Departments and Agencies to breathe life into the policy has led to the continued slow growth of the sector.

The policy as articulated was designed to be the government's major intervention/ strategic tool for stimulating the agro-allied industry, whose primary aims include –increasing local production of fresh tomatoes, increasing local production of tomato concentrates, and reducing post-harvest losses. News reports quoted the Minister of Agriculture and Rural Development at the time, saying that the policy aims to discourage importation by increasing tariffs on tomato concentrate from 5% to 50% and introducing USD1, 500 levy per tonne. He further assured that the subsequent inclusion of tomato production and processing activities for investment incentives is a positive development. The incentives, which include tax holidays and the introduction of zero per cent import duty on greenhouse equipment are expected to increase investments in the tomato industry[24].

***Key issues***

Reports as of mid-2019 indicated that the Policy was not being implemented. In fact, the value chain stakeholders, including the Tomato Growers Association of Nigeria (TOGAN) accused MDAs such as the Federal Ministry of Finance, Nigerian Customs Services and NAFDAC of frustrating the implementation of the Policy by allowing indiscriminate importation of tomato pastes in violation of the Policy guidelines. The operators also complained of loss of investment on the part of the growers and the forced shutdown of processing companies that were set up to take advantage of the policy[25].

There was a positive development in early 2020. SON presented the result of the work to develop/revise national standards for the industry. The standards developed include a Code of Practices for Planting, Harvesting, Processing, Transportation and Storage; as well as the revision of the Standard for Tomato Fruit[26].

The Federal Ministry of Agriculture and Rural Development, however, has a range of interventions for the sector which it terms "promotion and development of value chain for the sector". It continues to budget and spend various sums of money for the crop but without a clear-cut policy in operation, it is difficult to tell what exact activities/intervention model is in operation as regards supporting the Tomato industry in Nigeria.

***Recommendations***

The government needs to be clear on its intention for the tomatoes industry. Businesses require predictability to make investment decisions. TOGAN and other industry stakeholders should work to extract the government's commitment to the tomatoes policy. This would involve measures to guarantee that companies that invest in the value chain would be protected against changes in government policy.

### b. *Leather*

***Overview***

The Agriculture Promotion Policy (Green Alternative) does not recognise the leather industry as one for priority support. However, the Federal Ministry of Science and Technology recently developed a national policy for the industry.

The National Leather and Leather Products Policy[27] was launched in 2018 by the Federal Ministry of Science and Technology with active contributions from the Ministry of Agriculture and Rural Development and remain the only policy/major intervention for the leather industry in Nigeria. The policy implementation, though yet to kick-off, will be managed by the Nigerian Institute of Leather and Science Technology (NILEST).

The policy addresses key issues such as research and development, governance, standards, marketing and compliance, fiscal measures, and other key items for consideration in the bid to drive development in the sector, however, as is often the case with policy documents produced with support and push of development organisations, the policy's implementation appears to not be a major concern for the Ministry.

Before the Policy, two laws relate to the leather industry: one is the Hides and Skins Act of 1942, Cap. H3 LFN 2004 (see analysis in Section of the Report) and a regional law, Northern Nigeria Hides and Skins (Export duty) Act – 1962. These laws are not only obsolete; there is also no sign that they are still being implemented.

***Key issues***

At present, beyond the establishment of several institutes both at the Federal Ministry of Agriculture and Rural Development and the Federal Ministry of Science and Technology, there is not any structured operational intervention for the sector. In 2018, the Federal Ministry of Science and Technology unveiled a plan to support the leather industry cluster in Abia state but not much was heard of the initiatives to date. The bulk of the activities in the sector appears to be driven by the Science and Technology Ministry, though there are several institutes under the supervision of the Ministry of Agriculture and Rural Development involved in the process.

Industry associations representing the interest of stakeholders in the industry include Joint Association of Leather Value Chain Sokoto State (JALVCSS), Leather and Allied Products Manufacturers Association of Nigeria (LAPAN), Leather Product Manufacturers Association of Abia State (LEPMAAS), and Association of Leather and Allied Industrialists of Nigeria (ALAIN).

***Recommendations***

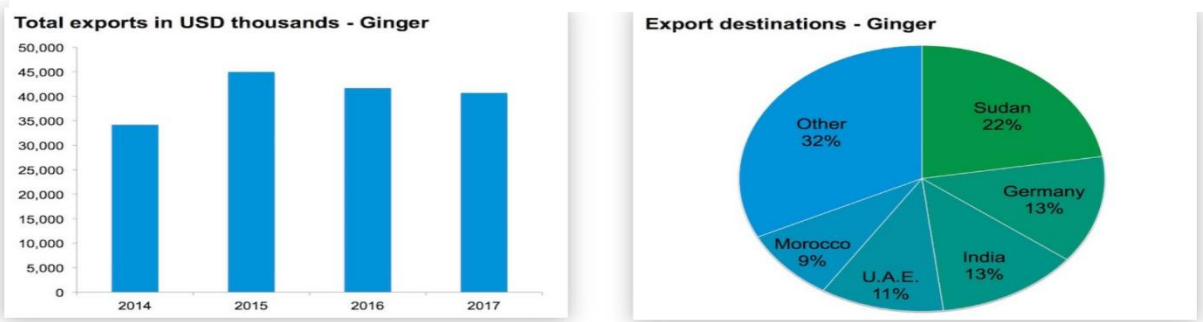
For the National Leather and Leather Products Policy to achieve its objectives, it requires independent tracking and perioding evaluation. The best way to achieve this is to build the capacity of the industry association on policy tracking and advocacy.

## c. *Ginger*

***Overview***

Ginger has become one of Nigeria's major agricultural exports in the past few years. Nigeria produces about 523,000 tons of ginger annually, making up about 16% of total global production. Nigeria exports over 90% of ginger produced, making up 3.5% of the global export market and is reputed to be the 6th largest exporter globally[28]. Exports of Nigerian ginger grew by 5.6% per year from 2014, reaching about USD45m in export value in 2015 and dropping slightly to about USD42.5m in 2017. Main export destinations are diverse and include African, Middle Eastern and European markets[29]. Ginger production is concentrated in the Northern part of the country, particularly the Southern part of Kaduna State. Nigerian ginger is reputed to be one of the best globally because of its high-quality essential oils, mainly gingerol and oleoresin[30].

*Figure 3:* Nigeria's ginger export value and destination 2014-2017




*Source: Nigerian Export Promotion Council (NEPC)*

A report by the NEPC in 2017 identified the various challenges facing the ginger value chain as follows: lack of organised market information system; inadequate warehouses for large buyers to store their stock; lack of cleaning and drying centres in the ginger producing areas; sun-drying ginger next to highways which affect the quality; production records not available which affects planning; inadequate extension services to farmers; lack of value addition; inadequate training for the farmers on new farming techniques; high cost of transportation; and ginger processing done manually due to lack of technology[31].

***Key issues***

Nigeria does not have any specific policy on ginger. Ginger has been recognised as one of the crops with export potential in the Agriculture Promotion Policy (APP). Curiously, this appears in the Executive Summary of the APP without any further mention of ginger in the

entire document. Unlike some other crops like cotton and sugar, there is no special intervention fund for ginger cultivation or processing.

It is important to mention that despite the absence of any specific policy targeted at developing the ginger value chains, there are a few research programmes in public research institutions targeted at the value chain. These include efforts by the National Roots Crop Research Institute (NRCRI) in Umudike[32], the Federal Institute for Industrial Research Oshodi, (FIIRO); the Institute for Agricultural Research, Ahmadu Bello University, Zaria. The research in NRCRI Umudike has yielded some results such as the adaptability of ginger to the rainforest agroecology of Nigeria, the development and fabrication of ginger splitting machines. The Raw Materials Research and Development Council also has a programme tagged "Development of Ginger Value Chain and Utilization in Industries", whose aim is to develop high-quality ginger for use as raw material in industries[33]. There are also development partners and private sector actors undertaking value chain development programmes on the crop. There are two industry associations identified in the ginger value chain: the National Ginger Association of Nigeria (NGAN) and the Ginger Growers and Marketers Association (GGMA)[34].

The lack of attention to the development of the ginger value chain, despite its export potential, can be explained in terms of the motivation for prioritisation of crops/sectors to support. Ginger does not fit into the category of products that qualify for import substitution measures because it does not have a strong import competition, and it is not a local staple. Another factor could be that the crop does not have large lobby groups given that 90% of the production is carried out by smallholder farmers. The case of ginger and other export produce like sesamum and cashew nuts raise a fundamental question about Nigeria's trade policy: should the country prioritise and support the production of crops where it has the highest export potentials or just crops where it has a strong import competition? The answer to this question, as highlighted in Section 2.2., is centred on economics, politics and ideology.

***Recommendation***

The Government needs to pay more attention to the development of ginger for utilisation in domestic industries and its high export potential. The industry associations need to be supported to act as effective lobby groups for the development of the value chain. This would include lobbying for a specific government policy or programme aimed at addressing the various challenges facing the development of the value chain.

### d. *Cotton, Textile and Garments*

***Overview***

The cotton, textile, and garments (CTG) industry is among those that have enjoyed considerable support by successive administrations in Nigeria. The subsisting policy in the industry is the National Cotton, Textile and Garment Enterprise Policy (NCTGEP) launched by the Federal Ministry of Industry Trade and Investment (FMITI) in 2015. The Policy which was designed to operate as part of the NIRP, was aimed at pursuing import substitution in the value chain. Over the years, Nigeria has become a major importer of readymade clothing and textiles with a current import value put at about USD4bn per annum by the Governor of the Central Bank of Nigeria (CBN)[35]. Between the 1970s and the 1980s, Nigeria is reputed as having Africa's largest textile industry. More than 180 textile mills were employing over 450,000 people, in addition to some 600,000 local cotton farmers across the country. It was

the largest employer after the public sector, comprising over 25 per cent of the manufacturing workforce.

The CBN reports that most of the factories have all stopped operations, leaving only 25 textile factories that are operating below 20 per cent of their production capacities, and employing less than 20,000 people. The causes for this decline in the CTG industry in Nigeria has been attributed to a "lack of vision on the part of those managing the economy at some point in time"[36]. Experts from the Textile Researchers Association of Nigeria (TRAN) identified the challenges facing the industry as poor energy supply, infrastructural decay, and flooding of the Nigerian markets with cheap, smuggled imported textiles[37].

The NCTGEP, therefore, developed strategies and incentives towards the revitalisation of the industry. Some of the strategies include the establishment of Integrated Textiles and Garments Parks (ITGPs), considering nearness to raw materials, markets, availability of infrastructure and geographical advantages. These parks, host between 30-40 textile and garment plants. Each would be private sector-driven or operate on a Public-Private Partnership basis. As a cluster/industrial area, the parks would be serviced with common infrastructural amenities available for all companies in the park in addition to reduced energy cost for an initial period of 3 years.

Investors are to receive the following incentives:

- Removal of tax on imported equipment and inputs: All investors who invest in the textile sector from 2015-2019 will be able to import inputs such as plant and machinery, spares, dyes, chemical and packaging materials duty and VAT free for 2 years.
- Application of industry-wide tax holidays: All major textile manufacturers will benefit from a three-year tax holiday i.e., 2015 till 2017.
- Investors who invest a minimum of NGN2bn in a cotton, textile and garment industry and employ a minimum of 500 direct Nigerian staff can import fabrics equivalent to 50% of their output from their Nigerian manufacturing operations levy free for a 5-year period after which they will have to commence the local manufacture of the imported fabrics.
- All military and para-military agencies, as well as government schools, are to compulsorily purchase only made in Nigeria textiles and garments for their uniforms once the necessary standards are met.

Some of the targets of the NCTGEP include:

- Projected savings of $2 billion in foreign exchange through import substitution.
- Increase in the level of direct employment in the sector from the then 24,000 workers to 50,000 workers by the end of 2015 and to 100,000 workers by 2017.
- Increase in seed cotton production in the short-term from 200,000 metric tonnes to 500,000 metric tonnes by the end of 2015
- Increase in indirect employment from the current level of 650,000 people to 1 million people by 2015, and 1.3 million people by 2017.
- Export earnings are also expected to increase to at least $3bn annually or 0.5 per cent of the global share of international trade in textiles and garments in five years.
- FDI into the Nigerian textiles and garment sector will increase to as high as N255bn cumulatively over five years.

***Key issues***

The first challenge the NCTGEP encountered was that the Minister who championed it left office shortly after the NCTGEP was approved as a result of the change in administration in 2015. The Policy seemed to have lost steam under the subsequent Minister until 2019 when the CBN Governor assumed the role of championing the Policy. Some of the initiatives of the CBN on the Policy include:

- CBN announced in March 2019 that importers of textiles would no longer be allowed to source forex from the official window. The implication was that importers of textile could only source forex from the slightly more expensive parallel market.
- Enforcement of the sourcing of all uniformed services and theatre wears in hospitals and medical facilities from local textile mills.
- Support to cotton farmers in terms of distribution of inputs and single-digit interest rates under the Anchor Borrowers Programme. As of late 2019, about NGN50bn had been disbursed to the cotton and ginning components.
- Disbursement of loans to any textile company with an existing facility in the books of BOI under the CTG scheme (emphasis will be on facilities that are indicating weakness arising from the tenor structure as well as facing cash flow difficulties).
- Facilitation of long-term contracts (5 years or more) with the textile and garment factories to produce uniforms for armed forces and uniform services using local fabrics and textile materials.

It is interesting to note that this is not the first time the Government is attempting to support the CTG industry. The most recent attempt was the N100 billion Cotton, Textile and Garment Revival Fund introduced in 2010. The fund was domiciled in the Bank of Industry (BOI), and it aimed to turn around the fortunes of the textile industry. Many of the companies stayed away from the loan because of the harsh business environment marked by the influx of imports from Asian countries as well as infrastructure-related challenges. Most of those who accessed the fund could not repay[38]. Experts point out that despite the initiatives of the CBN, the NCTGEP has failed to meet its targets. They still cite the resolution of the harsh business environment issues as key to the revival of the industry.

Meanwhile, there is disagreement among the players in the different segments of the value chain as to the usefulness of the CBN restrictions on the import of textiles. While the Cotton, Textile and Garment (CTG) Association and the National Cotton Association of Nigeria (NACOTAN) supported the policy, those in the garment manufacturing segment hold the view that the restriction would affect the cost of fabrics, which is the critical input into their production process. Some say that the kind of fabrics they use are not produced by the local textile mills and given that some of them are already exporting their finished products, they also deserve recognition and support.

The Lagos Chamber of Commerce and Industry (LCCI) did not agree with the forex restriction, pointing out that the restriction would impact negatively on other actors in the value chain such as the fledgling fashion industry, and textile trading. The LCCI noted that the restriction would have a grave implication on over 500,000 jobs provided by the industry. It is said that the NGN5tn worth industry was one of the fastest-growing in the economy and has created opportunities for many young Nigerians to express their creativity and innovation.[39] Again, the LCC harped on the importance of addressing the business environment issues that inhibit the competitiveness of the CTG industry such as power supply.

***Recommendations***

Going forward, it is important to evaluate the implementation of the NCTGEP to assess the extent to which the gains have been achieved as well as draw lessons from its failures and successes. It would be good to understand, for example, why the Integrated Textiles and Garments Parks (ITGPs) have not sprung up all over the country and whether, indeed, the government is still interested in pursuing this initiative. Even though the restriction on forex may eventually become redundant when the CBN succeeds in unifying the exchange rates as it is attempting to do now, it is still important to disaggregate the interest of the various players in the different segments of the value chain. Any intervention in the sector should consider the interest of the emerging fashion/garments industry which is delivering tangible benefits to the economy. In this respect, there is a need to strengthen the capacity of the players in the fashion/garment industry to be able to advocate for policies and interventions that would cater to their interests.

### e. *Rice*

***Overview***

Rice is another political crop in Nigeria, being one of the most consumed food staples in Nigeria, one which has had a significant toll on Nigeria's foreign exchange. Successive administrations have continued to launch interventions for the crop, the most recent being the Anchors Borrowers Programme (ABP). There are also restrictions on imports.

The ABP is managed by the Nigeria Incentive-Based Risk Sharing System for Agricultural Lending (NIRSAL) and backed with debenture funding from the Central Bank of Nigeria and other financial institutions. It remains the largest intervention for the food crop in Nigeria. The ABP model seeks to support farmers with a mix of inputs and funds with which they can enhance their productivity and is operational across several states in Nigeria.

Between 2017 and 2018, the Federal Ministry of Agriculture and Rural Development budgeted a total of N4, 099,320,902 for a range of interventions tagged "Promotion and Development of Value Chain for Rice". The Agriculture Promotion Policy, though due for a review, lists the food crop as one of its priority crops that would benefit from interventions aimed at improved research and development, value chain development and promotion, improved access to inputs, etc. However, beyond the interventions of the ABP, not much is known about the nature of the interventions undertaken by FMARD.

The Value Chain Development Programme (VCDP) is another intervention for the crop recorded in the country. VCDP is a six-year development initiative of the Federal Government of Nigeria (FGN) and International Fund for Agricultural Development (IFAD) programme that is improving cassava and rice value chains for small farmers in the six states of Anambra, Benue, Ebonyi, Niger, Ogun and Taraba while also addressing the constraints along the value chains. VCDP is well anchored in the Nigerian government's vision for agricultural transformation through a commodity value chain approach, with emphasis on enhancing productivity and access to markets for rice and cassava smallholder farmers.

***Key issues***

Meanwhile, the smuggling of rice through the land borders has been a threat to Nigeria's quest for self-sufficiency in rice production. In August 2019, the Federal Government closed her various land borders through which rice floods the country. Many stakeholders have attested to the astronomical growth in the number of rice farmers and local production of the commodity

in the country over the past few years. The Rice Farmers Association of Nigeria (RIFAN) stated in an interview that they have seen a rise in the number of companies, corporate and individuals that are setting up mills, integrated mills, and even small mills in the various areas. However, it is uncertain when the government intends to open the land borders as it affects the trade relationship between Nigeria and its neighbours.

***Recommendations***

Serious consultations need to happen between Nigeria and her neighbours to find a lasting solution to the menace of smuggling because the borders will not be closed forever. It is important to consider the implications of the border closure on legitimate intra-regional trade and transit goods. Nigeria's obligations under the ETLS and the soon to be operationalised AfCFTA means that Nigeria needs to adopt a more nuanced strategy towards managing illegal trade through its land borders.

### f. *Wheat*

***Overview***

Following the oil shock of 2015/2016, wheat farming is presently experiencing renewed interest from policymakers who see the crop as one of those that Nigeria has the potential to be self-sufficient in, thereby conserving foreign exchange. This has led to the design of several interventions for the crop. At the moment, there is no specific policy document on wheat but there are a few interventions such as the 15% levy added to the 5% import duty, as well as the provision of support to the farmers under the ABP.

In 1987, the importation of wheat was banned and the Accelerated Wheat Production Program (AWPP) was implemented to encourage local production. Farmers were provided inputs and necessary equipment at subsidised rates. Nigeria's wheat production rose from 50,000MT to 450,000MT within three years of the program. However, the program failed due to Nigerian wheat millers, who were reluctant to patronise locally produced wheat. The importation ban was lifted in 1990 and the program ended abruptly. This led to an 87% fall in production to 60,000MT in 1991. Farmers switched to the production of other crops such as rice, maize, and vegetables.

***Key issues***

In a bid to revive the crop's fortunes, FMARD rolled out a few interventions for wheat between 2017 and 2018 totalling N5, 215,425,584 and described them as interventions for promoting and developing the value chain for the crop in Nigeria. These range of interventions are without explainers on the specific nature and context of the interventions, neither are there documents in the public space detailing what the interventions entailed and the expected outcomes for the interventions.

The Anchor Borrowers Programme (ABP) is also actively supporting farmers involved in the production of wheat. This intervention by ABP, like other related interventions, seeks to provide farmers with a mix of inputs and funds with which they are expected to enhance their productivity and support food security campaigns.

The Federal Government and the African Development Bank recently launched the Technologies for African Agricultural Transformation (TAAT) compact programme for Nigeria's wheat value chain. TAAT is an integral part of the Feed Africa Strategy and a three-year (2018-

2020) programme to be implemented in seven selected African countries-Nigeria, Sudan, Ethiopia, Tanzania, Kenya, Mali, and Zimbabwe. The programme is designed to scale up wheat technologies and deploy best practices that would ensure farmers increase yields from the current 3.0t/ha to 5-6 t/ha.

***Recommendations***

Nigeria barely produces 5% of its total wheat consumption. It is uncertain whether the current interventions, just like the past ones, can lift the profile of the crop given the major challenge which is climate. Maybe, Nigeria should rather pursue more vigorously the policy of wheat substitution with cassava and sorghum flour.

### g. *Sugar*

***Overview***

Sugar is among the priority crops of the APP and was considered an industrial crop by the Agriculture Transformation Agenda (ATA) before it. The federal government established the National Sugar Development Council (NSDC) in 1993 as the country's preeminent sugar regulator, basically to guide the development of sugar estates and the organisation of the sugar cane out-growers scheme to enhance the local production of sugar.

In January 2013, President Goodluck Jonathan introduced the Nigeria Sugar Master Plan (NSMP) to be driven by 3 of the biggest conglomerates- Dangote Sugar Plc, BUA Sugar Ltd and Golden Sugar Company Ltd. They were charged with implementing the NSMP to achieve self-sufficiency in sugar production and save foreign exchange on the importation of sugar and ethanol. Despite this joint race to produce enough sugar in Nigeria, data from NSDC suggest that local production has stagnated since 2015. This can be attributed to the lack of continuity of the program implementation by the succeeding administration.

***Key issues***

Nigeria continues to employ trade-restrictive measures, including high tariffs, forex control, levies and import bans and other measures in ways of incentives to protect and boost local production. Nigeria's current domestic supply has not kept pace with the rising demand despite the incentives offered by the federal government to boost local production. The federal government offers zero import duty on machinery and spare parts for local sugar manufacturing firms as an incentive to boost domestic raw sugar production. Nigeria's sugar production is estimated to have remained at 80,000 tons on a year-on-year basis. This implies that the federal government policies on sugar have not resulted in increased production. The NSMP of backward integration programs for sugar production remains significantly challenged by weak infrastructure, poor policy formulation/implementation, limited funding, and insecurity.

***Recommendations***

The development of domestic capacity in sugar production requires a long-term approach hinged on policy consistency.

### h. *Palm Oil*

***Overview***

The Federal Ministry of Agriculture and Rural Development has led interventions for the palm oil industry in Nigeria over the past decade, budgeting a total of N2, 009, 833, 787 for a range

of interventions between 2017 and 2018 described as Promotion and Development of Value Chain for the Crop in Nigeria. The Central Bank of Nigeria early in 2019, announced a planned roll-out of an intervention fund totalling 30bn for the sector, the intervention is designed to support both large scale and small-scale producers of palm oil in Nigeria.

Interventions in the sector/ industry are presently driven by both the Central Bank and the Federal Ministry of Agriculture and Rural Development While the CBN focuses more on access to finance for key actors in the sector, FMARD focuses on developing and promoting the crop's value chain.

***Key issues***

Nigeria was once a global leader in the export of oil palm. The advent of the crude oil economy relegated oil palm and similar cash crops to the background. Other countries like Malaysia and Indonesia dominate the global export market. Past attempts to revive the oil palm value chain suffered policy inconsistency. Also, most of the stock of oil palm trees in Nigeria are aged and past their prime yield.

***Recommendations***

The development of the palm oil value chain would require years of consistent implementation of the right policies. Experience has shown that government policies on the value chain, like most others, have not been consistent. It would also require the replacement of the old trees with improved and early maturing varieties as well as proper funding of research and development.

### i. *Cassava*

***Overview***

Similar to the case of tomatoes, cassava has remained a major political crop in Nigeria, with successive administrations making statements indicative of the intention to drive the sustainable development of the cassava value chain. What however has remained missing, is the sustenance of a deliberate approach/intervention to developing the sector.

The APP lists the crop as one of its priority crops. In line with the listing, FMARD budgeted a total of N2, 734,050,946 between 2017 and 2018 for several interventions termed Promotion and Development of Value Chain for Cassava in Nigeria. These interventions are not linked to a structured policy for the food crop and have no details in the public space.

The Nigerian government, with support from the United Nations Industrial Development Organisation (UNIDO), launched the Cassava Master Plan policy document it termed a Strategic Action Plan for the Development of the Nigerian Cassava Industry in March 2006. This has remained the most remarkable intervention for the food crop in Nigeria. The Policy was to be implemented by the Presidential Initiative on Cassava. The Policy dwelt more on value chain development, the global market trend, processing technology and a systematic approach to developing the Nigerian cassava industry.

***Key issues***

Sadly, implementation of the cassava policy has been noticeably slow, if not abandoned. The bulk of the major intervention for the crop in Nigeria is driven by the International Institute for

Tropical Agriculture (IITA) which has the crop as one of its mandate crops and has actively supported the Nigerian government in developing the food crop in Nigeria.

The Value Chain Development Programme (VCDP) is another intervention for the cassava recorded in the country. VCDP is a six-year development initiative of the Federal Government of Nigeria (FGN) and International Fund for Agricultural Development (IFAD) programme that is improving cassava and rice value chains for small farmers in the six states of Anambra, Benue, Ebonyi, Niger, Ogun and Taraba while also addressing the constraints along the value chains. VCDP is well anchored on the Nigerian government's vision for agricultural transformation through a commodity value chain approach, with emphasis on enhancing productivity and access to markets for rice and cassava smallholder farmers.

Cassava value chain players still complain of the inability of the government to fully implement the requirement of a minimum of 10% cassava flour to be blended with the wheat flour for baking. More advocacy is needed in ensuring the gradual ramp-up of high-quality cassava flour (HQCF) content in baking flour in Nigeria, especially given that research has proven the viability of the idea[40].

***Recommendations***

The government of Nigeria could achieve a better result by pursuing the substitution of wheat flour with cassava flour for baking. Besides, cassava has various other derivatives that are useful for industrial application. More attention needs to be paid to the development of the cassava value chain from the perspective of research, processing, and industrial application. Nigeria could easily become the leading global exporter of cassava derivatives.

# CHAPTER 3

## 3. REVIEW OF SELECT LAWS AND REGULATIONS AFFECTING MSMEs COMPETITIVENESS IN NIGERIA.

As applicable to any other aspect of human life, several laws and regulations apply directly or indirectly to the conduct of MSMEs in Nigeria. The objective of this section is to examine some of these laws thematically, addressing issues from starting a business to the supply of the products of the business to the market.

### 3.1. Company Registration and Operations

The major federal law applicable to starting/registering a business is the Companies and Allied Matters Act, Cap C15 Laws of the Federation LFN 2004.

#### *Companies and Allied Matters Act, Cap C15 LFN 2004 (CAMA)*

***Overview***

The 2016 Comprehensive Review of the Industrial, Legislative and Associated Instruments Affecting Businesses in Nigeria ("Comprehensive Report") carried out by a team of consultants on behalf of the immediate past Senate of the National Assembly was commissioned in response to Nigeria's low ranking in the 2016 World Bank Doing Business Report. The Comprehensive Report listed CAMA among the high priority laws which should be amended to improve the business regulatory environment for MSMEs.

***Key issues***

The Comprehensive Report recommended that the minimum share capital requirement and a minimum number of two directors and two shareholders for private companies be done away with. It also recommended a flat fee structure for incorporation costs and stamp duties. The Enabling Business Environment Secretariat commissioned a review of CAMA, and a Bill was presented to the last National Assembly[41]. This Bill made several amendments to bring the Act up to date with modern realities. Amendments relevant to starting a business included a provision to replace the requirement for a minimum of two shareholders with a provision for a single shareholder company. The Bill, though laudable currently has no force of law and does not assist MSMEs in business or start-ups. In March 2020, the Bill was passed again by the two chambers of the National Assembly, but it has not been signed by the President as of July 7, 2020.

Although between the publication of the Comprehensive Report and now, Nigeria has moved up to occupy the 146th position out of 190 countries in the 2019 World Bank Doing Business Report, there is still a need for CAMA to undergo certain amendments to create a better enabling business environment.

Notable changes made by the Companies Registry include introducing online registration procedures and doing away with the compulsory need for the services of lawyers or accountants during the registration process. Unfortunately, the process is not as seamless as envisaged and non-lawyers still resort to the services of lawyers. In some cases, after a failed attempt to register themselves. Further, hard copies of forms still need to be submitted physically at the Companies Registry for certificates to be retrieved. This takes away from the anticipated online experience.

More reforms are being introduced such as the announcement that effective 19 August 2019, company registrations can be completed online, and certificates printed from the website. There is however much need for user education to avoid delays in online company registrations.

The procedure for starting a business begins with reserving a business/company name. Technical related problems often delay this process and create uncertainties for new businesses. After registration, persons wishing to make changes to the company information at the Registry sometimes encounter difficulties as queries are raised over slight misnomers. The staff of the Registry thus need further training on assisting the public to cut out delays in administrative issues.

***Recommendations***

The Companies and Allied matters Act (Repeal and Re-enactment) Bill 2019 addressed the key issues raised by stakeholders over the years. The Bill has been passed by the National Assembly but is awaiting assent by the President.

### 3.2. Access to Land (Ownership and transfer of interest in land)

According to the World Bank (2019), “secure property rights and efficient land registration institutions are a cornerstone of any modern economy. They give confidence to individuals and businesses to invest in land, allow private companies to borrow – using land as collateral – to expand job opportunities, and enable governments to collect property taxes, which are necessary to finance the provision of infrastructure and services to citizens”.

Land tenure and title administration system is commonly cited as a major challenge impeding the development of MSMEs in Nigeria. The effect of this challenge is the availability of land for agriculture and other economic activities; the capacity of MSMEs to borrow money, using land as collateral; the chances of women participating in economic activities such as agriculture; etc.

*Figure 4:* Navigating Land Transactions in Nigeria

| | |
|---|---|
| Land ownership | • The Land Use Act of 1978 converted all land to State Land. Nigerians and foreigners can obtain leases from a State for a maximum of 99 years for the use of land<br>• State Governors are responsible for the management of this land on behalf of the people. Land can therefore not be owned privately. The Governor's consent is needed for the assignment of title to use, occupy and improve property with a statutory certificate. |
| Assignment and transfer of title | • Sale of real estate does not involve actual selling and purchasing. There is only the transfer of rights from one person to another. The seller assigns the rights to use and occupy the land to the buyer<br>• After the transaction, the buyer applies for a new certificate under his or her name. |
| Consent fee | • One peculiarity about buying property in Nigeria, particularly in Lagos, is the Consent Fee that means no land can be 'sold' without the Governor's consent<br>• The logic is that the State government is the owner of the land, meaning that any change in ownership or assignment, in the case of a lease, should have the consent of the Governor. |
| Capital gains tax (CGT) | • CGT is levied at 10% of the difference between the sale price and the original acquisition price. This is assessed by the Ministry of Finance but is rarely enforced. |
| Confirmation of title | • The buyer's lawyer checks the title and other documents presented by the seller/assigner before continuing with the transaction<br>• Several restrictions and conditions come with a title, meaning buyers must ensure they are aware of them all. |
| Expropriation risk | • Purchasing property in Nigeria is not without risks. The Land Use Act of 1978 allows the government to take over land under the State´s right to eminent domain (that is, the right to take private property and convert it into public use)<br>• The compensation scheme covers only 'unexhausted improvements' to the land but not the land itself. The value is also fixed to a government rate which was set in the year the law was created. |

*Source, NIPC: Nigeria Investment Guide*

The principal legislation dealing with land tenure and title administration in Nigeria is the Land Use Act, Cap C5 LFN 2004.

### *Land Use Act, Cap L5 LFN 2004*

***Overview***

The Land Use Act was first enacted as a Decree under the Military administration of General Olusegun Obasanjo in 1978. Upon the drafting of a new constitution as part of the transition to democracy, the Land Use Act was not only retained but incorporated into the 1979 Constitution as an existing "legislation law". This provision is retained under Section 315 of the 1999 Constitution. While the idea behind preserving "existing laws" in a transitional arrangement cannot be assailed, Section 315 goes further in Subsection 5 to elevate the Land Use Act and three other laws to the level of the Constitution and states expressly that these laws "…shall not be altered or repealed except under the provisions of section 9 (2) of this Constitution". That is, the Land Use Act requires the regular procedure of constitutional amendment for any changes to be made to it. This means that the Land Use Act cannot be easily amended to respond to the emerging needs of the modern economy.

In terms of content, the Land Use Act vests all the land in a State on the Governor of the State "…who would hold such land in trust for the people and would henceforth be responsible for allocation of land in all urban areas to individuals resident in the state and to organisations for residential, agriculture, commercial and other purposes while similar powers will with respect to non-urban areas are conferred on Local Governments" (Long Title of the Act).

***Key issues***

The major challenges posed by the Land Use Act arise from the content of the Act as well as the administration of titles, including documentation and transfer of title. The challenges arising from the content of the Act include the following

- Limitation of land tenure to a leasehold for 99 years as opposed to a freehold.
- The requirement for the governor's consent for the transfer of title, including by mortgage (Section 22).

The challenges arising from the title administration, documentation and transfer include:

- Inefficient processes at the various state land registries.
- Poor record-keeping, leading to difficulty in verifying legal titles.
- Poor coverage of properly titled lands makes it difficult to use these lands as security for loans.
- The high cost of consummating property transactions because of multiple charges.
- Delay in obtaining the governor's consent for transfer and mortgage as well as for obtaining a certificate of occupancy.

***Recommendations***

There does not seem to be a political will or even political consensus to change the constitutional status of the Land Use Act or even to amend it. Modernisation of the land administration system in the states would eliminate most of the process and cost issues. This modernisation should involve a wholesale cadastral mapping and titling of lands for ease of verification of titles. This would have the effect of unlocking the capital value of the lands, including those in the rural areas.

### 3.3. Access to quality seeds

The availability of quality and affordable seeds is critical to the competitiveness of the agricultural sector. Modern agricultural practice demands a shift from the traditional system of seed preservation and re-planting to a system where seeds are specially produced for planting. The challenge lies in creating a robust realisable formal seed system in the country. The regulatory framework for seed production and supply is contained in the newly passed National Agricultural Seeds Council Act, 2019**.** Other relevant laws are the National Crop Varieties and Livestock Breeds (Registration, Etc.) Act Cap N27 LFN 2004; the National Biosafety Management Agency Act, 2015; and the National Biosafety (Implementation, Etc.) Regulations, 2017.

## a. *National Agricultural Seeds Council Act, 2019*

***Overview***

The new Act signed into law in June 2019 has the potential to impact the access to quality seeds by farmers in the following ways:

- The National Agricultural Seed Council (NASC) is with the new Act, given the powers to roll out a new set of sanctions for seed producers offering substandard/adulterated seeds to farmers.
- NASC is with the new Act, given broad powers to draw up new regulations for the seed industry in Nigeria to address the challenges of production of low-quality seeds.
- The regulatory powers of the Council have been given legal backing. This includes powers to regulate agricultural seed sourcing and distribution both by the public and private sectors.
- NASC is at present, legally empowered to use the powers of appropriate fine/sanctions on seed producers in default of the seeds production protocol developed by the council.
- The powers to regulate agricultural seed sourcing and distribution within the country is now legally provided for in the new Act of the council. NASC is now empowered to vet seed suppliers to state governments/FCT and those to be engaged by the Federal Ministry of Agriculture.
- NASC has been bestowed with broad powers to investigate and prosecute seed producers found to be adulterating or causing to be sold/ distributed to farmers, substandard/ fake seeds.

Improved timely access to quality agricultural seeds for smallholder farmers will be improved upon should the council begin immediate enforcement of standards as previously developed by it and meting out appropriate sanctions to defaulting seed producers. The council would also need to partner with farmers' associations to receive timely feedback on the rate of germination of seeds sold/distributed to them across the states/FCT.

***Key issues***

In as much as this Act is a welcome development in the seed industry in Nigeria, it contains overlaps with potentials for conflict with existing legislations and agencies. These include:

- The Act has not referred to existing legislation of crop variety registration (*National Crop Varieties and Livestock Breeds (Registration, Etc.) Act* but has gone ahead to vest similar mandate on the National Agricultural Seed Council as those vested in the Registrar of the National Crop Varieties and Livestock Breeds Register under the older law. Section 4(3), the Act provides that the Crop Variety Registration and Release Committee is responsible for making recommendations to the Council on matters relating to the registration and release of any given crop variety; among other issues relating to registration and release of crop variety. Part V of the Act (Sections 10 to 14) titled "Seed Registration and Release" sets out the rules for release of seed varieties and establishes the "Seed Registration and Release Subcommittee". The subcommittee will advise the Council on matters relating to the release and registration of varieties, among other related matters (Section 12). Section 38 provides that the "Council shall participate in the registration of new plant varieties as provided for in the

national legislation". This provision casts a further veil of uncertainty over the mandate of the Council with respect to plant/crop variety registration, for failing to specify which national legislation it is referencing or whether it envisages the coming into force of such legislation at a future date. In any case, the issue of crop variety registration is covered by the National Crop Varieties and Livestock Breeds (Registration, Etc.) Act as we shall explore it subsequently.

- Section 13(5) of the Act states that genetically modified varieties are considered (for registration and release) if they conform to the bio-safety regulation of Nigeria and the Cartagena Protocol. The Act has not said how this conformity would be assessed. However, the National Biosafety Management Agency (NBMA) established under the National Biosafety Management Agency Act, 2015 is charged with responsibility for the regulation of modern biotechnology, including the development and release of genetically modified organisms (GMO) in Nigeria. NBMA is actively involved in the regulation of field trials and the release of GMO seeds in Nigeria. There is nothing in the Seed Council Act to show whether the proof of "conformity with national bio-safety regulation" means approval from NBMA. Furthermore, the reference to the "Cartagena Protocol" seems to suggest that the test of acceptance is not limited to conformity with national bio-safety regulations of Nigeria but also conformity with the Cartagena Protocol. Again, this raises the question of assessment/proof of this conformity. Does it also suppose that the existing national legislation (which is not mentioned in the Act anyway) does not conform to the Cartagena Protocol?
- The Seed Council Act seeks to regulate the import and export of agricultural seeds. Sections 36 and 37 prohibits the import and export of seeds for planting except with written authority from the Council. Approval for the import and export of plants is ordinarily within the remit of the National Agricultural Quarantine Service (NAQS). What the Seed Council Act has done is to provide that the Council shall submit a copy of the application to NAQS, without saying what NAQS is expected to do or how the two agencies would exercise their mandates in this regard.

***Recommendations***

While this Act is a welcome development in the seed market in Nigeria, it is obvious that it has not considered the existing multiple agencies operating in the field. The Act seems to have conflated between crop varieties registration and release on the one hand and seed certification on the other hand.

Three recommendations for intervention are:

i. The Council should approach the other relevant regulators in the field and enter a multi-agency memorandum of understanding (MoU) detailing the procedure for the exercise of overlapping powers by each of the agencies.
ii. The Council needs to develop appropriate regulations and guidelines on licensing of seed companies, certification of seeds, enforcement measures, etc.
iii. It is also important to support the Council and other stakeholders in understanding the content of the Act.

### b. *National Crop Varieties and Livestock Breeds (Registration, Etc.) Act Cap N27 LFN 2004*

***Overview***

This Act was enacted in 1987 “to introduce a register for the certification, registration and release of national crop varieties and livestock breeds and other matters related thereto”. The Act establishes the National Register for Crop Varieties and Livestock Breeds to record in a “permanent form” the names of old and new crop varieties and livestock breeds in Nigeria (Section 1). The Act provides for the appointment of a Registrar who “shall be the head of the Genetic Resources Unit in the Federal Ministry of Science and Technology or his representative”. Other grades of assistants shall each be appointed from the staff of the Federal Ministry of Science and Technology (Section 2).

Section 5 of the Act establishes the National Crop Varieties and Livestock Breeds Registration and Release Committee which shall operate “under the Genetic Resources Unit of the Department of Agricultural Science of the Federal Ministry of Science and Technology and shall be charged with the general responsibility for crop varieties and livestock breed validation, registration, naming and release in Nigeria”. The functions of the Committee include to:

i. receive and process applications for the registration, naming and release of old and new crop varieties and livestock breeds.
ii. officially release the list of superior crop varieties and livestock breeds recommended by any sub-committee established for that purpose.
iii. approve names for new crop varieties and breeds of livestock certified as new or distinct such that uniformity in nomenclature is ensured.
iv. render essential information on the released varieties of crops and livestock breeds, their outstanding characteristics, areas of adaptation and the location of foundation of seeds or stocks of the released varieties and breeds.
v. monitor the effect of the importation of exotic plants and animals on local species in Nigeria.
vi. ensure the maintenance of the National Register for all crop varieties and livestock breeds.
vii. interact with national organisations and institutions concerned with large-scale seed and livestock production.
viii. organise, in collaboration with the Genetic Resources Unit of the Federal Ministry of Science and Technology, the maintenance and storage of posterity and germplasm of the registered crop varieties and livestock breeds.
ix. ensure that the importation of any crop variety or livestock breed into Nigeria which are required for general distribution and use shall pass through the process required by this Act in the same way as seeds of new crop varieties and livestock breeds from breeders; and
x. formulate policies on matters concerning the validation, registration, naming and release of new crop varieties and livestock breeds which are either introduced or developed in Nigeria.

The Act also makes it an offence to name or release a crop variety or livestock breed in Nigeria without the written authority of the Registrar to do so (Section 8(1) (b)). Today, the National Crop Varieties and Livestock Breeds Registration Committee is domiciled in the National

Centre for Genetic Resources and Biotechnology (NACGRAB), a parastatal in the Federal Ministry of Science and Technology, while the Registrar is the Coordinator of NACGRAB. The Committee is actively engaged in the registration and release of new crop varieties. The Committee/NACGRAB published the *Guidelines for Registration and Release of New Crop Varieties in Nigeria, 2016* to present clarity on the process of crop variety registration and release.

***Key issues***

The major challenge with this Act is that it falls short of providing for the protection of plant varieties and animal breeder's rights as required under modern laws on plant varieties registration, and in consonance with Nigeria's obligation under the WTO-TRIPS Agreement[42].

***Recommendations***

The observations made under the Seed Council Act are valid here. For example, there is a need for the streamlining of the regulatory mandate of different agencies in the seeds market. This would be easily achieved by the use of inter or multi-agency cooperation agreements or MoUs. The development of a modern formal seed regulatory framework would not be complete without the streamlining and alignment of the various laws and agency mandates, as well as the anticipation of the enactment of a law to protect intellectual property in plant varieties and animal breeds. It is recommended that stakeholders work together to ensure a streamlining and alignment of the mandates of the agencies dealing with seed regulation.

### 3.4. Access to finance

Most analyses of the challenges inhibiting the competitiveness of MSMEs in Nigeria have often identified access to finance as the number one problem. This is reflected in the SMEDAN MSME Survey. MSMEs financing comes from various sources which may be characterised as formal and informal sources. The informal sources of financing MSMEs include personal savings and soft loans from friends and relatives, while formal sources include concessional loans from government institutions/development finance institutions and commercial bank loans. Accessing the formal sources of funding is where the problem lies for most MSMEs due mostly to the requirement for fixed assets as security for loans. Improving access to finance for MSMEs require innovative action across different fronts to ensure that MSMEs meet the required security for accessing formal funding windows. One of the initiatives aimed at promoting MSMEs access to finance in Nigeria in the recent past is the enactment of a suite of laws in this respect. Indeed, these initiatives have served to improve Nigeria's ranking in the World Bank Doing Business Report in "getting credit". The major legislations in this respect include Secured Transaction in Moveable Assets Act, 2017 and the Credit Reporting Act, 2017. Two other pieces of proposed legislation in this respect are yet to be enacted into law and will be examined in Section 5.0. These are the Warehouse Receipt Bill and the Factoring Bill.

#### a. *Secured Transaction in Moveable Assets Act, 2017*

***Overview***

To stimulate economic growth, the Secured Transaction in Movable Assets Act (STMA), also referred to as the Collateral Registry Act establishes a regime that guarantees access to affordable credit secured by movable properties of MSMEs in Nigeria. As its main objectives, the STMA Act was enacted in 2017 to enhance financial inclusion in Nigeria; stimulate

responsible lending to Micro, Small and Medium Enterprises; facilitate access to credit secured with movable assets; facilitate perfection of security interests in movable assets; facilitate the realisation of security interests in movable assets. The Act also establishes the National Collateral Registry and provides for its operation.

The law applies to all security interests in movable assets created by an agreement that secures payment or the performance of an obligation; it applies to a person who is a creditor, borrower, or grantor. Every public registry established by an Act of the National Assembly to co-ordinate or oversee transactions in movable assets in Nigeria shall be operated in a manner that creates an automated interface between such a registry and the National Collateral Registry, with a purpose to ensuring and guaranteeing that the registry is made accessible through, by and from the National Collateral Registry.

There are no issues with this Act. The Act operates in favour of MSMEs.

***Recommendations***

There is a need to increase awareness of this law. There is also a need for enhanced integration between the National Collateral Registry hosted by the CBN and other asset registers in Nigeria such as the CAC Register of Charges, Motor Vehicle Registries across the states, etc

### b. *Credit Reporting Act, 2017*

***Overview***

The Credit Reporting Act (CRA) set the standard and conditions for the establishment, regulation and operation of the Credit Bureaux and aims to facilitate and promote access to credit and enhance risk management in credit transactions; promote access to accurate, fair and reliable credit information and to protect the privacy of such information; promote fair and competitive credit reporting system; promote responsibility in the credit market by encouraging responsible borrowing and to facilitate credible information sharing.

Essentially, the CRA provides a platform for credit information providers to provide the credit bureaux with information relating to a person's creditworthiness, credit standing or capacity, and to the history and profile of such person about credit, assets and any financial obligations. In creating a database of credit information, the Credit Bureaux will receive and collate credit information from the Credit Reporting Management System, public registries and key players all known as 'Credit Information Providers'. The list of entities that qualify as credit information providers and which are required to furnish credit bureaux with the credit information of their customers includes banks and other financial institutions, leasing companies, insurance companies, cooperative societies and institutions that offer credit to MSMEs. The CRA restricts the purposes for which credit information may be accessed; the permissible purposes include considering an application for credit or considering a person's qualification to act as a guarantor for the grant of credit; reviewing, renewing, restructuring, or monitoring of existing credit facilities; and assessing the creditworthiness of a prospective borrower.

This Act has no issues. It operates in favour of MSMEs.

***Recommendations***

However, whilst it is the expectation that the Credit Reporting Act will facilitate and promote ease of access to credit, the provisions of the Act are lofty considering the intended objective, and compliance costs may hinder the achievement of these objectives. Secondly, the Credit Bureaux is only as valuable as its database of information, hence the obligation imposed upon it by the Act to regularly update its database with regards to the nature of the information stored to achieve efficiency.

Other relevant policies/guidelines in respect of access to finance include:

### c. *Central Bank of Nigeria Microfinance Policy Framework for Nigeria (Revised April 2011).*

Following the challenges and shortcomings observed from the application of the initial policy formulated in December 2005, the CBN revised the existing Policy in April 2011 to reflect lessons from experience, global economic trends and the envisioned future for small business development in Nigeria. The objective of the revised Policy is to enhance the access of micro-entrepreneurs and low-income households to financial services required to expand and modernize their operations to contribute to rapid economic growth. The rationale behind this policy was that no inclusive growth can be achieved without improving access of this segment of the economic strata to factors of production, especially financial services. The envisioned microfinance sub-sector under the policy regime recognises the existence of informal institutions and provides for their mainstreaming into the national financial system. The policy also seeks to harmonise operating standards and provide a strategic platform for the evolution of microfinance institutions particularly, MFBs. The policy, therefore, provides for a framework that would enhance the provision of diversified microfinance services on a sustainable basis for the economically active poor and low-income households. It also provides appropriate machinery for tracking the activities of development partners and other non-bank service providers in the microfinance sub-sector of the Nigerian economy.

The Microfinance policy provides a platform to achieve the following specific objectives:

i. Provision of timely, diversified, affordable and dependable financial services to the economically active poor.

ii. Creation of employment opportunities and increase in the productivity and household income of the active poor in the country, thereby enhancing their standard of living.

iii. Promotion of synergy and mainstreaming of the informal Microfinance sub-sector into the formal financial system.

iv. Enhancement of service delivery to micro, small and medium enterprises (MSMEs).

v. Mobilisation of savings for intermediation and rural transformation.

vi. Promotion of linkage programmes between Microfinance Institutions (MFIs), Deposit Money Banks (DMBs), Development Finance Institutions (DFIs) and specialized funding institutions.

vii. Provision of dependable avenues for the administration of the microcredit programmes of government and high net worth individuals on a non-recourse basis; and

viii. Promotion of a platform for microfinance service providers to network, exchange views and share experiences.

Based on the objectives, the target/scope of the microfinance policy includes:

i. To increase access to financial services of the economically active poor by 10 per cent annually.
ii. To increase the share of microcredit as a percentage of total credit to the economy from 0.9 per cent in 2005 to at least 20 per cent in 2020, and the share of microcredit as a percentage of GDP from 0.2 per cent in 2005 to at least 5 per cent in 2020.
iii. To ensure the participation of all states and the FCT as well as at least two-thirds of all the Local Government Areas (LGAs) in microfinance activities by 2015; and
iv. To eliminate gender disparity by ensuring that women's access to financial services increases by 15 percent annually, that is 5 per cent above the stipulated minimum of 10 per cent across the board.

There are no identified problems with the Policy Framework, rather the challenge lies with effective implementation.

### d. *Central Bank of Nigeria Regulatory and Supervisory Guidelines for Microfinance Banks (MFBs) in Nigeria (Revised 2012).*

This Guideline works hand in hand with the Policy Framework: it regulates the technical operations of Microfinance Banks and is aimed at promoting innovative, rapid, and balanced growth of the financial sector, leveraging on global best practices in microfinance banking. The Guidelines recognise the distinctiveness of micro clients, the ownership structure of the institutions, their credit methodology, and the central position of savings/deposits in the intermediation process. It also adopts measures to ensure the soundness and safety of the institutions, and the protection of depositors, especially low-income clients. Also, it defines institution types, loan documentation, portfolio classification, loan loss provision and write-offs, amongst others, and provides the basis for the establishment, operations, regulation and supervision of microfinance banks, and institutions.

***Key issues***

The only identified problematic aspect of the guidelines is contained in 22.0 which provides a 'Minimum Operational Template for Microfinance Banks in Nigeria'. With regards to credit administration, it states that the lending methodology of MFBs should be based on a group solidarity model, or individual loan but with group responsibility. This would mean that individual business operators may be unable to access credit facilities from the MFBs except they form some sort of cluster of between 5 and 30 persons.

***Recommendations***

It is recommended that the CBN should amend the Guidelines to reflect the demands of present times which should not require people to form clusters to access loans, irrespective of how micro the enterprise is. The MFBs have been capitalised enough to enable them to grant credit facilities to individual applicants who are business owners. The original principle behind microfinance lending was the group lending technique that was used to address the issues of adverse selection and moral hazard; it was based on the social network

characteristics of the borrowers—homogeneity and social cohesiveness—generally operating microenterprises run from their homes. Today, microfinance activities have evolved and MSMEs are more heterogeneous and autonomous, and the business location is usually quite separate from the home. Therefore, the group co-guarantor method on which microfinance was based is generally not appropriate for lending to MSMEs anymore.

### e. *Micro, Small and Medium Enterprises Development Fund (MSMEDF) Guidelines (Revised August 2014).*

***Overview***

In line with the revised Microfinance Policy Framework 2011 (Section 6.10) the Central Bank of Nigeria established the Micro, Small and Medium Enterprises Development Fund to channel low-interest funds to the MSME sub-sector of the Nigerian economy through Performing Financial Institutions (PFIs) to enhance access by MSMEs to financial services; increase productivity and output of micro-enterprises; increase employment and create wealth; and engender inclusive growth. The Fund prescribes a 50:50 ratio for on-lending to micro-enterprises and SMEs, respectively. The Fund comprises a commercial and development component. The commercial component is made up of 90 per cent of the Fund which shall be disbursed in the form of Wholesale Funding to the PFIs in the ratio of 60:40 to women and others; while the development component is made up of the remaining 10 per cent of the Fund, which is earmarked for developmental programmes in the categories of 9.75% as grant and 0.25% for operational expenses at take-off.

The Guidelines provide for the administration of the Fund by the Central Bank of Nigeria through PFIs which include all Microfinance Banks, Non-Governmental Organisations-Microfinance Institutions (NGO-MFIs), Financial Cooperatives, Finance Companies, Development Finance Institutions (Bank of Agriculture & Bank of Industries) and Deposit Money Banks. The Bank of Industries (BoI) and Deposit Money Banks (DMBs) participate under the SMEs window only.

***Key issues***

The procedure for administering the fund from CBN to the MSMEs (borrowers) seems rather cumbersome as the CBN must approve every single application for a loan that comes through all the PFIs before disbursing funds in the grant of the application. This method will inevitably constitute a bottleneck in the process of accessing finance by MSMEs.

***Recommendations***

It is recommended that the CBN should enable high profile PFIs like Deposit Money Banks and Development Financial Institutions access to the wholesale funding and to process loan applications themselves; nevertheless, they must remain under the supervision of the CBN.

### f. *The Bank of Industry (BOI).*

***Overview***

The Bank of Industry is the oldest, largest, and most successful Development Financial Institution (DFI) operating in Nigeria. BOI was founded in 2001 as the successor to the defunct Nigerian Industrial Development Bank (NIDB) Limited, which was incorporated in 1964. BOI functions as a parastatal under the Federal Ministry of Industry, Trade and Investment tasked with providing financial assistance for the establishment of a large, medium, and small projects

as well as the expansion, diversification, rehabilitation and modernisation of existing enterprises. The BOI operates in compliance with the provisions of the Companies and Allied Matters Act: it is owned by the Ministry of Finance Incorporated (MOFI) Nigeria (94.80%), the Central Bank of Nigeria (CBN) (5.19%) and private shareholders (0.01%).

The Micro, Small and Medium Enterprises Development Fund (MSMEDF) Guidelines regulate funding to the BOI which operates as a PFI in the SME window only.

### g. *Nigerian Export-Import Bank (NEXIM).*

***Overview***

The Nigerian Export-Import Bank (NEXIM) was established by Act 38 of 1991 (Cap N106 LFN 2004) as an Export Credit Agency (ECA) with a share capital of N50, 000,000,000 (Fifty Billion Naira) held equally by the Federal Ministry of Finance Incorporated and the Central Bank of Nigeria; the Bank replaced the Nigerian Export Credit Guarantee & Insurance Corporation earlier set up under Act 15 of 1988. The establishing Act provides for the objects of the bank as follows:

- Provision of export credit guarantee and export credit insurance facilities to its clients.
- Provision of credit in local currency to its clients in support of exports.
- Establishment and management of funds connected with exports.
- Maintenance of a foreign exchange revolving fund for lending to exporters who need to import foreign inputs to facilitate export production.
- Provision of domestic credit insurance where such a facility is likely to assist exports.
- Maintenance of a trade information system in support of the export business.

The Bank provides short- and medium-term loans to Nigerian exporters. It also provides short term guarantees for loans granted by Nigerian banks to exporters as well as credit insurance against political and commercial risks in the event of non-payment by foreign buyers.

### h. *Development Bank of Nigeria PLC (DBN).*

The Development Bank of Nigeria (DBN), a Development Financial Institution (DFI) was conceived by the Federal Government of Nigeria (FGN) in collaboration with global development partners[43] to address the major financing challenges facing Micro, Small and Medium Scale Enterprises (MSMEs) in Nigeria. The objective of this DFI is to alleviate financing constraints faced by MSMEs and small corporates in Nigeria through the provision of financing and partial credit guarantees to eligible financial intermediaries on a market-conforming and fully financially sustainable basis.

The Bank commenced its lending activities in 2017 by making funds available to PFIs for on-lending to MSMEs. Currently, the bank boasts of having impacted 70,000 MSMEs with N70, 000,000,000 (Seventy Billion Naira) through Twenty-Two (22) PFIs since 2017, working with a mandate to:

i. Increase access to finance for MSMEs by lending to Participating Financial Institutions (Commercial Banks, Micro Finance Banks and other DFIs) for on-lending to this segment.
ii. Provide Capacity Building for Participating Financial Institutions to enhance their ability and willingness to lend to the MSME segment.
iii. Provide Partial Credit Guarantees for Participating Financial Institutions to encourage them to take the risk of lending to MSMEs.

### i. *The Nigerian Incentive-Based Risk Sharing System for Agricultural Lending (NIRSAL Plc).*

NIRSAL[44] is a US$500million non-bank financial institution wholly owned by the Central Bank of Nigeria (CBN) created to redefine, dimension, measure, re-price, and share agribusiness-related credit risks in Nigeria.

It was established in 2013 by collaboration between the Federal Ministry of Agriculture and Rural Development and the Nigerian Bankers' Committee. NIRSAL's mandate is to stimulate the flow of affordable finance and investments into the agricultural sector by de-risking the agribusiness finance value chain, fixing agricultural value chains, building long-term capacity, and institutionalising incentives for agricultural lending through its five (5) strategic pillars viz. – Risk Sharing, Insurance, Technical Assistance, Incentives and Rating.

NIRSAL specialises in Value Chain Fixing, Agribusiness Project Development, Finance Facilitation and Agricultural Risk Management. The CBN has appropriated the US$500million investment into NIRSAL through its five strategic pillars thus:

i. Risk-sharing Facility (USD 300 million): This component would address banks' perception of high-risks in the sector by sharing losses on agricultural loans.
ii. Insurance Facility (USD 30 million): The facility's primary goal is to expand insurance products for agricultural lending from the current coverage to new products, such as weather index insurance, new variants of pest and disease insurance etc.
iii. Technical Assistance Facility (USD 60 million): This would equip banks to lend sustainably to agriculture, producers to borrow and use loans more effectively and increase the output of better-quality agricultural products.
iv. Holistic Bank Rating Mechanism (USD 10 million): This mechanism rates banks based on two factors- the effectiveness of their agricultural lending and the social impact and makes them available for the public.
v. Bank Incentives Mechanism (USD 100 million): This mechanism offers winning banks in pillar four, additional incentives to build their long-term capabilities to lend to agriculture. It will be in terms of cash awards.

NIRSAL has begun work with six pilot crop value chains comprising tomatoes, cotton, maize, soya beans, rice, and cassava.

### j. *Commercial Agriculture Credit Scheme (CACS).*

Apart from NIRSAL, there is the Commercial Agriculture Credit Scheme (CACS) regulated by the CBN through its Guidelines (2018)[45]. The CACS was developed by the CBN in collaboration with the Federal Government of Nigeria through the Federal Ministry of

Agriculture and Rural Development (FMARD) to promote commercial agricultural enterprises in Nigeria.

The Fund channelled to this scheme will complement other special initiatives of the Central Bank of Nigeria in providing concessionary funding for agriculture such as the Agricultural Credit Guarantee Scheme (ACGS) which is mostly for small scale farmers, Interest Draw-back scheme, Agricultural Credit Support Scheme, etc. The scheme is financed from the proceeds of the N200billion three (3) year bond raised by the Debt Management Office (DMO). The fund is made available to the participating bank(s) [including Non-Interest Financial Institutions (NIFIs)] to finance commercial agricultural enterprises.

The objectives of the scheme are:

i. To fast-track development of the agricultural sector of the Nigerian economy by providing credit facilities to commercial agricultural enterprises at a single-digit interest rate.
ii. Enhance national food security by increasing food supply and effecting lower agricultural produce and product prices, thereby promoting low food inflation.
iii. Reduce the cost of credit in agricultural production to enable farmers to exploit the potentials of the sector; and
iv. Increase output, generate employment, diversify the revenue base, increase foreign exchange earnings, and provide input for the industrial sector on a sustainable basis.

The target agricultural commodities and value chains of the scheme include – production (cash crops, food crops, livestock, poultry, and aquaculture); processing; storage; farm input supplies; and marketing. Key stakeholders of the scheme are the FMARD, CBN, Debt Management Office (DMO), participating banks, Nigerian Agricultural Insurance Corporation (NAIC), and borrowers.

It is recommended that the proposed Commercial Agriculture Credit Scheme Bill, 2015 be passed into law to provide for more efficient regulation of the scheme by a Project Management Team.

### 3.5. Quality Standards Regulations and Institutions (Quality Infrastructure)

The end of every production process is consumption, and the market is the medium through which products reach the consumers. In reaching the market, an MSME needs to meet certain technical regulations aimed at ensuring that its products met the necessary quality standards and safety of the products it brings to the market. Some legislations establish the framework for formulating, testing and certifying compliance with these standards. Often, challenges may arise as to the utility of the substantive regulations established by and under these legislations, or the efficiency of the procedures for testing and certifying compliance. In either of these cases, the result would be an increased burden of compliance on the MSMEs or even total denial of access to the market. In the context of exports, weak quality infrastructure keeps locking out Nigerian MSMEs from export opportunities, thereby reducing their profitability. Some of the recent cases include the EU ban on beans imported from Nigeria as intolerable levels of residue chemical; the rejection of Nigerian yam, shea butter, hibiscus leave (zobo), etc in different export markets.

This part of the report reviews the various laws and regulations relating to quality infrastructure with the view to recommending changes in content and implementation procedure. The quality

infrastructure in Nigeria is marked by weak institutional capacity among the public and private sector actors, overlapping mandates and poor coordination among the various elements within the quality infrastructure (Draft National Quality Policy 2015). Perhaps, the most pronounced example of overlapping mandate and poor coordination is between the Standard Organisation of Nigeria (SON) and the National Agency for Food and Drug Administration and Control (NAFDAC).

### a. *The Standards Organisation of Nigeria Act, 2015*

***Overview***

SON is the apex standards body charged with the responsibility to designate, establish, and approve standards in respect of metrology, materials, commodities, structures, and processes for the certification of products in commerce and industry throughout Nigeria. It also has the mandate to provide the necessary measures for quality control of raw materials and products in conformity with the standard specifications as well as the powers to investigate production premises and raw materials used for production (Sections 4 and 5, SON Act, 2015). SON maintains domestic conformity assessment programmes such as the Manufacturers Conformity Assessment Programme (MANCAP) and offshore (pre-shipment) conformity assessment programme known as SONCAP. SON is working with its stakeholders and operators in the various agriculture value chain to establish national standards based on international best practices. The SON uses pre-shipment inspection agents to certify goods bound for the Nigerian market at the country of origin. The possession of a valid SONCAP certificate issued by one of the pre-shipment inspection agents is mandatory for the clearance of cargo at the Nigerian ports.

***Key issues***

There is contention whether the SON Act of 2015 grants SON the power to operate within the ports of entry. The Presidential Enabling Business Environment Council (PEBEC) had included SON among the list of agencies barred from the ports in 2016. This was in line with the government's ease of doing business agenda, and specifically to ease the process of clearing cargoes at the ports. The new system required that SON would only be called in by the Customs to examine cargoes on a needs basis. But SON has been pushing back against this directive with the claim that their absence at the ports has led to the influx of fake and substandard products into Nigeria[46]. Section 30(10(1)(b) of the SON Act grants SON the right of "…access at reasonable times to any premises including all Nigerian seaports, airports and land borders where a commercial or industrial undertaking is being carried on…". SON interprets this provision as granting it the powers to maintain a permanent presence in the ports. However, it seems this provision only confer on the SON the power to enter into the ports and other listed premises for enforcement. Indeed, the provision comes under the heading "Offences" and listed other powers of the agency when enforcing the positions of the Act.

It remains arguable whether the presence of SON at the ports is more beneficial to the country than having the agency operate on the present arrangement. It could be argued that the SONCAP mechanism is enough to check the influx of fake and substandard goods. This is more so because the importer is required to activate the certificate on the SON portal to validate its authenticity before the goods are cleared. This raises the question of whether the pre-shipment agents issue SONCAP certificates without checking for quality conformity.

***Recommendations***

There is a need to strengthen the capability of SON to curb the presence of fake and substandard products in Nigerian markets. This would require increased reliance on digital technology as well as improved surveillance and enforcement capacity. In relating with the local MSMEs, the major issue with the operations of the SON is in the exercise of its overlapping mandates with NAFDAC. This issue is addressed under the comments for NAFDAC.

### b. *National Agency for Foods and Drugs Administration and Control Act Cap N1, LFN 2004*

***Overview***

The *National Agency for Food and Drug Administration and Control Act* established the National Agency for Food and Drug Administration and Control (NAFDAC) with the functions, among others, to regulate and control the importation, exportation, manufacture, advertisement, distribution, sale and use of food, drugs, cosmetics, medical devices, bottled water and chemicals. NAFDAC also has the mandate to designate, establish and approve quality specifications as well as to conduct appropriate tests and ensure compliance with standard specifications designated and approved by the Council for the effective control of the quality of the products under its regulatory purview. It can also undertake appropriate investigations into the production premises and raw materials used in the production of these products (Section 5 and 6 of the NAFDAC Act).

***Key issues***

It is pertinent to note that NAFDAC has, by regulation[47], created a number of offences and imposed what they call "investigation charges". It is submitted that this is an aberration. The NAFDAC Act does not recognise “investigation charges”. Section 25 of the Act only makes it an offence for any person to contravene any regulation made under the Act. The penalty for such contravention is as stipulated in the regulation. It is admitted that the penalties under the Act are outdated (e.g., NGN100,000 for an offence by a person corporate and NGN50,000 for most other offences, in addition to or in alternative to terms of imprisonment), the proper thing would be for the legislature to amend the Act to provide for appropriate penalties.

The major difference between the SON mandate and that of NAFDAC is in the scope of products covered. However, the SON Act which is a more recent reiteration of the old SON Act has not made any express exemption in respect of products under the remit of NAFDAC. The implication is that SON can undertake the task of prescribing and enforcing standards in respect of the products covered by NAFDAC. Indeed, there have been complaints of officials of the two agencies conducting parallel inspection and tests on the same production facility or process for certification.

***Recommendations***

The solution to this overlap would be to amend the SON Act to expressly exclude the products for which NAFDAC has a mandate, or to issue an Executive Directive or Order mandating both agencies to enter into an interagency MoU on the modalities for the exercise of their overlapping powers in such a way as to reduce the cost of compliance suffered by the MSMEs under their regulatory powers. Stakeholders should work together to advocate for and facilitate the process of developing this MoU between the two agencies.

Beyond the often-mentioned issue of the overlap between NAFDAC and SON, there are a few other overlapping legislation that specifically regulate the quality, health and safety standards of agro-commodities, especially those meant for the export market. These legislations include:

### c. *Hides and Skins Act Cap H3 LFN 2004*

***Overview***

The Hides and Skins Act was enacted in 1942 and last amended in 1958. The Act seeks to enable regulations to be made for maintaining and improving the quality of Nigerian hides and skins and for regulating and controlling the trade and export of hides and skins. The Act granted the President the power to make regulations for the following purposes:

- Regulating the method of flaying, drying and preparation of hides and skins and providing for the appointment and payment of instructors.
- regulating and restricting the purchase, removal and transport of hides and skins and providing for the degree of dryness they shall possess.
- providing for the inspection and marking of hides and skins and generally controlling the preparation and sale of hides and skins.
- generally, for maintaining or improving the quality of Nigerian hides and skins.
- providing for the licensing of premises used for the buying and preparation of hides and skins for export.
- prescribing the authorities who may grant, withhold, or cancel licences, the obligation with regard to the production of licences, the form of licence and the fees payable in respect of them.
- providing for the appointment of inspectors and other officers to carry out the provisions of any regulations under this Act and investing them with powers necessary for the due execution of their duties and for giving effect to the purposes of this Act.
- prescribing the fees to be paid for any matter or thing done under any regulation under this Act.
- prescribing the area or areas to which all or any regulations shall apply.

There are two subsidiary legislations (regulations) made under the Act. They are: *Hides and Skins Regulations 1942* (as amended last in 1954) and *Hides and Skins (Authorised Persons) Notice 1952*. The Hides and Skins Regulation of 1942 set out a detailed method of drying and flaying hides and skin as well as the licensing of places for the buying of and the preparation of hides and skins for export. The Bill further provides that "[N]o premises or enclosure shall be licensed unless there is an inspection by a medical officer for health or a person nominated by him, and an officer of the Veterinary Department of the State have both first certified that the premises or enclosure, in respect of which an application for a licence is made, are suitable for the buying of and the preparation of hides and skins for export".

The Hides and Skins (Authorised Persons) Notice 1952 provides a list of officials who shall be the authorised persons for the purposes of the Hides and Skins Regulations. These include Assistant Directors of Veterinary Services; Senior Veterinary Officers; Veterinary Officers; Assistant Veterinary Officers; Principal hides Improvement Officer; Hides and Skins Instructors; Hides Improvement Officers; and Veterinary Assistants.

***Key issues***

It is not clear to what extent this law is being complied with or enforced. But the law is certainly obsolete. For example, the technique for flaying and drying were the techniques available at the time the Act was enacted. There is a need for a more technical evaluation of the Act from the perspective of leather industry value chain specialists to determine whether the methods, practices and procedures set out in the Act are still relevant to the modern leather value chain.

***Recommendations***

There is a need for more technical analysis of the provisions of this Act with the view to drafting a Bill for an Act to repeal and re-enact this Act. The process of drafting and passing the new Bill should be open to inputs from relevant stakeholders.

### d. *Produce (Enforcement of Export Standards) Act Cap P32LFN 2004.*

***Overview***

This legislation enacted in 1959 is described as "[A]n Act to make provision for the inspection of commodities for export from Nigeria at ports of shipment, for the purpose of enforcement of grades and standards of quality in respect of such commodities…" The law repealed the Produce Inspection Act of 1950 as it relates to Lagos[48] and re-established the Produce Inspection Board previously established under the repealed law. The Board is appointed by the "Minister of Commerce" and its function revolves around advising the Minister on matters relating to produce inspection, including regulations. The overall goal of this legislation is to ensure that export produce is free from pest infestation and is properly graded "according to its quality and purity"[49]. The Act grants the Minister wide-reaching powers in "prohibiting or regulating the export of any produce which has not been so inspected and graded, or which does not conform to standards prescribed in accordance with the Commodity Boards Act or any other law" as well as the general regulation of the practice of inspection and grading. The responsibility of inspection and grading is placed on the "produce officers" who are "officer of the Produce Inspection Service of the Federation of or above the rank of produce officer or pest infestation control officer"[50].

The provisions of this Act apply to some produce listed in the Schedule and these are: Benniseed, Capsicums, Cassava Starch, Cocoa, Copra, Cotton Seed, Cotton Lint, Fruit, Fruit Products (other than oils), Ginger, Groundnuts, Groundnut Cake, Palm Kernels, Palm Oil, Rubber and Soya Beans. The Act also grants the Minister the power to, by order, add or delete from this list[51].

The Act creates offences and penalties with respect to inspection, grading, unauthorised use of seal, obstruction of produce inspection officers in the execution of their jobs, etc. An amendment to the Act, *Produce (Enforcement of Export Standards) Amendment Act, 2016* only reviewed the amount payable as penalties upwards to bring them in line with present realities. Similarly, the *Pre-Shipment Inspection of Exports Act Cap P25 LFN 2004* expressly limited the powers of Produce Inspection Services granted under the *Produce (Enforcement of Export Standards) Act* to cover only: (a) the carrying out of pest control and fumigation at the ports of shipment; and (b) ensuring that the material used for packaging of goods for export are of good quality. The function of inspecting for quality, quantity and price of export commodities is now vested in the Pre-Shipment Inspection Agents appointed by the Central bank under the *Pre-Shipment Inspection of Exports Act.*

**Key issues**

This Act contributes to the multiple layers of quality and standards regulation for export. The provisions belong to a different era from today. For example, it was enacted and operated under the Commodity Board era. The regulation of export quality and standards (including health and safety) are carried out by different agencies, leading to confusion, delay and high cost of processing exports.

***Recommendations***

This Act needs to be repealed and the surviving mandates (inspection for pest control and quality control for packaging materials for export produce) transferred to National Agricultural Quarantine Services (NAQs) or any other relevant agency and SON respectively.

### e. *Pre-Shipment Inspection of Exports Act Cap P25 LFN 2004*

***Overview***

This legislation was enacted in 1996. The Act made all exports from Nigeria (with few exceptions such as personal effects, empty containers, etc) subject to pre-shipment inspection and issuance of "Clean Certificate of Inspection" to the overseas buyer by the Pre-Shipment Inspection Agents (PSIA) appointed by the operations of the Act. The Act further abolished the powers of any government agency with regards to the issuance of a "Clean Certificate of Findings" in respect of any exports from Nigeria[52]. In scope, "all oil and non-oil goods are liable to pre-shipment inspection by an inspecting agent with respect to their quality, quantity and price comparison"[53].

***Key issues***

It has been argued that the rationale for pre-shipment inspection is to check certain abuses in the export process such as under-declaration by exporters (to avoid charges or duties), over-invoicing (transfer pricing) by multinationals to evade local taxes, circumvention of foreign exchange controls, enforcement of export restrictions/prohibitions, etc. The Pre-Shipment Inspection of Exports Act seeks to ensure that the declarations of goods are correct and that the price on the invoice matches the export price of the goods sought to be exported. These checks relate to elements of "quantity" and "price comparison" as mandated by the Act. The third element which is "quality", though important for price comparison, raises the question as to the duplication of the role of the quality institutions[54] in the export process. This is more so since the Act preserves the roles of these institutions (to the extent they do not issue clean certificates of findings/inspection) in respect of pre-shipment inspection of goods for export[55]. More specifically, the mandate of the Produce Inspection Services granted under the *Produce (Enforcement of Export Standards) Act* has been reduced to cover only: (a) the carrying out of pest control and fumigation at the ports of shipment; and (b) ensuring that the material used for packaging of goods for export are of good quality.

Another major feature of this Act is the prohibition of other modes of payment for exports except through letters of credit or other approved international modes of payments made to the domiciliary account of the importing firm in Nigeria.

A major concern about this legislation is in the additional layers of procedure it introduced into the export process. For example, the exporter must give the inspection agent a 10-day notice before the date of inspection. The exporter is also expected to provide the inspection agent "with all necessary facilities to enable the inspecting agent to carry out quality and quantity inspections, price comparison and other processes as may be required in the circumstances";

and to ensure that "all necessary arrangements are made for the handling, presentation, including unpacking and repacking, sampling, shop testing and any other thing required to be done in connection with the inspection of the goods"[56]

Ostensibly, the inspection for quality is also aimed at ensuring that exports meet standards in the export market, thereby reducing the incidence of rejected exports from Nigeria. However,

*Figure 5:* Nigeria's performance in "trading across borders" (Lagos)

Trading across Borders - Lagos

| Indicator | Lagos | Sub-Saharan Africa | OECD high income | Best Regulatory Performance |
|---|---|---|---|---|
| Time to export: Border compliance (hours) | 128 | 97.1 | 12.7 | 1 (19 Economies) |
| Cost to export: Border compliance (USD) | 786 | 603.1 | 136.8 | 0 (19 Economies) |
| Time to export: Documentary compliance (hours) | 74 | 71.9 | 2.3 | 1 (26 Economies) |
| Cost to export: Documentary compliance (USD) | 250 | 172.5 | 33.4 | 0 (20 Economies) |

*Source: World Bank Doing Business Report 2020*

the results have not been particularly stellar as there are still incidences of rejection of Nigeria's exports, which must have passed through the PSIAs. Stakeholders have complained about the onerous documentation process and cost associated with the duplication of the quality inspection role. Commenting on this issue, Mr Lucky Amiwero (the National President of the National Council of Managing Directors of Licensed Customs Agents – NCMDLCA) said that the duplication of product quality (standard) inspection by the four agencies constitutes a serious bottleneck due to lengthy and cumbersome process, procedure and cost. This, he stated, resulted in associated delays and high cost[57].A check on the website of the Nigerian Export Promotion Council (NEPC)[58] shows the listed export requirements to include the quality assurance documents from the relevant government agencies as well as the Clean Certificate of Inspection issued by the PSIA that "ascertains the quality, quantity and price competitiveness of Nigerian exports" and the Certificate of Weight and Quality issued by "independent quality assessors (e.g. SGS, Bureau Veritas)" to ensure "the goods conform to the quality standards and weight as stated in the contract". There is a need to re-examine these multiple layers of quality assurance for goods exported from Nigeria. The undue time and cost associated with multiple inspections are reflected in Nigeria's performance in the "trading across borders" indicator of the World Bank Doing Business Report. In the 2020 Report released in October 2019, Nigeria ranked 179 out of 190 countries. The picture concerning exports is more clearly depicted in the figure below.

While it is acknowledged that the Pre-Shipment Inspection of Exports Act has some merits at the time it was introduced, it must also be acknowledged that the need for the Act in the first place is an admission of the failure of critical government agencies such as the customs and the quality assurance institutions, whose functions the PSIAs have come to undertake or replicate. It is arguable whether the solution to weak institutions is creating more layers of checks as opposed to systemic reform of those institutions.

***Recommendations***

Besides the ongoing effort to deploy a single-window system, there is a need to streamline the roles of the various agencies and agents as well as the procedures, cost, and

documentation requirements for export processing. There is also a need for stricter enforcement of joint inspection by the agencies/agents backed by a Joint Service Level Agreement.

A reform of the PSI regime could involve:

- A clearer definition of the procedure to be followed in the conduct of the inspections by the various agencies/agents, using a joint inspection approach, with stipulated timelines.
- Reduction in the fees payable under the Act by exporting MSMEs who fall below a stipulated turnover threshold to 0.25& (from the present 0.5% flat rate for all exports/exporters) and aligning the fees upwards based on the turnover of the exporting company.
- Adopting a risk-based approach where the role of the PSIAs is such that they are restricted to receiving and endorsing the reports of the relevant government agencies and only conduct occasional checks based on specific risk assessment criteria.

### f. *Pest Control of Produce (Special Powers) Act. Cap P9LFN, 2004*

***Overview***

This legislation was first enacted in 1968 as an "Act to provide for the inspection of produce for pests before export at all sea and airports in Nigeria and other matters ancillary thereto". It grants the power to any person specially authorised by the Minister of "Commerce" to enter buildings and vehicles within the ports or vessels in port, within the port or approaching the ports for the purpose of inspecting the condition of the holds thereof or the produce stored therein. This includes the power to fumigate to eradicate or control pest infestation of produce; and in the exercise of his powers, an inspector may condemn produce if he is of opinion that no other means of control are suitable to the case. The sole purpose of this Act seems to be to extend the powers granted to produce inspection officers under the Produce (Enforcement of Export Standards) Act in respect of entry and inspection of premises for the purpose of pest control. The additional power granted under this Act extends the power to cover buildings and vehicles within the ports or vessels in port, within the port, or approaching the ports as against "buildings" in general as stipulated in the prior law.

***Key issues***

The observations under the *Produce (Enforcement of Export Standards) Act* apply here.

***Recommendations***

This Act needs to be repealed and the provisions accommodated within the mandates NAQS and SON.

### g. *Export Produce (Federal Powers) Act Cap E20 LFN, 2004*

***Overview***

Enacted in 1961, this law has just one substantive section which provides as follows: "Notwithstanding the provisions of any other Act, the Minister for the time being charged with responsibility for external trade may, from time to time, make regulations prescribing grades and standards of quality for any produce intended for export, not being produce for export purchased by the relevant Commodity Board". It granted the Minister the power to prescribe

grades and standards in respect of produce, not under the control of any of the commodity boards established under the Commodity Boards Act. The Act has two regulations prescribing grades and standards for capsicums and rubber, respectively.

It is an addendum to the Produce (Enforcement of Export Standards) Act, hence reference to the Minister here is a reference to "for the time being charged with responsibility for matters relating to external trade", i.e., Minister of Industry, Trade and Investment.

***Key issues***

The issues with this Act are the same as the Produce (Enforcement of Export Standards) Act, which it seeks to strengthen. Moreover, the mandate for setting quality standards is now firmly vested in SON (still under the Minister "with responsibility for matters relating to external trade").

***Recommendations***

This Act needs to be repealed because it no longer serves any purpose.

### h. *Export of Nigerian Produce Act Cap E21 LFN 2004*

***Overview***

This Act was enacted to "…repeal the Nigerian Central Marketing Board Act and to make new provision for the export of Nigerian produce". It essentially granted the Minister charged with responsibility for matters relating to external trade the power to grant, withhold or cancel licenses to purchase produce for export or to export the produce so purchased. This licensing regime replaced the Central Marketing Board regime. However, the government also set up the Commodity Marketing Company Ltd and this Act makes it lawful for the Minister to grant an exclusive license to the Company for the purchase and export of any produce from the Commodity Boards. This includes the power to define the export markets to which the licensee may export. The Act makes it an offence for any person to "export any produce except under and in accordance with the terms of a licence granted by the Minister"[59]

***Key issues***

This Act speaks to the era of controlled commodity export regime under the commodity board/marketing company system. The NEPC Act only requires exporters to register with it without any requirement of a license to purchase produce for export or to export same.

***Recommendations***

This is another Act that needs to be repealed as it no longer serves any purpose.

### i. *Commodity Boards Act Cap C17 LFN 2004*

***Overview***

This Act remains the major relic of the days of centralised purchase and sale of produce under the commodity board system. It was enacted in 1977 to "dissolve the Nigerian Produce Marketing Company Limited and all the States Marketing Boards and in their place set up six new commodity boards to which certain staff and assets of the dissolved company and boards are to be transferred".

The Commodity Boards created under this Act include:

- The Nigerian Cocoa Board[60]
- Nigerian Groundnut Board[61]
- The Nigerian Cotton Board[62]
- The Nigerian Palm Produce Board[63]
- The Nigerian Rubber Board[64]
- The Nigerian Grains Board[65]

***Key issues***

This is another law from the commodity boards era. The commodity boards fixed the price at which they purchased and sold the produce under their control. The commodity boards were scrapped in 1986 under the liberalisation mantra of the Structural Adjustment Programme (SAP). However, Nigeria's statute books are still strewn with the relics of that era as shown in the foregoing statutes reviewed.

***Recommendations***

Like the other laws that underpinned the operations of the commodity boards era, this Act also needs to be repealed.

### j. *Weight and Measures Act Cap W3 LFN 2004*

***Overview***

This Act was enacted in 1975 "to repeal the Weights and Measures Act 1962 and re-enact that Act with additional provisions to facilitate the change-over to the metric system". The Weight and Measures Act was amended by the Weight and Measures (Replacement of Fifth Schedule) Order, 2012 to review the fees contained in the Fifth Schedule of the Act.

The Weight and Measures Act is critical to the operation of MSMEs to the extent that it is the primary legislation on legal metrology in Nigeria. It defines the measurement system and the primary standards of measurement to be used in trade and commerce in Nigeria. The Act prescribes the metric measures and weights lawful for use in trade in Nigeria in general[66] as well as standard metric quantities for pre-packed goods[67].

The Act further creates various offences relating to weight and measures and prescribed punishments for the same. The provisions of the Act are implemented by the Weights and Measures Department of the Federal Ministry of Industry, Trade and Investment. The activities of the department include weighing scale verification certification; pattern approval certificate; issuance of a certificate of competency; waiver not to comply with provisions of weights and measures; exemption from regulation approval[68].

***Key issues***

It is doubtful whether some of the provisions of this law is practicable today. For example, the requirement of verification of measuring instruments used in trade[69]. This requires any person using any measuring instrument for trade to ensure that the instrument has been verified and stamped by the Weights and Measures Department. Indeed, this is a laudable provision but in a predominantly informal economy, there is a need to devise more efficient means of enforcing this and similar provisions. The aim is to ensure that the verification and stamping process is efficient and within the reach of MSMEs.

***Recommendations***

There is no doubt that most businesspeople are not aware of the requirements of this Act hence their operation outside of it. There is a need for a deliberate programme of public enlightenment and re-orientation on the importance of accurate weights and measures. It is also recommended that a stakeholders' consultation be organised to examine the provisions of the Act with the view to review the obsolete provisions and better align the Act to the present realities of trade and commerce in Nigeria.

### k. *Nigerian Agricultural Quarantine Services Act, 2018*

***Overview***

This Act established the Nigerian Agricultural Quarantine Services (NAQS) as a regulatory agency under the Federal Ministry of Agriculture and Rural Development. The Agency was "created for the harmonization of Plants, Veterinary and Aquatic resources (fisheries) Quarantine in Nigeria to promote and regulate sanitary (animal and fisheries health) and phytosanitary (plant health) measures in connection with the import and export of agricultural products to minimize the risk to the agricultural economy, food safety and the environment"[70].

***Key issues***

The Act vests NAQS with far-reaching powers for the control of exotic pests and diseases of plant, animals and aquatic resources and their products. The agency also has as one of its objectives to prevent pesticides or mycotoxin contamination of agricultural commodities. While one of the functions of the agency is to "enforce compliance with laws, guidelines, policies and standards on agricultural quarantine procedure", no reference has been made to existing laws and regulations regarding control of pests and diseases of plant, animal and aquatic resources and their products, and how these existing laws would affect or interact with the mandate of the Agency. For example:

- The *Produce (Enforcement of Export Standards) Act* (as amended by Sections 16 and 17 of the *Pre-Shipment of Exports Inspection Act*) grants the powers to the Produce Inspectorate Service to carry out "pest control and fumigation at the ports of shipment". The same applies to the *Pest Control of Produce (Special Powers) Act* which vest the power of pest and disease control on export goods "at all sea and airports in Nigeria on "any person specially authorised" by "the Minister of Commerce".
- The *Animal Diseases (Control) Act, CAP A17 LFN 2004* (an earlier law) vests the power of animal disease control and quarantine on the "Director" which the Act defines as "the Veterinary Officer who has the overall responsibility of the Federal Livestock Department"[71]. This power is now assumed by the Director in charge of the Department of Veterinary & Pest Control Services (DVPCS), Federal Ministry of Agriculture & Rural Development. A look at the blogsite[72] of the department shows that: "The responsibility to certify animals/animal products for trade purposes is vested on the Chief Veterinary Officer of the country (Director, Veterinary & Pest Control Services); in accordance with the country's Animal Disease Control Act of 1988 and article 5.2.2 of the OIE Terrestrial Animal Health code. An International Veterinary Certificate (Import/export permit) is issued for certified commodities. This is issued by the office of the CVO[73] after due certification of the proposed animals/animal products, biologics and vaccines". The website has a complete "Nigeria Import/Export certification protocols for Animal and Animal products".

- The NAQS Act states that one of the objectives of the Agency is to prevent pesticides or mycotoxin contamination of agricultural commodities. This mandate overlaps with that of NAFDAC in terms of regulation of the use of pesticides, leading to potential conflict. This conflict came to the fore in early 2019 when NAFDAC banned the use of Methyl bromide as an agro-chemical, only for NAQS to issue a counter statement in which it asks farmers to ignore the ban. According to the NAQS, "The public may wish to note that NAFDAC regulates chemicals generally but their specific use in phytosanitary treatment is the statutory responsibility of NAQS as the National Plant Protection Organization (NPPO) for Nigeria under the International Plant Protection Convention (IPPC) guidelines. Only NAQS can make a public pronouncement on the use of Methyl bromide for phytosanitary treatment of agro-produce in Nigeria"[74].

***Recommendations***

The case has been made in the foregoing analysis of laws relating to quality standards, including health and safety standards (SPS), for the consolidation of these laws and their various mandates. This would also mean the repeal of the old laws that speak to a different era in the country's development trajectory. The new system for quality and standards for export and import of produce should revolve around NAQS, SON and possibly the Pre-Shipment Inspection Agents. This system should include a clear demarcation of roles and procedures to ensure quick turn-around time for exporters and importers.

### 3.6. Access to Fair and Efficient Markets

The end of every production process is the sale of the product to the final consumer. Some rules determine the marketing channels (markets) through which a firm can sell its products as well as the accepted practices within those markets. This segment deals with "market rules", examining what rules are in force and their level of effectiveness as well as where existing gaps require new rules.

#### a. *Federal Competition and Consumer Protection Act, 2019*

***Overview***

This is one of the newest laws in Nigeria. This law established the Federal Competition and Consumer Protection Commission (FCCPC) as well as the Federal Competition and Consumer Protection Tribunal (FCCPT). The FCCPA repealed the Consumer Protection Council (CPC) Act and scrapped the CPC, replacing it with the FCCPC.

The objectives of the Act include: (a) promote and maintain competitive markets in the Nigerian economy; (b) promote economic efficiency; (c) protect and promote the interests and welfare of consumers by providing consumers with a wider variety of quality products at competitive prices; (d) prohibit restrictive or unfair business practices which prevent, restrict or distort competition or constitute an abuse of a dominant position of market power in Nigeria; and (e) contribute to the sustainable development of the Nigerian economy[75]. It applies to all undertakings and all commercial activities within or having effect within, Nigeria[76].

The importance of this legislation is that it defines the market rules relating to the acceptable market structure and conduct of businesses in seeking to win or retain patronage in the market. These rules are referred to as competition rules – basically prohibiting anti-competitive agreements or conducts of firms. The FCCPC is a hybrid law in that it does not only regulate competition but also sets out consumer protection rules. As would be seen later in this

analysis, the consumer protection rules set out under the Act has the potential to aggravate the spaghetti bowl of laws and institutions in the quality assurance landscape. Some of the broad areas addressed by the Act include:

- Restrictive Agreements between or among firms which are harmful to competition[77]. These kinds of agreements may include price-fixing; collusive tendering/bid-rigging; market allocation; limiting or controlling production or distribution of goods or services, technical development or investment. With specific exceptions, a business is prohibited from engaging in any of these conducts in the pursuit of market share, exclusive dealing, minimum resale price, collective boycott/refusal to deal, etc. As MSMEs seek new market opportunities, they must not be unfairly blocked off by these kinds of agreements from other businesses – large or small. For example, an MSME seeking access to a distribution network to sell its products may discover that existing distributors have an agreement among themselves not to take on new producers for whatever reason. Or an MSME may realise that the price for critical inputs into its production process such as fertilizer or seeds or even transport/logistics has been fixed by supplying a level below the ordinary market value. In these other cases bordering on anticompetitive agreements, this Act would come to the aid of an MSME.
- Abuse of Dominant Position[78]: a company is said to be in a dominant position in respect of the market for a particular product in a given geographical area if it "…is able to act without taking account of the reaction of its customers, consumers or competitors"; and "…having the power to behave to an appreciable extent independently of its competitors, customers and ultimately consumers". A dominant company is not allowed to use its market power in such a way as to unfairly deny other companies access to the market. This is particularly important to MSMEs as they strive to enter new markets that have been otherwise dominated by big names. Some of the conducts that could amount to an abuse of a dominant position of market power include excessive pricing; refusal to grant access to an essential facility; exclusionary dealings; predatory pricing; etc[79].
- A company that has been declared a dominant player is not allowed to refuse access to an essential facility to another company, where access is critical to competition and could be granted at a commercial value. An essential facility could be a shared facility like a storage facility, distribution facility (pipeline, transmission lines, etc). It is also prohibited from engaging in predatory pricing to gain or sustain market share. This means that the dominant company is not allowed to sell its products below the "market value" if the intent or effect would be the elimination of other competitors in the market.
- Mergers and Acquisitions[80]: this part of the Act addresses the rules that would govern the merger of two or more companies or the direct or indirect acquisition of controlling interest in one company by another. The aim is to ensure that by the consolidation of the business of two or more companies, competition is not eliminated in the market. So, companies that wish to engage in a merger or acquisition would have to apply to the FCCPC for approval of their plan and the FCCPC would consider the impact of such merger or acquisition on competition in the market(s) where the companies operate or would operate post-merger/acquisition. If the result is likely to be the reduction or elimination of competition without commensurate offsetting efficiency gain to the consumer or compelling public interest gain, the merger would be refused or approved with conditions.

- An MSME can find itself where a merger between two or more companies in the value chain or market where it operates would reduce or eliminate competition in the market for a given good or service. This may lead to an increase in price or exclusionary practices by the post-merger entity, thereby jeopardising the business of MSMEs that rely on the good or service as an input. For example, where the merger of two trucking companies would lead to an increase in the cost of transportation; or where a company engaged in farming acquires a seed company supplying the entire market leading to the farm denying seed supply to other farms seeking seed supply. In these and other similar cases, the MSME would be interested to ensure that these kinds of mergers/acquisitions do not happen or where they are allowed, there must be conditions to ensure that competition is not unduly impaired in the market for the products involved.
- Other competition-related issues covered by the Act include investigation of monopoly situations and application of appropriate remedy[81]; and price regulation orders by the President in appropriate cases[82]
- On the consumer protection part of the Act, the provisions define the rights of the consumer[83] and the obligations of suppliers or manufacturers of goods or services with respect to those rights[84].

***Key issues***

Many years after Nigeria abandoned the blanket price control regime, it is curious to note that the FCCPA has introduced another system of price "regulation" in Nigeria[85]. By virtue of Sections 88 of the FCCPA, "For the purpose of regulating and facilitating competition only, the President may, from time to time, by order published in the Federal Gazette, declare that the prices for goods or services specified in the order shall be controlled in accordance with the provisions of this Act". The Act emphasises that this power could only be used for regulating and facilitating competition, consequently, price declaration can only be made in respect of goods or services which are or will be supplied or acquired in a market in which competition is limited or is likely to be lessened; the declaration is made in the interest of users, consumers, or, as the case may be, suppliers; and the declaration is narrowly designed, both in terms of duration and the list of goods and services affected, as is necessary to remedy the effects of the absence of competition in the relevant market[86].

It seems, therefore, that the purpose of price regulation under the FCCPA is that of remedying market failure and restore optimal competition. The Act provides further safeguards against the likely abuse of this power by the President by providing that declaration of price regulation must be predicated on "a report of the Commission assessing the state of competition in the relevant market and providing recommendations on the desirability and likely effects of implementing price regulation or other remedies"[87]. The price regulation order must be for a fixed time and subject to monitoring and reporting by the Commission, either acting on the request of the President or its own accord. There is also a provision for interested persons to present their views on the matter to the Commission[88].

While it is important for the MSMEs to understand how they can use this Act to advance their business interest, it is also important for them to understand the rules so as not to fall foul of the law as they seek to take advantage of new market opportunities or consolidate on their market positions.

On the administration of the Act, there are areas of overlap with the mandate of other regulators/agencies raising the possibility of conflict or duplication of mandates. It is never in the interest of businesses to be regulated by more than one regulator in respect of an issue or process. For example, the consumer protection functions of the FCCPC includes to "regulate and seek ways and means of removing or eliminating from the market, hazardous goods and services, including emission, untested, controversial, emerging or new technologies, products or devices whatsoever…[89]" and "cause all imported goods to be registered for traceability whenever the need arises[90]". Among the powers of the FCCPC is the power "to cause quality tests to be conducted on consumer goods as it deems necessary[91]" and seal up any premises on reasonable suspicion that such premises contain, harbour or are being used to produce or disseminate goods or services that are fake, substandard, hazardous or inimical to consumers' welfare in collaboration with relevant sector regulators[92]".

These are issues within the remits of existing regulators such as NAFDAC and SON. There are other areas of possible overlap such as when it comes to the issue of sectors subject to the regulation of another sector regulator on issues of competition and consumer protection. For example, the telecommunication sector is subject to regulation by the Nigerian Communications Commission (NCC) under the Nigerian Communications Act; the civil aviation market is subject to regulation by the Nigerian Civil Aviation Authority (NCAA) under the Nigerian Civil Aviation Act. The mandate of these and similar regulators cover competition and consumer protection in their sectors.

The FCCPA is a later law compared to the other laws hence it has sought to smoothen the mechanism for the exercise of overlapping/concurrent regulatory powers where they occur between the FCCPC and other regulators or agencies. As a first step, Section 104 of the FCCPA declared the Act as having supremacy above any other law on matters of competition and consumer protection. The Act then goes ahead – in Section 105 – to provide that while the sector regulators or agencies maintain their powers in the areas the Act has also granted the FCCPA powers, these powers would be exercised concurrently between the FCCPC and the regulator/agency but based on an interagency memorandum of understanding (agreement) to be negotiated between the FCCPC and each of those agencies. The Act further requires this agreement to be in place within the first one year of the operations of the Act.

***Recommendations***

Reforming this Act would involve clarifying the functions and powers of the FCCPC under Sections 17 and 18 with respect to consumer protection issues (quality standards, safety and health of consumers). The mandate of the FCCPC should be limited to strategic market intervention to tackle systemic problems that are either too complex for the relevant agency or have been ignored by the relevant agency.

More importantly, the nature of intervention required under this Act is that of sensitisation of the MSMEs on the implication of the Act for their businesses. As the newly established FCCPC continues to ramp up its capacity to implement the Act, it is expected that more enforcement actions would ensue.

### b. *Price Control Act Cap P28 LFN 2004*

***Overview***

This is another one of the “forgotten” and moribund laws in the Nigerian statute books. The Act was made in 1977 to “re-enact the Price Control Act[93], prescribe stiffer penalties and to make better provisions for the implementation of the scheme”[94]. This Act provided for the control of the prices of listed controlled commodities[95] and made it an offence for anyone to sell those products above the controlled price. It also made it an offence for anyone to hoard controlled products. The Act set up a Price Control Board at the federal level and Price Control Committees at the state level. They had the responsibility of enforcing the provisions of the Act and their powers extend to confiscation and disposal of commodities sole in contravention of the Act and sealing of premises where commodities are stored or sold in contravention of the Act. The Board also had the power to add to the list of controlled commodities. Besides, the imposition of fines or terms of imprisonment on offenders, the Court can also issue an order preventing a habitual offender from carrying on business concerning the controlled commodity[96]. It is also the duty of the Minister, acting on the advice of the Board, to approve any agreement between a manufacturer or importer and a wholesaler or retailer whose intent is to set a resale price for a commodity – whether the commodity is subject to price control or not[97]. The order must state the maximum price at which the commodity may be sold, and it is an offence to sell the commodities above that price.

***Key issues***

Nigeria discarded the price control regime and abolished the Boards since the days of SAP in the mid-80s, but the law remains in the statute books. The era of price control was the era of government control of virtually all sectors of the economy but soon fizzled out under the liberalisation mantra of SAP. It can be argued that there are price controls in force in Nigeria over certain commodities such as premium moto spirit, mobile phone calls, etc but these are based on clearly set laws and regulations specific to those sectors. The concept of a blanket price control regime is alien to the principle of a free-market economy which Nigeria is operating today.

***Recommendations***

The Price Control Act should be repealed, especially because the specific industries that require some form of price control are already placed under sector regulators. The analysis has also shown that the price regulation regime under the FCCPA is a more tolerable one to bring or restore competition in the relevant market.

### c. *Investment and Securities Act 2007 (ISA) / Requirements for Registration as Commodities Exchange Operators*

***Overview***

The regulatory framework for commodities exchange in Nigeria is the Investment and Securities Act (ISA) 2007 and the "Requirements for Registration as Commodities Exchange Operators" issued by the Securities and Exchange Commission (SEC) pursuant to the ISA. The ISA mentions "commodity exchanges" in section 13(b) as one of the entities under the regulatory purview of the SEC. However, apart from the Requirements for "Registration as

Commodities Exchange Operators", there is no solid framework to regulate the operation of commodity exchanges under the Act. In recognition of the need to improve the commodity trading market/ecosystem, SEC set up a Technical Committee on Commodities Trading Ecosystem in 2017 with the mandate "to identify challenges of the existing framework/infrastructure and develop a roadmap for a vibrant ecosystem". The Report[98] of the Committee was exposed for stakeholders' comments in the first quarter of 2018.

***Key issues***

With the demise of commodity boards and commodity marketing companies in the mid-1980s, some challenges arose regarding price discovery, produce aggregation and grading, etc. The gap created by the demise of the commodity boards was recently brought to light with the comments of the immediate past Minister for Agriculture and Rural Development, Chief Audu Ogbe, when he announced that he was considering bringing back the commodity boards, sparking off a debate on the subject[99]. The top two arguments favouring the return of the commodity boards revolved around the need to ensure the quality of produce, especially those destined for export markets, and transparency in market/price information. Those against the idea raised issues about the monopolistic powers of commodity boards and the bureaucratic inefficiency that may overtake its running. The debate also recognised the alternative approach presented by a privately run commodity exchange system in addressing the gap left by the commodity boards.

The commodity exchange system plays a vital role in fixing inevitable marketing frictions that clog the commodities markets. The frictions include low price of commodities at the farm gate due to the lack of accurate market information and product aggregation services; poor access to credit by commodity producers (especially farmers) due to the lack of collateral; lack of proper grading and standardisation leading to rejection of commodities; losses occasioned by poor logistics; etc. An efficient commodity trading ecosystem would formalise commodity trading in Nigeria. It would also deepen the financial market by creating new tradable instruments. These would be contracts and derivatives and generate new investments in agriculture, agro-processing, warehousing, logistics, and other support services that make up the exchange ecosystem.

It is essential to state that past attempts at establishing a commodity exchange in Nigeria primarily failed because it was government-owned and got starved of funding before it could stabilise[100]. The idea of transiting to a commodity exchange system started in 1989. In recognition of the vacuum created by the defunct Produce Marketing Boards, the government set up an inter-ministerial committee to consider the possibility of setting up commodity exchanges as an alternative. No action was taken on the committee's recommendation, which was in favour of setting up commodity exchanges, until 2001, when the government directed the conversion of the Abuja Stock Exchange to a Commodity Exchange. The Exchange was first called Abuja Commodity Exchange, then Abuja Security and Commodity Exchange (ASCE) and now called the Nigerian Commodity Exchange (NCX). The Exchange did not commence trading until 2006.

Besides the issue of funding, the SEC Committee Report identified other factors that contribute to the failure of the Abuja Commodity Exchange as follows: "weak supply, lack of interest by operators in the securities market to open commodities trading subsidiaries, low understanding of the workings of the Exchange and the absence of supportive infrastructure and institutional arrangements that could strengthen the supply side of the market". The report

also mentioned the absence of organised farmers' cooperatives for bulking of produce, commodity grades and standards, and farmers' credit system based on warehouse receipts as contributing factors to the failure of the Exchange. The NCX was recently reported to be undergoing privatisation with the Nigerian Sovereign Investment Authority as the main investor.

Today, there is only one 'operational' commodity exchange in Nigeria, the privately-owned AFEX Commodities Exchange Limited (AFEX), a sister company of East Africa Exchange (EAX), established in Nigeria in 2014[101]. AFEX is not a full-fledged commodity exchange as it still operates at the level of direct produce purchase and aggregation, rather than providing an ecosystem for market participants as a normal commodity exchange. AFEX operates a Warehouse Receipt System and maintains warehouses in different locations across seven states in Northern and North-Central Nigeria. A second exchange, the Lagos Commodity and Futures Exchange, was licensed in 2019 but has not started trading[102].

The SEC Committee report raised pertinent issues that need to be resolved in creating a definite regulatory and operational framework for the commodity exchange ecosystem in Nigeria. It recommended far-reaching regulatory changes. These include: the reduction in the minimum paid-up capital of commodity brokers, streamlining regulation to take into account the different segments of the market (spot trading, futures, etc), better definition of the regulatory mandate of the various MDAs within the ecosystem (Federal Ministry of Finance, Federal Ministry of Agriculture and Rural Development, Federal Ministry of Industry, Trade and Investment, Standard Organisation of Nigeria, etc). The report also recommended advocacy and capacity building across the various stakeholders and potential investors to ensure that the concept of commodity exchange is properly understood and embraced. Although the committee identified most of the relevant stakeholders within the ecosystem, the scope of the committee's work did not extend to interviewing the stakeholders. In other words, the report has not captured the current thoughts of all relevant stakeholders from the government and the private sector on the way forward for the establishment of a functional commodity trading ecosystem in Nigeria.

On the regulatory framework, it is essential to point out that there are currently at least three Bills before the National Assembly that seek to regulate different aspects of the commodity trading ecosystem[103]. Of note is the Commodities Exchange Commission Bill, which aims to create a new regulator with accompanying substantive rules for commodity exchanges. Other Bills seek to regulate independent warehousing, commodity brokering, etc.

***Recommendations***

Besides the need to review and streamline these bills to avoid duplication of provisions, some questions call for broad-based consultation and resolution. These include: does Nigeria need a separate regulator for commodities exchanges, or should SEC be strengthened to effectively perform that role? Should the government still own commodities exchanges? How many commodities exchanges – private and public – can Nigeria maintain? These overarching questions would need to be answered before addressing issues relating to operational regulation (market operators, rules, etc). The Report (in Chapter 4) proposes three different options for reforming the commodity trading ecosystem in Nigeria.

## 3.7. Customs Procedures and Trade Facilitation

Research has shown that export-focused MSMEs grow faster. Besides the issues of quality infrastructure discussed in the preceding section in relation to the export market, customs and related export/import procedures affect the competitiveness of MSMEs. In the World Bank Doing Business Report, a complete indicator, "trading across border" is dedicated to examining the efficiency of import and export procedures. The approach of the World Bank Report is to measure the number of procedures, the number of days and the amount of money it costs to fulfil export/import formalities. Nigeria is a signatory to the WTO Trade Facilitation Agreement (FTA) but is lagging in its implementation. The WTO rates Nigeria's implementation of the TFA to be at 18% of its commitments. This is way behind South Africa which has attained a 90.3% rate of implementation) and neighbouring Benin Republic that has attained 65.5%[104].

Similarly, in the World Bank Global Logistics Index[105] 2018, Nigeria ranked 103 out of 112 countries. Some of the challenges bedevilling customs administration in Nigeria is the delay in setting up the single window system leading to inefficient interface among agencies; the absence of scanners at the ports leading to the time consuming and inefficient physical examination; corrupt demands by officials; etc. Trade logistics suffer from poor transport infrastructure; port congestion; etc.

The primary law that governs customs procedures for the import and export of goods is the Customs and Exercise Management Act, Cap C45 LFN, 2004. Others include: Customs, Excise Tariff, Etc. (Consolidation) Act, Cap C49 LFN 2004; Customs Duties (Dumped and Subsidized Goods) Act, Cap C48 LFN 2004 and Customs and Excise (Special Penal and Other Provisions) Act Cap C47 LFN 2004. Ports administration is the mandate of the Nigerian Ports Authority as mandated by the Nigeria Ports Authority Act.

### a. *Customs and Excise Management Act, Cap C45 LFN 2004*

***Overview***

The Customs and Excise Management Act (CEMA) was enacted in 1958. Though it has been through some amendments, it is anything but a modern customs legislation. The Act empowers the Nigerian Customs Service to act for the country on customs matters. The statutory functions of the Nigeria Customs Service include the collection of revenue (import/excise duties & other taxes/levies) and accounting for same; anti-smuggling activities; security functions; generating statistics for planning and budgetary purposes; monitoring foreign exchange utilisation; engaging in research, planning and enforcement of fiscal policies of the government; manifest processing; licensing and registration of customs agents; registration and designation of collecting banks; working in collaboration with other government agencies in all approved ports and border station.[106]

***Key issues***

Apart from being obsolete in provisions such as the amount payable as penalties[107], other gaps in the CEMA include:

- No room for the electronic submission of a goods declaration or supporting documents.
- Absence of a risk-based approach to the controls on import, export or transit goods. This means that the Customs Service cannot apply selective control based on certain risk triggers.

- Lack of clarity on the legal provision for Post Clearance Audit, including a clear definition of the persons subject to post-clearance audit.
- No provision to support the submission of transit declarations before the arrival of the goods. Also, the Act does not recognise the practice of negotiating with the Customs administrations of other countries to coordinate transit operations.
- No provisions on advance rulings on tariff classification, valuation and rules of origin. In practice, though, Customs provide advance rulings that are neither binding on the customs nor the applicant.
- The appeal procedure is presently not spelt out in the Act.

***Recommendations***

The clear recommendation with respect to CEMA is the expedited enactment into law of a new Customs Bill. To achieve that, there is a need to first harmonise the various bills pending before the National Assembly to ensure that the bill that would be passed eventually addresses all the important gaps and brings Nigeria's customs administration in line with international standards. Special attention also needs to be paid to ensure that the Bill that eventually gets passed aligns with Nigeria's obligation under international and regional instruments within ECOWAS, AfCFTA, WCO and WTO.

There is a need for a process of dialogue among stakeholders (including the National Assembly) leading to the adoption and passage of a harmonised version of the CEMA Bill.

### b. *Nigerian Shippers Council Act Cap N133 LFN 2004*

***Overview***

The Nigerian Shippers Council Act was enacted in 1978. It established the Nigerian Shippers Council (NSC) for the "protection of the interest of shippers in matters affecting the shipment of imports and exports to and from Nigeria; and to advise the federal government on sundry matters related thereto". Following the reform of the ports and the delay in passing the appropriate regulatory framework for ports regulation, the government of Nigeria, by a Presidential directive, designated the NSC as the Interim Port Regulator in 2014. This was followed in 2015 by a gazetted Executive Order (*Nigerian Shippers Council (Port Economic Regulator) Order 2015*)[108] spelling out the economic regulatory role of the Council with respect to shipping and ports services. The list of services provided covered by the economic regulatory mandate of the NSC includes: Nigerian Ports Authority; Seaport Terminal Operators; Shipping Companies and Agencies; Off-Dock Terminal Operators; Cargo Consolidators; Logistics Service Providers; Freight Forwarders and Clearing Agents; Inland Container Depot Operators; Stevedoring Companies; any other port service provider or user.

***Key issues***

In 2014, the Seaport Terminal Operators Association of Nigeria (STOAN) challenged the NSC's status as an economic regulator of the ports and its power to fix shipping charges. The matter was decided in favour of NSC up to the Court of Appeal[109]. There has been the argument that the status and powers of NSC as an economic regulator need to be clearly defined in a legislation rather than through an Executive Order.

The 8th National Assembly passed the National Transport Commission Bill (NTC Bill) which sought to transform the NSC into a multimodal transport regulator, but the Bill was not signed

by the President. The NSC continues to have challenges in getting the agencies and private service providers within the ports to comply with its regulations, especially as it relates to the regulation of charges[110].

***Recommendations***

If the government does not favour the idea of transforming the NSC into a multimodal transport regulator as proposed by the NTC Bill, it should go ahead and amend the extant NSC Act to strengthen the regulatory powers of the NSC, including powers to apply sanctions for violation of its regulations.

## 3.8. Industrialisation and Export Development

Countries use a combination of policy measures to incentivise export by their businesses to other countries. This suite of measures may include outright export promotion and marketing activities; special incentives like duty drawbacks and special grants for exporting firms; development of special economic zones targets at exports; etc. The need to diversify and promote Nigeria's export has been on the front burner of policy statements since the first major slump in international price for crude oil in the early 70s. With the adoption of SAP came some concrete actions in the legal front with the enactment of the Export (Incentives and Miscellaneous Provisions) Decree of 1986 (amended by the 1992 Decree)[111]; Nigerian Export Promotion Council Decree 1987[112]; the Nigerian Export-Import Bank Act of 1991[113], the Nigerian Export Processing Zones Act 1992[114]; and the Oil and Gas Export Free Zone Decree of 1996[115].

Evidence points to the fact that export-oriented MSMEs "are more likely to survive in business, expand their operations, generate jobs and become large enterprises"[116]; and that "exporting has a positive impact on innovation"[117]. There is renewed push on the part of the government of Nigeria to increase the export capacity of MSMEs as shown in such initiatives as the Zero-Oil Export Initiative, One State One Product, etc. Moreover, most of the value chains that form the focus of NICOP fall among the products where the government is not just seeking to develop domestic self-sufficiency but also (more) export capacity. It is behind this background that we examine the existing legal framework for the promotion of exports in Nigeria.

### a. *Nigerian Export Promotion Council Act, Cap N108 LFN 2004*

***Overview***

The NEPC Act was enacted as a Decree of a military regime in 1987. The aim of the Decree as stated in the Long Title was "to establish the Nigerian Export Promotion Council to promote the development and diversification of Nigeria's export trade, assist in promoting the development of export-oriented industries in Nigeria and other related matters". The Council has as part of its mandate the dissemination of market information; supporting trade missions; capacity building of exporters; administer grants and other benefits related to export promotions and development; pursue the simplification and streamlining of export procedure and documentation continuously; and to provide technical assistance to local exporters in such areas as export procedure and documentation, transportation, financing, marketing techniques, quality control, export packaging, costing and pricing, publicity and in other similar areas[118]; etc. The NEPC administers export incentives such as the Export Development Fund (EDF) – whose aim is to prepare, facilitate and support new exporters to penetrate global markets by providing training, trade fair participation support, financial and logistics support; and the Export Expansion Grant (EEG) – whose aim is to support active exporters expanding

their international business by increasing exports of existing products in current markets and accessing new markets.

***Key issues***

The NEPC Act is adjudged to have remained fit for purpose. However, some minor amendments may be needed to make it conform to present legal realities as well as enhance its operation. For example, the Act still retains a reference to "Ministry of Commerce" in Section 2(ii). There is currently no Ministry of Commerce. The right ministry is the Ministry of Industry, Trade and Investment. Secondly, the Act in Section 9(2) (d) indicates that the Council may charge some fees for services rendered as well as subscription fees. However, it is not clear in the Act which of its functions would attract any such charges or fees for subscription as mentioned in Section 9(2) (d). The Act does not also contain any table of fees or charges prescribed for any of the services to be rendered by the Council. This leaves the Council with the discretion of fixing the fees or charges alluded to in Section 9(2) (d). Ostensibly, this power is exercised by regulation based on Section 13 (which grants the Council power to make regulations for carrying into effect the provisions of the Act). But a search on the website of NEPC shows that no such regulation/guideline prescribing a schedule of services and fees/charges payable in respect to it is available on the website. However, there are fees stated separately on the forms/guidelines for various services such as application for export expansion grant or e-registration as an exporter.

***Recommendations***

It is recommended that the Council issues a regulation or guideline detailing the services for which it charges fees and what the fees are for which of those services.

There is a need for more engagement between the NEPC and the select value chains to ensure that the MSMEs in the select value chains benefit from the activities of NEPC towards making the MSMEs export ready. NEPC should be supported to service the MSMEs in the value chains with market information, training on quality and best production/agricultural practices, etc.

### b. *The Export (Incentives and Miscellaneous Provisions) Act Cap E19 LFN 2004*

***Overview***

This law was first enacted in 1986 and amended in 1992. It is "An act to provide incentives to manufacturing exporters of exportable products and for matters connected therewith"[119]. This Act created certain Funds and incentives for the promotion of export-oriented businesses. Some of the funds/incentives include the Export Development Fund, the Export Expansion Grant Fund, and the Export Adjustment Fund. The Act vests the NEPC (working with committees set up for each of these funds) with the power of administering these funds.

i. ***The Export Development Fund (EDF)***[120]: this fund is aimed at providing "financial assistance to private sector exporting companies to cover part of their initial expenses in respect of export promotion activities". The fund is supposed to be made up of such money as the government may from time to time contribute to the fund as well as any contribution from private sector exporters.
   The scope of activities eligible for EDF grant includes participation in training courses, symposia, seminars and workshops in all aspects of export promotion; advertising and publicity campaigns in foreign markets; export market research and studies; product

design and consultancy; participation in trade missions, buyer-oriented activities, overseas trade fairs, exhibitions and stores promotion; the cost of collecting trade information; organisation of joint export groups and mutual export guarantee associations; backing up the development of export-oriented industries.

***Key issues with the EDF***

The Act prescribes for the fund with a Board of Trustees made up of public and private sector bodies but the responsibility for the day-to-day administration of the fund is vested with the NEPC. It is also the responsibility of NEPC to recommend applications for financial assistance for the approval of the Exchange Control Department of the Central Bank of Nigeria; disburse the sum approved by the Central Bank of Nigeria; and issue guidelines for the operation of the Development Fund.

The Act has not specified under which circumstances the private sector contribution would be made, whether in form of levies or voluntary contribution and at what intervals such contributions may be made. Similarly, the Act has not specified the source of government contribution to the fund, whether by annual appropriation or from other sources. This means that there is no guaranteed source of funding for the EDF. This may account for the lack of momentum in the administration of the fund as records show that the last call for application for grants by NEPC under the EDF was made in 2018. It is not clear what the relationship is between the EDF under this Act (which is the sole responsibility of NEPC) and the EDF administered by NEXIM Bank on behalf of the CBN.

ii. ***The Export Expansion Grant (EEG) Fund***[121]: this fund is aimed at providing "cash inducement for exporters … to increase their volume and value of export, and diversify export products and coverage". The general basis for qualification for a grant under the fund is the value of "semi-manufactured or manufactured products as prescribed by order, from time to time, made by the Nigerian Export Promotion Council". The disbursement of the grant is predicated on the evidence of repatriation of export proceed "paid into the foreign account of the Central Bank of Nigeria". The administration of the EEG is vested in the NEPC while the power to make regulation in respect of the EEG is vested in the Minister in charge of commerce (now Minister of Industry, Trade and Investment).

***Key issues with the EEG***

The administration of the EEG has been fraught with controversy over the years because of perceived abuse by beneficiaries. In 1999, the Government of Nigeria stopped the settlement of the claims in cash and introduced the Negotiable Duty Credit Certificate (NDCC) which was only valid for the payment of import and export duties. The EEG Guidelines was redesigned in 2004/2005 to ensure that the objectives are realised. Following the suspension of the scheme in 2015, the Government embarked on a comprehensive review of the scheme leading to the new EEG guideline released in 2017[122]. This Guideline made some changes in the weighted eligibility criteria, stated the intention to automate the application and administration process, and adjusted the rate of incentives applicable to the different product bands, among other changes. The incentive rates under the Guidelines are determined by two broad factors: the company's total score in the "determination of export performance -eligibility criteria" which has some weighted criteria such as local value-added, local content, employment (Nigerian), export

growth and capital investment; and the product band/category which includes fully manufactured (end of process/ready for consumption), semi-manufactured products (input into further processing), processed/intermediate products and merchants/primary agricultural commodities (including commodities and solid minerals).

Settlement of claims under the new Guidelines shall be done utilising a negotiable tax credit certificate known as the Export Credit Certificate (EEC). The EEC is valid for the settlement of all federal government taxes such as Companies Income Tax, Value Added Tax, Withholding Tax, etc. Other transactions for which the EEC could be used include the following: purchase of federal government bonds; settlement of credit facilities from the Bank of Industry, Nigerian Import-Export Bank, Central Bank of Nigeria; and settlement of Asset Management Company of Nigeria (AMCOM) liabilities. Unlike the EDF, the Act does not state the source of funding for the Export Expansion Grant Fund Act.

The EEG Guidelines seems to have overreached the provisions of the enabling Act by introducing elements in the administration against the clear provisions of the Act. Some of the elements of the Guidelines that conflict with the Act include:

- The use of ECC (and NDCC before it) for the settlement of EEG claims is against the express provision of Section 5(2) which says the EEG Fund shall be sued to provide "cash inducement" to exporters.
- The EEG Guidelines includes "merchants/primary agricultural commodities (including commodities and solid minerals)" in the category of exporters/exports eligible for the grant, against the clear provisions of the Act. The Act expressly provides that the cash inducement under the EEG Fund shall be "based on the value of their semi-manufactured or manufactured products as prescribed by order"[123] In fact, the long title of the Act says that it is "[A]n Act to provide incentives to <u>manufacturing</u> exporters of exportable products…" (emphasis supplied)
- A further point about the foregoing clause is whether the "determination of export performance – eligibility criteria" adopted in the Guidelines as weighted eligibility criteria are consistent with the prescription of the Act, which states that the grant shall be "based on value …as prescribed by order". It seems that the "order" here cannot introduce other criteria such as employment, capital investment, etc but may only set a threshold of the value of export and the incentive they attract.
- The Act has provided for the administration of the EEG Fund to be shared between the NEPC and the Minister in charge of commerce. While the NEPC is responsible for the day-to-day administration of the fund as well as issuing Guidelines for the effective administration of the Fund; the Minister is charged with the responsibility to "rules or regulations for the effective administration" of the Fund. The 2017 Guidelines creates a structure for the administration of the Fund which has introduced other MDAs not mentioned in the Act[124]. It is doubtful whether the power to issue guidelines granted the NEPC under the Act extends to creating such a complex structure that places substantial responsibilities on other entities not mentioned in the Act. It can be argued that such powers can only be exercised via a regulation made by the Minister and the structure created under such regulation can only play an advisory role to the NEPC.
- Flowing from the foregoing point is the fact that the introduction of the ECC has given the Federal Ministry of Finance substantial control over the administration of

the EEG Scheme against the clear provisions of the Act, which did not give the Ministry of Finance any role in administering the EEG Fund.

- While the Act (Section 5 subsection 3) provides that exporters provide evidence of exporting with proceeds paid into "foreign account of the Central Bank of Nigeria", the Guidelines provides for proceeds to be paid into "a domiciliary account in Nigeria and confirmed by the CBN".

While most of the seemingly inconsistent elements of the Guidelines are designed to make the EEG Scheme more effective and transparent, it is a basic principle of law that a guideline or regulation made under an enabling statute cannot introduce elements outside of the express provisions or clear intendment of the statute. These inconsistencies between the Guideline and the Act only show that the Act is overdue for amendment or outright repeal and re-enactment to align it with present realities. This cannot be done through guidelines or regulations.

iii. ***Export Adjustment Scheme (EAS) Fund*** was established to "serve as a supplementary export subsidy or as an additional fund for dealing with- (a) high costs of production arising mainly from infrastructural deficiencies; (b) other factors beyond the control of the exporter". The administration of this fund is also vested in NEPC. Application for a grant under the fund shall be made to the NEPC and the applicant must provide accurate information on the cost of their export activities.

***Key Issues with the EAS***

At present, this fund is inactive. Even the website of NEPC[125] expressly indicates that "NEPC is administrating two export incentives: Export Development Fund & Export Expansion Grant" (emphasis added).

iv. ***Pioneer Status for Manufacturing-exporter***: The Act provides that manufacturers who export at least 50% of their output shall enjoy the pioneer status incentives contained in the Industrial Development (Income Tax Relief) Act. Application for declaration of pioneer status under this scheme is directed to the NEPC and the NEPC shall screen all applications and make recommendations to the Minister accordingly (Section 11).

***Key issues with the Pioneer Status for manufacturing-exporters***

There is no sign that this incentive is active. The Pioneer Status provided for under the Industrial Development (Income Tax Relief) Act is administered by the Nigerian Investment Promotion Commission (NIPC). Neither the Guidelines of 2017 nor the Regulation of 2014 made mention of the manufacturing-exporter pioneer status. Also, extensive checks on the websites of NIPC and NEPC do not show any reference to the Manufacturing-exporter Incentive Scheme.

***Other Incentive Schemes mentioned under the Act***

These include the Duty Draw-back, Duty Suspension and Manufacture-in-Bond schemes whose administration is vested in the NEPC, subject to consultation with the Duty Draw-back Committee established under the Act (Sections 7, 8 and 9).

***Other issues with the Act***

There are other issues, not relating to incentives, which are thrown up by the continued existence of the *Export (Incentives and Miscellaneous Provisions) Act* in its current form in our statute books:

- While Section 1(1) permits an exporter to retain the foreign currency proceeds from export in his bank account in Nigeria, subsection 3 restricts what the foreign currency can be used for. It provides that the foreign currency retained "shall be for the purpose of enabling the exporter have at his disposal, foreign currencies to pay for such export related activities as may be prescribed by regulations made by the Nigerian Export Promotion Council in consultation with the Central Bank of Nigeria". This foreign currency can only be used to pay for such export-related activities approved by NEPC in consultation with the CBN. Simply put, the exporter cannot apply the funds so repatriated to other businesses or personal use. This goes against the current practice where export proceeds in a domiciliary account of an exporter can be applied to any legitimate use at the discretion of the exporter, subject, of course, to prevailing foreign exchange regulations. According to CBN, "[T]he liberalization of the proceeds of export in the domiciliary account has afforded exporters unfettered access to the funds"[126].
- According to Section 3 of the Act, "…all raw or unprocessed commodities, whether mineral or agricultural, shall be exportable on the payment of a levy as may be prescribed, from time to time, by order of the Nigerian Export Promotion Council". However, there is no evidence that this levy is applied today.

***Recommendations***

The foregoing analysis of the *Export (Incentives and Miscellaneous Provisions) Act* shows that, like many other laws and regulations in our statute book, this very Act needs to be repealed and re-enacted to address the present policy stance of the government. A policy decision needs to be made on the number of incentives and their administration, with such policy position then forming the basis for the re-enactment of this Act. Similarly, issues relating to the repatriation and utilisation of exchange proceeds are best left to the purview of other laws and regulations that empower the CBN to regulate and manage the foreign exchange market.

### C. *Nigerian Export Processing Zones Act, Cap N107 LFN 2004*

***Overview***

The NEPZA Act was enacted in 1992 to regulate the operations of export free zones. The Act grants the President the power to designate an area as an export processing zone, on the recommendation of the Nigerian Export Processing Zones Authority (NEPZA)[127] which is also established[128] under this Act. The nature of functions and powers vested in the NEPZA suggests that the intent of the Act is that NEPZA owns and operates export processing zones. It has the function of managing all export free zones; provision and maintenance of services and facilities; establishment of customs, police, immigration and similar posts in the Zones; etc[129]. Enterprises within the Zones can undertake only the "approved activities"[130].

***Key issues***

The justification for export processing zones (which is just one of the types of special economic zones) is to grant special incentives to companies to operate within the physical territory of a company but outside of the laws relating to taxation, customs, labour, and other regulatory requirements ordinarily applied to companies operating within that country. These companies

are expected to export their entire output but when they are permitted to sell to the customs territory[131], then the goods would attract customs duties as if they were coming from another country. According to the World Bank (1998)[132], the three main goals of export processing zones include: to provide a country with foreign exchange earnings by promoting non-traditional exports; to create jobs and generate income; and to attract foreign direct investment, engendering technology transfer, knowledge spill-over, demonstration effects, and backward linkages.

While the Act did not expressly grant NEPZA the power to license export processing zones to be run by other entities such as private institutions or states of the federation, this gap seems to have been cured with the Free Zones (Monitoring and Regulation, Etc.) Order of 2001. The Order also granted NEPZA the power to designate single factories as "sub-zones" if they meet the stipulated conditions. This Order was purported to be made according to Section 24(2) of the Act but a thorough reading of the section shows that it only refers to the power of the Minister to modify by order existing legislations in the customs territory that are ordinarily applicable to the free zone but whose application would "restrict or interfere with the smooth running of the Zone or operation of licensees therein". In other words, section 24(2) cannot be a basis for the grant of "additional functions" to the Authority as the 2001 Order purports to do. However, the correct legal authority for the Free Zones (Monitoring and Regulation, Etc.) Order of 2001 would be found in Section 1(2) of the Act which provides that the zones established pursuant to the powers of the President under the section "…may be operated and managed by a public, private or a combination of public and private entity under the supervision of and with the approval of the Nigeria Export Processing Zones Authority".

Apart from the Free Zones (Monitoring and Regulation, Etc.) Order of 2001, other subsidiary legislations under this Act include: *Customs Tariff (Exemption) Order* which provides an exemption from customs duties for all goods consigned to the export processing zones from other countries; The *Free Zones (Tariffs and Other Charges) Order*, which sets the tariff chargeable for sundry services rendered by the NEPZA such as licensing of enterprises to operate within the Zones, etc. The major implementation regulation is the Investment Procedures, Regulations and Operational Guidelines for Free Zones in Nigeria, 2004. This regulation provided for the procedure to be followed when NEPZA is recommending to the President the designation of an export processing zone; procedure for application for export processing zone license by other entities like states and private sector; construction permits within the zones, the movement of goods and persons; records and audit of records of enterprises with the zones, etc.

The ECOWAS Investment Scorecard[133] pointed out some deficiencies with NEPZA legal framework. These include:

- Absence of comprehensive definitions of key concepts. Where definitions do exist, critical terms need to be updated.
- Absence of a modern memoranda of understanding (MOU) mechanism in the enabling law to facilitate the needed administrative coordination between the EPZ Authority and the other key public-sector stakeholders, including Customs.
- Omission of modern criteria to select a suitable site to establish an SEZ or the appropriate SEZ developer to design, finance, construct, and develop a selected site;

- Unclear legal status of zone developers and operators, together with the absence of legal mechanisms to incentivize the provision of onsite/off-site infrastructure and services in accordance with international standards.
- Lack of express infrastructure/service standards in the enabling law that compels zone developers/operators to adhere to minimum international building standards.
- Absence of mainstream legal rights and obligations for zone developers and operators, as well as for zone-user tenants, that should appear in the enabling law.
- Lack of effective measures that require zone enterprises to undertake construction/development activities by a date certain, as reinforced by enforceable penalties, such as the legal requirement to reimburse the Nigerian State for all previously granted fiscal, customs, and other investment incentives in the event of an affirmative land-speculation determination.
- The omission of internationally recognized customs provisions in the existing 1992 NEPZA law that adhere to World Customs Organization principles, including those of the Revised Kyoto Convention, and WTO customs standards, such as those spelt out in the WTO Trade Facilitation Agreement; and
- Need for legal framework consistency that prevents government authorities from constantly changing administrative policies, interpretations, and practices.

Another major issue in the administration of special economic zones (SEZs) in Nigeria is the lingering turf war between NEPZA and its sister regulator, the Oil and Gas Free Zone Authority (OGFZA)[134]. Secondly, the need to move away from the narrow EPZ orientation of the NEPZA Act to the broader concept of SEZs. This is important in the context of recent moves by the Government of Nigeria, backed by international development finance institutions like the African Development Bank, to set up Agriculture Export Processing Zones across the country[135].

***Recommendations***

The recommendations for the reform of the special economic zones' regime is contained in Chapter 4.

### d. *Oil and Gas Export Free Zones Act, Cap O5 LFN 2004*

***Overview***

This Act was enacted in 1996 to establish the OGEFZA and to vest it with the management of the Oil and Gas Export Free Zone (Onne/Ikpokiri area of Rivers State) also designated under the Act. This Act is a replication of NEPZA Act with the only difference being that the subject matter of the Act is limited to the operations of oil and gas export free zones.

***Key issues***

Perhaps, the most contentious issue about this Act is the propriety of having a separate Act and agency manage and regulate oil and gas export free zones when there is already an export free zone regulatory framework in form of the NEPZA Act. This issue is exacerbated by a few provisions of the Act which seem to bring the Act into conflict with the earlier NEPZA Act. Two examples would suffice:

The wordings of the entire Section 5 subsection 1 (Functions of the Authority) suggests that the sole aim of establishing the Authority was to administer "the Export Free Zone". This points to the fact that the intendment of the Act was to limit the mandate of OGEFZA to the Onne/Ikpokiri Oil and Gas Export Free Zone. This is also evident in the Oil and Gas Export Free Zone (Special Imports Provisions) Order 2003 where "free zone" was interpreted as "the oil and gas free zone designated under the Oil and Gas Export Free Zone Act". Also, in the *Oil and Gas Export Free Zone Regulation, 2003* (same year as the Order), the term "free zone" was interpreted as "the area designated as a Free Zone by the President of the Federal Republic of Nigeria"[136]. In other words, and as has been consistently argued by NEPZA, the mandate of OGEFZA seems to be limited to the Onne/Ikpokiri Oil and Gas Export Free Zone.

The complication, however, arises from the same Section 5 but in subsection 2 where the Act empowers OGEFZA to "take over and perform such other functions being hitherto performed by the Nigeria Export Processing Zones Authority as they relate to the export of oil and gas from any of the Nigerian Export Processing Zones established by the Nigeria Export Processing Zone Act". Relying on this, OGEFZA has sought to take over other export free zones (where oil and gas export operations are performed) hitherto administered by NEPZA. There have been steps taken over the past few years to amend the enabling statute of the two agencies but even those legislative proposals still seek to entrench the position of each of the parties (Osagie, 2017). These Bills are discussed in Chapter 4.

***Recommendations***

The recommendations for the reform of the special economic zones' regime are contained in Chapter 4.

### e. *Export Prohibition Act Cap E22 LFN 2004*

***Overview***

This is yet another relic from the past. This law was first enacted as a military Decree No. 17 of 1989. Its aim was to prohibit the "exportation of certain foodstuff from Nigeria and the trial of offenders…" It placed an absolute prohibition on the exportation from Nigeria of certain foodstuffs listed in the Schedule. The list of foodstuffs prohibited from export include beans, cassava tuber, maize, rice, yam tuber, all products or derivatives of these items, and all imported food items.

The Act (Section 2 subsection1) prescribes punishment for anyone who "…takes, causes to be taken, induces any other person to take or attempts to take out of Nigeria…" any of these items. The penalty for violation is life imprisonment in addition to the forfeiture of "the goods, as well as any vehicle, vessel, aircraft or other things whatsoever used in connection with the exportation; and all the assets, movable or immovable, including motor vehicles, of any person convicted of the offence…" (Section 2 subsection 2)

***Key issues***

The concern about this law is not that it was ever made – because military regimes are known for these kinds of laws – but that it has remained in force more than 20 years after the return to democracy[137]. More absurd is the fact that the Government of Nigeria under different

administrations in the past 20 years has been making efforts to promote the export of most of those items on the prohibition list under this Act.

This law deserves nothing but an immediate repeal. However, it is arguable that there could be some legitimate public interest grounds that warrant the occasional prohibition of the export of certain food items from Nigeria, hence the need for this kind of legislation. Already, Nigeria operates an export prohibition mechanism anchored on the tariff book. It must be noted that as a member of the WTO and other trading arrangements such as the ECOWAS ETLS and CET, and the more recent AfCFTA, export prohibitions and restrictions must comply with these rules governing those trade arrangements.

***Recommendations***

This Act should be repealed. At the worst, it should be amended by removing the present schedule (containing the list of items prohibited from export) and granting the President the power to issue an order from time to time when there is a need to prohibit the export of certain food items from Nigeria. This is one area of intervention that can galvanise consensus across all stakeholders' groups and achieve a quick win, especially if the goal is an outright repeal of the legislation. There is already ongoing advocacy, (championed by the Association of Yam Farmers, Markets and Processors in Nigeria) for the repeal of the Act[138].

### 3.9. Intellectual Property

Intellectual property protection is at the heart of the modern business practice. Businesses ride on branding, innovation, and invention to penetrate their markets. Intellectual property is intangible assets of a company that are a product of intellectual exertion. The logic behind the protection of the intellectual property is that a person who conceptualises an idea, image, product, process etc. ought to enjoy some reward from their work. This reward comes in cash or kind but for it to be guaranteed, the law affords protection against the unlawful use, application or commercialisation of the idea, image, product, process, etc of another person or firm. There are several statutes in Nigeria covering different aspects of intellectual property such as trademarks, patents and industrial designs, copyrights, etc. MSMEs have an interest in protecting their brand names as well as inventions/innovations and literary works they make or purchase from third parties.

#### a. *Trademarks Act Cap T13 LFN 2004*

***Overview***

The Trade Marks Act Cap T13, Laws of the Federation of Nigeria 2004 enacted in 1965 effectively repealed the previous Trade Marks Act and made far-reaching provisions on trademark protection in Nigeria.

The Act deals with important issues including the definition of trademarks, rights of a trademark proprietor, the extent of such rights, the procedure leading to the acquisition of the rights, infringing acts, and remedies.

Section 67 of the Trademarks Act defines a trademark as a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods and some person having the right either as proprietor or as a registered user to use the mark, whether with or without any indication of the identity of that person.

Section 2 of the Act provides for the registration of trademarks by entering the trademarks, as well as the name of the proprietor into a register of trademarks. In Section 4, the Act goes further to provide that trademarks are to be registered in respect of particular goods or classes of goods. The duration of trademark registrations is stated in section 23 of the Act. Trademarks are valid for an initial period of seven years after their registration, and further periods of 14 years from the date of each renewal. Section 5 vests on trademark proprietors the exclusive rights to the use of the registered trademarks in relation to goods for which the trademark is registered.

For a trademark to be registered under the Act, the mark must be distinctive. The conditions for ascertaining distinctiveness are set out in sections 9 and 10 of the Act. The Act prohibits the registration of deceptive or scandalous marks as well as marks that are identical with or resemble an existing trademark. Section 18 of the Act details the procedure for the registration of a mark and the steps to be taken by a dissatisfied applicant should the registrar refuse his application. Section 20 makes provision for third-party oppositions against trademark application by any person whose trademark might be infringed by the said applications, following the publication of the trademark applications in the Trade Marks Journal. The Act allows for the assignment and transmission of a trademark from a proprietor to a third party.

Although the Act does not place a duty to use the registered trademark on the trademark owners, section 31 of the Act provides that a registered trademark may be removed from the Register of Trademarks for reasons of the non-use of the trademark. Remedies under the Act include injunction and damages ordered by the court at the instance of a trademark owner whose right has been infringed upon.

One of the benefits of trademark protection as provided by the Act for micro, small and medium enterprises is the fact that trademark protection ensures that the goods or services of small business owners are easily identifiable and can be readily distinguished from other goods or services in the market. Trademark protection also prevents unauthorized third parties from exploiting the goodwill and brand reputation of these businesses by prohibiting the use of marks that are identical or similar to that of business owners. This ensures that the economic gains flowing from the goodwill and reputation of a small business are fully appropriated by the proprietor of the business. Additionally, trademark protection increases the overall value of a small or medium enterprise as a registered trademark is considered an asset in and of itself. In the event of a merger or sale (business arrangements to which small businesses are rather susceptible), a registered trademark will be a significant asset that enhances the estimated value of the business. Similarly, a trademark can be exploited through franchising/licensing.

The Trade Marks Regulation of 1967 contains the classification of goods, procedures relating to the registration, opposition, renewal, and assignment of trademarks. It also details the documents to be submitted in doing any of the above-mentioned acts. In summary, the Regulation constitutes a practical guide in dealing with the Trademark Registry.

***Key issues***

Some of the problematic areas of the Act include:

- First, the definition of trademarks as contained in the Act is verbose and restrictive. The Act does not cover service marks in its definition of what constitutes a trademark for

registration purposes. It also fails to accommodate such non-traditional marks such as shape and scent marks which now enjoy trademark protection in more developed climes.

- The creation of a split register appears superfluous as the dichotomy sought to be achieved by the Act is artificial and unclear. It is thus advisable that the two parts be unified by defining trademarks in terms of their capability to distinguish and to be graphically represented.
- It is equally worthy of note that the scope of infringement covered by the Act is restrictive. The Act fails to recognise acts such as trademark dilution and cyber-squatting as forms of infringement.

Perhaps in a bid to bring the Nigerian trademark protection regime in line with best practices around the world, a bill is currently before the Nigerian National Assembly to repeal the extant Act.

***Recommendations***

Recommendations on reforming the intellectual property rights regime is contained in Chapter 4.

### b. *Copyrights Act Cap C28LFN 2004.*

***Overview***

Enacted in December 1988, the Nigerian Copyright Act was clear in its mandate – to make provisions for the definition, protection, transfer, infringement of, remedy and penalty of the copyright in literary works, musical works, artistic works, cinematograph films, sound recordings, broadcast, and other ancillary matters.

The Act identifies two principal conditions that must be satisfied by a literary, musical, or artistic work for such a work to enjoy copyright protection. Firstly, sufficient effort must have been expended in making the work to give it an original character, and secondly, the work must have been fixed in a definite medium of expression.

The Act equally outlines the specific exclusive rights to be enjoyed by a copyright owner including the right to reproduce the work in any material form, publish the work, perform the work in public, make any cinematograph film or record in respect of the work and make an adaptation of the work. To do any of the acts mentioned above without the consent of the copyright owner will amount to infringement. The First Schedule to the Act provides for the lifespan of a copyright. In the case of a literary, musical, or artistic work other than photography, copyright subsists for the lifetime of the author and seventy years after the end of the year in which the author dies. For cinematograph films, photographs, sound recordings and broadcasts, the duration is 50 years after the end of the year in which the work was first published. Section 11 of the Act allows for copyright to be transmitted by assignment, by testamentary disposition or by operation of law as a movable property, further expanding the scope of economic interest vested in a copyright owner. While copyright protection operates automatically upon the creation of a work, the Act allows the author to deposit such work with the Nigerian Copyright Commission for record purposes.

Micro, small, and medium enterprises have been dubbed economic growth enablers given their potential to create jobs and alleviate poverty. A strong MSME sector is required to build

a dynamic and strong economy. As a way of strengthening the MSME sector in Nigeria, intellectual property rights must be embraced and duly protected by the players in this sector. Copyright as an intellectual property right can be beneficial to the MSME sector in a variety of ways.

A major benefit of copyright protection for MSMEs is the creation of brand identity. It is now commonplace for MSMEs to have websites, brochures, videos, and even musical adverts to promote their brand visibility and, by extension, profitability. It is equally not unusual for an MSME to have a mobile application or software through which it engages its clients. Copyright protection ensures that all these components which together give a business a unique identity thereby differentiating it from others in the same sector are secured and protected against third-party encroachments.

A significant component of copyright is the exclusivity it provides in terms of the economic exploitation of the work by the author. This means that the economic interest in the work can be solely appropriated by the author of the work to the exclusion of every other person. This guarantees that MSMEs have maximum economic returns for their investment and an avenue to generate surplus value that can be reinvested into the business for the purpose of further growing same.

A major challenge faced by MSMEs is the challenge of raising capital to scale their businesses and secure a larger market share. Copyright protection can be a catalyst for attracting the required capital for this much-desired business expansion. The security of revenue channels because of copyright protection engenders investor confidence and makes it possible for MSMEs to raise capital. Other things being equal, a secured revenue channel means an investor is assured of recouping his capital and even earning profit from his investment.

A copyright is an assignable right. This means that a copyright owner can assign, wholly or partially, the bundle of rights conferred on him/her by law and generate additional revenue by so doing. This can be done through contractual agreements such as licensing, franchising, and other IP based agreements. For example, a publishing company that owns the copyright in a bestseller may decide to grant a license to a movie company to adapt the book into a movie and generate more revenue in addition to what it derives from the sale of copies of the book.

Copyright assignment could also be leveraged by MSMEs for the purpose of foreign market penetration. For example, a small company in Nigeria that neither has the financial capacity nor the operational strength to open an office in South Africa can by license grant a company in South Africa the right to exploit its work for economic gain and receive some monetary compensation in exchange.

To give full effect to the provisions of the Copyright Act, the Copyright Commission has introduced a few regulations. These regulations include Copyright (Video Rental) Regulations 1999, Copyright (Security Devices) Regulations 1993, Copyright (Optical Disc Plants) Regulations 2006, Copyright (Collective Management Organisation) Regulations 2007, and Appointment of Copyright Inspectors Notice, and Copyright (Levy on Materials) Order 2013.

***Key issues***

It has been observed that the provisions of the Copyright Act are skeletal and inadequate in addressing emerging realities within certain fields. For example, in the field of digital broadcast

by cable or satellite, the provisions of the Act will prove inadequate for curbing the complex and growing trend of piracy in digital broadcasting.

With respect to computer software, the requirement of originality and fixation as defined by the Copyright Act may render many works incapable of enjoying copyright protection as developers often employ computer languages developed by different authors in the course of their work. This makes it difficult to satisfy the requirement of originality as defined by the Act.

Following a holistic review of the country's copyright protection in 2015, the Nigerian Copyright Bill 2015, seeking to repeal the extant Copyright Act. The said bill is yet to be passed into law. There are also other Bills on the subject, one of which is discussed under Chapter 4.

### c. *Patents and Designs Act Cap P2 LFN 2004*

***Overview***

The Patents and Designs Act was enacted in 1970. It was the first statutory instrument that provided for the recognition and protection of patents and designs in post-colonial Nigeria. This Act was enacted to grant exclusive rights to the proprietor of innovation or design via registration and to protect the proprietor from unlawful infringement. It provides the criteria to be met before an application for patent or industrial design can be registered.

This Act aims to make comprehensive provisions for the registration and proprietorship of patents and designs in Nigeria and other ancillary matters. It regulates the patent regime in Nigeria as well as industrial designs. The Act provides grounds for patentability and provides a list of subject matters which are excluded from patentability. Recognition and acceptance of foreign priority claims for patents are provided by this law. It vests ownership of a patent right in the employer of the inventor, just like other Nigerian intellectual property laws do.

The grounds for registering an industrial design are set out under this Act: the rights that can be exploited in respect of industrial designs, who can oppose the registration of a design, grounds for filing an opposition against an application to register a design as well as what amounts to an infringement.

If MSMEs are to succeed in a highly competitive and domineering environment such as the marketing and sale of innovations, it is imperative to protect their Intellectual Property Rights (IPR) and provide a business-enabling space for them to achieve their full potential. Therefore, the Act is crucial not only for the survival of MSMEs but to provide a better pedestal to gain attention in dominated markets both locally and internationally. For example, the Act grants the exclusive right to the holder to work with the patent for 20 years. This protection serves as a catalyst for MSMEs to develop new inventions and look forward to exercising a monopoly over their invention.

Inventive activities provide highly lucrative intellectual property assets that can transform the value of a business. Micro, small and medium-sized enterprises need to understand the importance of exploiting a grant of a patent over their inventions for products and processes. Production of machinery, gadgets, devices, furniture, clothing among others fall within the purview of industrial designs. Exploiting the rights to a registered design can increase the earning potential of the business with such intellectual property rights because of the right of exclusivity offered by the law upon registration of these intellectual property rights. Obtaining a monopoly over a new product invented by one's business encourages other businesses to come up with more advanced inventions.

It also plays a huge role in the restructuring of businesses. The patent law provides for the assignment and grant of license by the holder of a patent. This allows companies with valuable patents to grant a contractual license or, in the event of a merger or take-over, assign their rights to their patents to other companies. The value of a company's intellectual property portfolio can be a weighty concern that influences how businesses negotiate deals among themselves. Furthermore, the Act provides a statutory backup for patent holders to economically exploit their creations. As such, if an MSME obtains a valuable patent in terms of market appreciation, such business can work with the patent and sell, license, or assign its rights for valuable consideration. Asides from the monetary gains, it provides a platform for brand development and the establishment of goodwill even beyond the borders of Nigeria. For businesses that deal primarily in the technology space, understanding and applying the provisions of the law on patents to their business is essential as the main field where patents play a pivotal role is in technology.

The Act is also vital as a shield for MSMEs to compete effectively and avoid being bullied by bigger brands out of the market. In an economy where innovation is constantly encouraged and protected, it will be near impossible for bigger brands to continually force MSMEs out of the market without some risk of exposure or infringement.

Some of the regulations made under the Act include:

- Patents and Designs (Convention Countries) Order- This order lists the countries that are considered convention countries under Section 27 of the Patents Act. A Patent or design applicant may claim the (earlier) filing date of an application to file the same patent or design in a Convention Country. This is called a priority claim.

- Patents Rules-The Rules specify the procedural methods for filing a patent including the fees, forms, time limits, etc.

***Key issues***

Overall, the Act is vital for MSMEs as it improves their ease of doing business. However, the Act is old and there are many major shifts in the world of IP that ought to reflect in the Act. Looking more closely, it is possible to note the perceived flaws of the legislation in comparison with foreign or international legislation and/or practices. There have been a lot of technological advancements since the year 1970 when this law was enacted yet there has been no tangible amendment to this law to reflect the development of technology and the current complexities.

The law fails to provide adequate compensation for inventors who carry on the inventive activity in the course of their employment. Section 2 of this law merely notes that the employer is to consider how much remuneration the inventor is ordinarily paid in determining what fair remuneration is. This needs to be amended to provide a more transparent method for providing remuneration for inventors, instead of leaving them at the mercy of the employers who have higher bargaining power.

Unlike many other countries including India, the United States of America and the United Kingdom which provide patentability for software or a sui generis scheme for protecting plant and animal varieties and software, the Patents and Designs Act does not provide for any of these. The Patents and Designs Act does not specify that employee inventors are required to assign their rights to the patents upon creation because the employer has a statutory right to the patent in the event of the absence of a contract that provides otherwise. The Act does not

recognise plant patents like South Korea and many other developed countries of the world. Section 1 (4) of the PDA specifically excludes patents for plants and animal varieties whereas the Korean Patents Act does not discriminate against plant and animal varieties patents.

Although the Patents and Designs Act provides conditions for patentability of an invention and registrability of a design, (including the requirement that the invention is new), it prevents the Registrar of Patents and Designs from considering the existence of these conditions in patent or design applications, as a precondition for granting a patent or design. It leaves this right exclusively to the courts to determine. In other words, the registrar is not allowed to examine patent or design applications for substantive compliance with the conditions for patentability; rather, the registrar is required to grant a patent or design registration as long as the prescribed supporting documents for the patent or design application are filed. This approach, which is unlike most laws around the world, makes it possible for patent or design applicants to obtain patent rights or design registration for works that might not be new, and in some cases for inventions or designs for which the Registrar has granted an earlier patent or design registration. This undermines the essence of the patent and design system.

Also, there is no provision for third parties to oppose the grant of patent. This is unlike the position in the United States where any third party can challenge the validity of an issued patent.

Given the seriousness of infringing on a patent, the Act carries no provision for criminal offences and penalties compared with what obtains in the WIPO treaty (Section 37) and some jurisdictions like China, Germany, Japan, Korea, Sierra Leone and Ghana.

Currently, there is a bill to repeal and re-enact the Patents and Designs Act 1970 titled the Industrial Property Bill on the floor of the House of Representatives. The bill intends to provide special protection for plants and animal varieties as well as traditional knowledge. It is hoped that this bill will be passed into law in the nearest future. The Patent and Designs Act (Repeal and Re-enactment) Bill, 2018 if passed and signed will amend the extant law.

***Recommendations***

Some of the recommendations for reform of the Act include:

- Expanding the scope of patentable matter to include all fields of technology apart from inventions contrary to public morality.

- Providing a more comprehensive legal framework for the protection of industrial designs in Nigeria.

- Empower the Registrar of Patents and Designs to substantively examine and design applications for compliance with the technical requirements for the patent.

- Establishment of a patent dispute resolution scheme in Nigeria for resolving patent matters which would improve enforcement of patent rights in Nigeria. It provides for a qualified expert to hear arguments on issues arising from such disputes in the case of arbitration, or a mediator or conciliator to enable parties to reach an amicable settlement. For example, in the United States, voluntary arbitration is available for parties to a patent interference matter, notice of any award made is to be given to the Director after which the award can be enforceable. The United Kingdom Intellectual Property Office also provides mediation services for intellectual property issues. ADR mechanisms are also preferable because of their time

and cost-efficiency. Disputes resolved through this scheme are usually resolved quickly and where a settlement proves impossible to reach, the matter can proceed to court promptly. It is also suggested that the Industrial Property Bill be amended to include provisions recommending that patent issues be referred to arbitration or any other method of Alternative Dispute Resolution.

- The law should embrace plant and animal varieties like other developed jurisdictions or make a separate enactment in this respect.

- The Act should define the words “patent” and “invention” and also outline the rights and obligations of the patentee.

- Opportunities should be given to the public and possibly aggrieved stakeholders to file opposition to applications of a patent before it is registered.

- Provisions that spell out penalties for offences of patent infringement should be included.

### d. *Trade Malpractices (Miscellaneous Offences) Act Cap T12 LFN 2004*

***Overview***

The Trade Malpractices (Miscellaneous Offences) Act was enacted in 1992 to create certain offences relating to trade malpractices. It aims to criminalise the sale or offering for sale and advertising of falsely packaged goods, among others. The primary aim of this law is to penalise activities that infringe on the goodwill of existing businesses and prohibit the fraudulent imitation of the labelling and packaging of goods. It also penalises the selling of or advertising for sale, goods that create a false impression regarding its value, composition, merit, safety, and brand name. In addition, it penalises fraudulent acts relating to the sale of products measured with weights and measures.

The Act seeks to protect consumers from deceptive sellers, marketers, distributors, and producers. It provides for offences and penalties for consumer deception or use of confusing similar trademarks or brands which are calculated to mislead the public. It further criminalizes false advertising, misrepresentation, and trademark infringement. The Act focuses on trading activities and penalizes unfair or sub-standard trade practices.

The Act creates a malpractice investigation panel that can make reports to the Attorney General. The Attorney General is empowered to prosecute offences under the Act and liability for corporate bodies as well as their principal officers are also contained in the law. The Law provides that the Weights and Measures Act applies to its provisions. It is important to note that this Act is consumer-oriented in its make-up and helps to consolidate the protection of businesses under the current Nigerian IP regime.

Micro, small and medium-sized enterprises are involved in trade at the business-to-business level and the business-to-consumer level, therefore placing them within the purview of the provisions of this Act. This law creates necessary restrictions on businesses that would ordinarily resort to sharp practices to stay ahead in the market. It, therefore, creates healthy competition, by preventing businesses from carrying on unjust business practices such as taking advantage of the goodwill of other existing businesses, selling fake products and deceiving customers as to the measure or value of the products they are purchasing. This is remarkable in protecting the brand equity of locally manufactured products (tomato paste,

garments, etc), especially in situations where imported substandard substitutes may be passed off as the local brand. Carrying on such acts is illegal, and the proprietors of that business will face criminal sanctions upon conviction.

The Trade Malpractices (Miscellaneous Offences) Act in its few sections addressed common unjust practices businesses carry on in a bid to recover additional profit; the specific offences listed under Section 1 of the Act apply particularly to MSMEs. Altering weights, possessing false measuring instruments, refusing to measure products that ought to be measured in the presence of the purchaser among others are familiar activities that take place within Nigeria among traders in the market, as well as retailers with online stores. The issue of measurement is of importance to the agro-commodities like ginger which are sold by weight.

Another benefit of the Act for the MSMEs is that their brands are better protected, and any person or body corporate found infringing on their IPR risks a criminal liability Section 1(h). By regulating the activities of fraudulent merchants, the Act directly contributes to the survival of MSMEs in Nigeria. In addition, the big players in the market are forced to cut down on their advertising tricks, thus providing a better competitive market for MSMEs. Furthermore, complying with the provisions of these laws reduces the risks of legal liability on MSMEs, thus making room for competition on a level playing field.

***Key issues***

The Act is not elaborate and can be very narrow in its application especially, when compared with similar enactments in other jurisdictions. The penalties imposed by the law as well as its failure to empower agencies like the Standards Organisation of Nigeria to enforce the criminal sanctions under the Act have decreased its power to act as a deterrent.

Furthermore, the offences in this Act are quite similar to forgery of trademarks and false trade descriptions as contained in the Merchandise Marks Act. It overlaps with the purpose of the Weights and Measures Act and the Federal Competition and Consumer Protection Act as many of the provisions are already provided for in the said Acts or could be amended to reflect the intention of the legislators. It would have been preferable if there was a consolidation to reflect all these offences within the body of a single legislation. The Trade Malpractice Act is hardly relied on for the prosecution of trade malpractices in Nigeria.

***Recommendations***

In the spirit of consolidating the legal framework for IPR, it is recommended that the new IPR regime should absorb the IPR related provisions of this Act. The unfair trade-related provisions are already covered under the FCCP Act; other elements are covered in the NAFDAC and SON Acts. Notably, these Acts are later than the Trade Malpractice Act hence have replicated some of its provisions. It is, therefore, recommended that the Trade Malpractice Act be repealed.

### e. *Merchandise Marks Act Cap M10 LFN 2004.*

***Overview***

The Merchandise Marks Act was enacted in the United Kingdom in 1887 to cater for incidences of forgery of marks, fraudulent marks on merchandise and other articles of trade as well as false trade descriptions. The Act was adopted in Nigeria, then a colony of Britain,

in 1916 and has since remained as one of the vestiges of British imperialism as well as one of the oldest surviving IP-related legislation.

The Act criminalises specific actions that directly or indirectly misrepresent the source or nature of goods, by forging a trademark, applying false description or deceptive trademarks to goods, etc. The Act enables the police, upon obtaining a requisite search warrant, to conduct raids/seizures of products bearing forged trademarks or false trade descriptions and prosecute offenders.

Section 2 of the Merchandise Marks Act Cap M10 Laws of the Federation of Nigeria 2004, defines trade description to mean any description, statement, or other indication, direct or indirect, as it relates to several characteristics which include: number, quantity, measure, gauge or weight of any goods, fitness for purpose, strength, performance, behaviour of any goods, mode of manufacturing, materials etc. While the list is broad, it is not exclusive, and it may be necessary to expand the list of what constitutes trade description. False trade description is that which is false or misleading in a material respect as regards the goods to which it is applied. The fact that a trade description is a trademark does not prevent such a trade description from being false within the meaning of the Act.

Section 10 concerns punishment for an accessory. Where a person is accessory to the commission of an act or otherwise aids such commission, and such an act would have amounted to an offence under the Act if it had been committed in Nigeria, such a person can be tried and convicted in Nigeria as if the offence had been committed in Nigeria.

Section 13 bars the commencement of criminal proceedings after the expiration of three years from the commission of an offence or one year after the first discovery by the prosecutor of the commission of the act (whichever is earlier).

MSMEs by their very nature need the protection of the law to survive and thrive. The general tenor of the Act provides some level of protection for MSMEs by enabling prosecution of trademark infringers and counterfeiters of goods, including goods manufactured by MSMEs. The punitive provisions of the Act extend to persons who outsource the infringement of a mark of a Nigerian business to a foreign company. Such a Nigerian company can be punished under section 10 of the Act as an accessory. This serves as a protective hedge around trademarks or trade descriptions of products of MSMEs.

Section 6 of the Act protects persons whose businesses may include manufacturing any material, machine or equipment that is generally used for forging trademarks or applying for trademarks to goods. Where such a person is charged under the Act, he may be discharged from prosecution if he is able to prove the facts contained in that section. This protection is necessary to shield the business from the pressures that may accompany litigation. Upon the conclusion of the trial, section 12 provides that the court may order costs to be paid to the defendant, which may be the business entity, by the prosecutor.

***Key issues***

There are a few observations about the Act. The fact that this Act is over a century old, is sure to be out of the reality of the times in which we live. A cursory look at the Act easily reveals this position. For instance, the punitive sanction of fine in the Act is so ridiculously low that it would not to serve any deterrent purpose to would-be violators of its provisions. Section 3 which generally provides for punitive measures pegs the fine for offences under the Act, in

the event of a summary conviction by the magistrate court, at one hundred Naira. Similarly, the offence created under Section 18 i.e., false representation as to warrant, is punishable with only a fine of forty Naira. The provisions for fine in the Trade Descriptions Acts of the UK and Kenya will be seen to be more in touch with reality.

It is not clear why the Act makes specific provisions for watches, but it will seem to be a confirmation of the obsolete nature of the Act. It was enacted at a time when false trade description as to the origin of watches being sold in Britain was rife and the production and sale of watches was an economic activity deserving of legal regulation. Protection for British makers of watches at the time was necessary to curtail the importation of watches made outside Britain and made with less than British standard but still sold as British watches. The current reality in the business space and the advancements in society does not recognise the sale of watches as a unique business to be specially protected by legislation and that is clear from the omission of the provision on watches from the United Kingdom's Trade Descriptions Act of 1968 which replaced the Merchandise Marks Act.

The Act makes little or no serious provision for enforcement and administration of its provisions. There are no provisions on the enforcing authority and powers vested on such authority in the administration of the Act. This is unlike the provisions in the UK Trade Descriptions Act of 1968 and the Kenyan Trade Descriptions Act 1977 which make commendable provisions on enforcement. In both laws, enforcement officers are responsible for enforcement and criminal sanctions are provided for non-cooperation or interference with the carrying on of their duties under the Act.

The Merchandise Marks Act makes provision for a person charged with an offence, in certain cases, to escape liability by showing a lack of intent to defraud- actions that show that he acted innocently. The Acts of the UK and Kenya go further to provide for specific defences such as accidents and mistakes, which can be raised by the defendant.

Apart from the fact that the Act has not undergone any major amendment since its inception, there is no Bill in the National Assembly to amend, repeal and/or re-enact the Act.

***Recommendations***

This Act should be considered for consolidation with similar laws in the context of reforming the IPR regime in Nigeria. Generally, on intellectual property protection, there is an ongoing debate focusing on not just the need to update the various laws but also on the merit of having several administrative entities for laws. There are strong arguments for the consolidation of the administrative regime in either of the two manners: one, consolidate the administration of all the laws under a single entity. This is the proposal under the Nigerian Intellectual Property Commission Bill that was floated over 10 years ago. Two, to consolidate the industrial related intellectual property laws (patents and designs, trademarks) under an Industrial Property Commission as proposed by one of the Bills (Industrial Property Commission Bill), while leaving out the Copyrights law under the present administrative framework. In either of the proposals, the need to update the various laws is also proposed.

In Chapter 4, we analyse the Industrial Property Commission Bill, following the unavailability of a copy of the Intellectual Property Commission Bill proposed many years ago. In principle, we agree with the merit in consolidating the administrative framework intellectual property rights protection in Nigeria, in addition to updating the substantive laws.

## 3.10. Taxation and tax practices

***Overview***

The challenges of the tax system in Nigeria are double-edged. On the one part, the government is unable to achieve a decent tax to GDP ratio which was recorded to be six per cent as of 2018 and on the other part, MSMEs are besieged with multiple taxation and little corresponding infrastructural development to support their businesses. Under this heading, the approach is to highlight some of the laws and then discuss the two that are considered most important to the MSMEs as it relates to multiple taxation.

***Key issues***

The issue of multiple taxes comes to play as soon as a company is incorporated. Immediately there is a chain of tax agents and taxes to be paid, starting from the federal down to the local government. For instance, the business of hospitality (hotels) requires the following after the company has been registered: registration of premises, stamp duty, Nigeria Social Insurance Trust Fund (NSITF), Industrial Training Fund (ITF), National Pension Commission, Value Added Tax, Pay as You Earn, Company Income Tax, Education Tax, Withholding Tax, liquor license, food handlers and health certificate, business premises charges, administrative charges on the environment etc. Other regulatory agencies across the sectors at the federal and state levels have contributed to overloading such business with sundry taxes, levies and charges and a few of the businesses have not been able to survive the pressure.

In 2018, the government, through the Federal Inland Revenue Service, launched several tax programs including the Voluntary Assets and Income Declaration Scheme (VAIDS), the Voluntary Offshore Assets Regularization Scheme (VOARS), the Revised Income Tax (Transfer Pricing) Regulations 2018 among other measures. Again, bank accounts of businesses and individuals were subjected to liens by the FIRS to trace tax defaulters. These measures alongside the burden of the multiplicity of taxes create an unattractive tax regime for MSMEs. Local taxes payable include the Companies Income Tax, the Petroleum Profits Tax (for companies engaged in petroleum exploration and production), Value Added Tax, Education Tax, Nigerian Content Development Levy, Information Technology Tax, Capital Gains Tax, customs and excise duties (where applicable) and stamp duties on qualifying transactions. Contributions for the employee compensation scheme and pensions are also compulsory contributions that businesses need to remit. Minimal remittances such as annual returns filing at the CAC with penalties for late filings also feature on statutory payments/remittances.

***Key issues***

Total taxes due by MSMEs depend on the states where they carry out operations. Some states levy taxes similar to federal taxes and though the courts have awarded judgments against state governments, state levies significantly increase tax burdens.

The 2016 Comprehensive Review of the Institutional, Legislative and Associated Instruments Affecting Businesses in Nigeria ("Comprehensive Report") made recommendations on legislative amendments including discarding the statutory minimum taxation requirements, addressing the lacunae on e-commerce and clarifying the provisions on payment of excess dividend tax under the Companies and Income Tax Act, Cap C21, LFN 2004 ("CITA"). It also questioned the constitutionality of the Taxes and Levies (Approved List for Collection) Act Cap T2 LFN 2004 and the relevance of some of the taxes and levies listed in the Act. These

recommendations were, however, not implemented before the dissolution of the last National Assembly.

The effect of the challenges in the tax regime on MSMEs acts as a disincentive to many businesses. Evasion becomes attractive and some businesses operate without the necessary tax visibility. The inability of the government to widen the tax net also puts a heavy burden on the few documented businesses within the net. Also problematic is poor tax education. Though the revenue authorities attempt to educate taxpayers, a large percentage of small business owners do not understand the nitty-gritty of tax compliance and cannot afford tax consultants. The resultant effect of poor tax education is that some MSMEs are ignorantly in default and with some tax penalties accruing daily, a single assessment raised following a notice of default may be capable of shutting down a thriving business.

Also crucial to MSMEs is their relationship with foreign investors vis-à-vis tax liabilities. In June 2019, the Court of Appeal sitting at Lagos State held that Nigerian businesses offering goods or services to foreign customers must remit on behalf of the foreign party. This appears contrary to the direct provisions of the Value Added Tax Act. While the judgment has laid to rest the uncertainty of VAT treatment where the recipients of the goods or service are foreigners, it has increased the cost of doing business for affected MSMEs.

Some of the Laws that regulate taxation in Nigeria are:

a. ***Companies Income Tax Act (2007)***

Companies' Income Tax in Nigeria is administered exclusively by the Federal Inland Revenue Service (FIRS). Once a company is registered, the Registrar General of Corporate Affairs Commission is meant to notify the FIRS of the name, address of the company. A file ought to be opened on the behalf of the company. The principal officer or manager of a company shall be held responsible for any tax matter that has to do with the company.

b. ***Capital Gains Tax Act (2007)***

It is a tax charged on the disposal of a chargeable asset. All companies would be liable to capital gains tax on chargeable assets disposed of. All forms of property shall be chargeable assets for the purpose of capital gains tax except the as exempted by the Act.

c. ***Tertiary Education Trust Fund (Establishment, Etc) Act, 2011***

The Act repealed the Education Tax Act cap E4 Laws of the Federation of Nigeria 2004, the Education Tax Fund (Amendment) Act No 17. 2003 and the Tertiary Education Trust Fund charged with the responsibility for imposing, managing and distributing the Education Tax to Public Tertiary Education Institution in Nigeria; and for related matters. The distribution of funds shall be in the ratio of 2:1:1 as between the universities, polytechnics and colleges of education. Section 1(2) of the Act states: the tax at the rate of 2% shall be charged on the assets of a registered company in Nigeria (in the Act referred to as a company).

d. ***Value Added Tax Act, Cap V1 LFN 2004***

An Act to impose and charge value-added tax on certain goods and services and to provide for the administration of the tax and matters related thereto. It is being administered by the Federal Inland Revenue Service through its tax offices. VAT is a multi-staged tax collected on sales at the stages of distribution. Value addition is the increment value of a product using labour contributed to raw materials or purchases of processed goods and services. The

inputs are proposed by labour to produce the final goods and services. This ranges from manufacturing, distribution, or supply of goods and services. VAT was imposed at a single rate of 5% on the invoice value of goods and services supplied by the taxable person. The Act is already amended by the Finance Act 2020 which has raised the rate of VAT to 7.5% as well as exempted small companies (with gross turnover of less than N25m) from VAT registration.

### e. *Stamp Duties Act cap S8, LFN 2004*

The Act was primarily enacted to provide for the levying of stamp duties on certain parties. They are taxes imposed on documents and instruments. Instruments can also be referred to as a written document. Depending on the document, stamp duties could be fixed or ad-valorem (based upon value). Instruments subject to tax include: agreements, conveyance of sales, leases, mortgages etc. The recent revenue drive of the government has led to the FIRS issuing a notice of its intention to begin the enforcement of stamp duties on rent/lease agreements. This is in addition to the ongoing implementation of an automatic deduction for banking transactions. These initiatives have been condemned by various interest groups representing business and labour for increasing the financial burden on citizens and businesses in a period of economic downturn.

### f. *The National Tax Policy (NTP) 2017.*

It is a policy with the attempt to set out the guideline principles in the Nigerian tax system and strategies to make the tax system an effective tool for socio-economic development. The policy outlines the definition of tax, identifies the challenges of the Nigerian tax system and the objectives of the policy. Even though certain objectives in the NTP[139] address the issue of multiple taxations, it is just a policy and does not have the force of law like an Act. The policy merely guides and plays advisory roles, even though the intent is to have some force of law and operate as a guiding regulation for tax administration in Nigeria.

### g. *The Finance Act 2020.*

The Finance Act 2020 came into force in February 2020. The objectives of the Act include:

i. Promoting fiscal equity by mitigating instances of regressive taxation
ii. Reforming domestic tax laws to align with global best practices
iii. Introducing tax incentives for investment in infrastructure and capital markets
iv. Supporting small businesses in line with the ongoing Ease of Doing Business reforms; and
v. Raising revenues for government, by various fiscal measures, including a proposed increase in the Value Added Tax from 5% to 7.5%.

The Finance Act is a major boost to MSME development in that it contains provisions aimed at addressing the tax burden on MSMEs. The Act defines a “small-sized company” as one with a gross turnover of less than N25m per annum and a medium-sized company as one with a gross turnover of between N25m and N100m per annum. Small-sized companies are exempt from the paying CIT, neither do they need to register for VAT[140]. Medium-sized

companies have their CIT rate reduced to 20%; while big companies (gross turnover above N100m) remain at 30%.

Other changes that affect MSMEs include: the imposition of stamp duties of N50 on any receipt (physical or electronic) that is worth NGN 10.000 and above, bonus for early payment of taxes, recognition of email as a valid means of communication between the taxpayer and the tax authority.

### h. *Taxes and Levies (Approved List for Collection) Act Cap T2, LFN 2004*

One of the core objectives of this Act is to restrain the "excesses" of state governments and local government councils in the exercise of their taxing powers. This law details the categories of taxes that are within the domain of the three tiers of government. It is based on the devolution of powers as contained in the Exclusive and Concurrent List under the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 (as amended). However, some states and local government councils do not abide by this list as they churn out all manner of taxes, levies, and fees for MSMEs. Taxes not contained in the periodic order made by the Minister of Finance under this Act are illegal.

The Act also provides that only the "appropriate tax authority" is permitted to assess or collect taxes[141]. This raises an issue as to the legality of the use of revenue consultants to assess and collect taxes on behalf of federal, state, or local government tax authorities. The Act further prohibits the mounting of roadblocks by any person, including a tax authority in any part of the federation for the purpose of collecting any tax or levy[142]. This provision is routinely violated as many states and local government councils still employ the services of persons who block the roads along the major trade routes in the country to collect taxes and levies from articulated vehicles conveying farm produce and other goods. The Minister of Finance has the power, upon the advice of the Joint Tax Board, to amend the schedule (containing the list of taxes for each tier of government) by an Order. The last of such Orders was made in 2015.

### i. *Taxes and Levies (Approved List for Collection) Act (Amendment) Order, 2015.*

This is the latest Order made pursuant to the Taxes and Levies (Approved List for Collection) Act. The Order intended to harmonise taxes among the states and local government and between them and the federal government. However, the outcome seems to have been a multiplication of taxes, further aggravating the problem of multiple taxations. The list of States taxes increased from 11 to 25 all in the attempt to accommodate different taxes and levies charged by different states, even when the substance of those different taxes is the same. It was reported that states mounted pressure on the Minister through the Joint Tax Board to accommodate their own taxes, levies and charges. For example, there is the hotel, restaurant or event center consumption tax and entertainment tax appearing as separate taxes simply because a state like Lagos uses the former nomenclature while some other states use the latter. Similarly, the new Order removed the harmonised rate for business premises registration and renewal, leaving the states to determine the same individually. "Signages and mobile advertisement" was listed for States while "signboard and advertisement permit fees" was also listed for the Local Governments. For the Federal Government, the list increased from eight to nine while for the Local Governments, it increased from 20 to 21. Overall, the number of taxes, levies and charges increased to 61 by the addition of 22 new ones. This raised the question of whether it was a harmonisation of taxes or the legalisation of multiple taxations[143].

The 2015 Order has been the subject of litigation. On 8th May 2020, the Federal High Court declared the Order null and void in a suit brought by the Registered Trustees of Hotel Owners and Managers Association of Lagos against the Lagos State. According to the Court, the

power granted the Minister of Finance under the Act to amend the Schedule containing the list of taxes, levies and charges as it is a usurpation of the constitutional powers of the National Assembly to make laws[144]. If no appeal is filed against this decision within the time stipulated or if the decision is upheld on appeal up to the Supreme Court, then the implication would be that all the taxes, levies and charges introduced into the initial Act by the 2015 order would no longer be applicable.

**Recommendations**

The need for tax harmonisation is a paramount one. However, the 2015 Order went about it the wrong way. There is a need to review the Act and the amendment done by the 2015 Order with a focus on:

- Rationalising the taxes, levies and charges based on their substance. For example, hotel, restaurant or event centre consumption tax should not appear separately from Entertainment tax. The Act should rather make them alternatives based on the nomenclature a State wishes to use.
- Eliminating areas of overlap across the taxes, levies and charges assigned to each of the three tiers of government. For example, there is no reason why a State would be allowed to charge for signage and mobile advertising and a local government is allowed to charge for signboard and advertisement permit fees simultaneously.
- At the federal level, for instance, capital gains tax can conveniently be taxed under the Personal Income Tax Act (PITA) and Companies Income Tax Act (CITA). Also, instead of having another law to provide for Education Tax, CITA and the Petroleum Profit Tax Act (PPA) could be amended to the effect that 2% of the total proceeds from companies' income tax and petroleum profit tax should be transferred to the Tertiary Education Trust Fund. This would ease computation and remittance by MSMEs.

## 3.11. External Trade Agreements (ETLS, CET, AfCFTA, WTO) and MSMEs Competitiveness

This section examines the trade agreements which Nigeria has signed on to and the implications of these agreements to the development of the MSMEs in Nigeria. The agreements considered are the ECOWAS Trade Liberalisation Scheme (ETLS) and Common External Tariff (CET), the World Trade Organisation (WTO) and the African Continental Free Trade Area (AfCFTA).

### a. *ECOWAS Trade Liberalisation Scheme (ETLS) and ECOWAS Common External Tariff (CET)*

***Overview***

Nigeria is a founding member of the Economic Community of West African States (ECOWAS). ECOWAS has two major instruments that can impact the competitiveness of MSMEs in the Member States. These are the ECOWAS Trade Liberalisation Scheme (ETLS), adopted in 1990; and the Common External Tariff (CET), adopted in 2015. As the name implies, ECOWAS is a regional integration arrangement with a vision to create a common market comprising all the 15 Member States. The first step in achieving this is the creation of a free trade area which is the purpose of the ETLS. The ETLS makes ECOWAS a free trade area with duty-free quota-free trade in goods that meet the rules of origin requirements among the member states[145]. The impact of the ETLS on MSMEs in Nigeria is twofold: While the MSMEs can target to export to the regional market; they are also faced with competition from imports from other ECOWAS countries. Nigeria has registered over 1,000 products under the ETLS.

While exporting or importing from the region by MSMEs are still largely informal, bigger Nigerian brands have been taking advantage of the ETLS to export within the region. Nigeria is said to be one of the greatest beneficiaries of the scheme, enjoying up to 39% of the entire benefits.

There is also the common external tariff (CET) which marks the attainment – at least in principle – of a customs union. The CET allows for the application of common tariffs (with slight variations) to all products imported from other countries to the region. The CET has resulted in the reduction of import duty for some items hence an increase in import competition for MSMEs. However, there are special mechanisms that countries can utilise to protect select industries. For example, the Import Adjustment Tax and the Supplementary Protection Tax allow countries to deviate from the general tariff rates. The opportunity for MSMEs in the CET includes a possible reduction in the cost of inputs because of lower tariffs.

***Key issues***

Both the ETLS and CET are trade liberalising instruments that present opportunities and threats to MSMEs. Overall implementation of the ETLS and the CET has not been smooth as most of the ECOWAS member states still struggle with aligning their domestic policies and laws with the demands of the ETLS and CET. For example, Nigeria continues to use import prohibitions and the recent border closure as trade policy measures, contrary to the spirit of the ETLS. In the same vein, traders across the region continue to complain about the various harassment and extortion they face from security and border officials. There is a widely held belief within the political and business circle in Nigeria that the ETLS and CET are not serving the best interest of Nigeria. In 2016, the Nigerian Senate passed a resolution for Nigeria to suspend its participation in both the ETLS and the CET to protect the local manufacturers[146]. However, after a consultation session with key stakeholders in February 2017, the Senate decided to rescind the earlier resolution. The Senate seems to have understood that Nigerian businesses are benefitting from the ETLS and CET.

### b. *World Trade Organisation (WTO)*

***Overview***

The WTO is the custodian of the multilateral trading system. Nigeria was part of the negotiations that led to the formation of the WTO and has remained a member. There are three major pillars of the WTO regime, viz: the General Agreement of Tariff and Trade (GATT), the General Agreement on Trade in Services (GATS); and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). These agreements come with various annexes. The WTO is another trade liberalisation agreement that presents opportunities and threats to Nigerian MSMEs. In principle, MSMEs in Nigeria can take advantage of the WTO to access export markets, while also working to overcome import competition. Nigeria has left its average bound tariff at the WTO high at 117.3% even though the applied tariff is about 12.7%. Added to the low tariff binding coverage (at 19.2% of total lines), it could be said that Nigeria retains wide flexibility to adjust its tariff[147]. However, that flexibility is now lost to the ECOWAS CET.

***Key issues***

Nigeria's membership of the WTO is often cited as the cause of the collapse of the textile industry in Nigeria[148]. However, this claim seems to discount the impact of smuggling and the

difficult business environment of Nigeria on the textile industry. Another sector that faces serious challenges from the WTO is the agriculture/food sector. The challenge arises from the inability of the WTO to reign in the agriculture subsidy of countries like the US and the European Union bloc. The implication is that these countries' agricultural products compete with products from other countries that are not rich enough to subsidise their own farmers[149].

Even though the Doha Round which sought to address the issues of critical importance to the developing countries has stalled, the WTO members were able to conclude and adopt the Trade Facilitation Agreement (TFA). Nigeria signed the TFA in 2017, making it the 107th nation to sign. The full implementation of the TFA in Nigeria would help to address the issues around the import and export procedures through the simplification and transparency of rules and procedures. Implementation in Nigeria has been slow. According to the WTO[150], Nigeria has only recorded an 18% rate of implementation of its commitments – compared to South Africa (90.3% rate of implementation) or Benin (65.5%).

## C. *African Continental Free Trade Area (AfCFTA)*

***Overview***

The AfCFTA creates a continent-wide free trade area among Africa's 1.2billion people, with over USD2.5t economy. It is expected to become operational in January 2021, after suffering postponement due to the COVID-19 pandemic. Nigeria has signed but has not ratified the Agreement. The AfCFTA provides opportunities for Nigerian MSMEs to access the wider African market. Just like any other trade liberalisation agreement, it also comes with threats of import competition.

***Key issues***

Nigeria has not ratified the AfCFTA Agreement hence cannot participate in trading under it when trading commences. Nigeria had sent out mixed signals on the AfCFTA when it refused to sign the Agreement in 2018, after leading the negotiations. There was much debate at the home front on the cost and benefits of the agreement for the country's economy, especially the manufacturing sector. Nigeria eventually signed the Agreement in 2019. Nigeria has established a National Action Committee (NAC) on the AfCFTA to drive the reforms that are required to improve Nigeria's chances of benefitting from the Agreement. However, several months after the inauguration of the NAC, not much has been put out in the public domain concerning its activities.

***General recommendations on trade agreements***

Nigeria needs to work hard at taking advantage of the external trade agreements it has signed on to by ensuring a conducive business environment within the country. The factors that determine whether the MSMEs in a country would gain or lose from the country's participation in the agreement relates more to the domestic competitiveness of the economy. Economies that provide the enabling environment and incentives for business growth and export are better placed to take advantage of trade liberalisation agreements. Similarly, competition in the import and export market could lead to improved competitiveness of the local MSMEs in the

face of appropriate government policies. There is also a need for continuous education of MSMEs on the implications of these agreements in terms of opportunities and threats.

# CHAPTER 4

# 4. REVIEW OF PROPOSED LAWS (BILLS) RELEVANT TO MSMEs COMPEITIVENESS IN NIGERIA.

This chapter reviews some of the Bills (proposed laws) under consideration before the National Assembly. The aim is to identify and analyse the Bills that are of most importance to the MSMEs so that NICOP and its partners could work to support their passage. Using the Bills as springboards, the Chapter also addresses issues around the total reform of the regulatory frameworks on select issues such as commodity exchange, intellectual property rights and special economic zones. In doing this, the report borrows from examples and experiences of other countries.

## 4.1. Commodity Market Reforms

From the preceding analysis in Chapter 3, it is evident that the commodity market in Nigeria is not properly organised. This means that farmers are not able to get the right value for their produce. Also, they are denied the opportunity to access financing using their commodities as security. As a result of the interest and effort of various stakeholders to address this, several Bills have been prepared and presented to the National Assembly over the years. Still, none of them has become law to date. These Bills have resurfaced in the 9th National Assembly and require the concerted effort of stakeholders to scale through to becoming laws. They include the Commodities Exchange Commission Bill, the Nigerian Independent Warehouse Regulatory Agency (Establishment Bill), and Warehouse Receipt Bill.

### *a. Commodities Exchange Bill, 2019*

This is a Bill for an Act to "regulate commodities future trading in Nigeria; provide for the establishment of the Commodities Future Trading Commission and for related matters". The Bill lays out a regulatory framework for "Commodity Exchanges and Trading Facilities and Derivates Exchanges in Nigeria". The Commission proposed under the Bill would have the power to register and regulate exchanges and participants/operators in the commodities and futures markets, including prescribing the eligibility for licencing as an exchange and the different participants in the market (Sections 8, 20, and 29). Section 20 details the Commission's powers with respect to the registration of a Commodity Exchange or Derivative Trading Facility. These bodies are supposed to be self-regulating – having their own rules that must satisfy the provisions of the law before they can be registered. The Commission also has the power to revoke the operating license of a Commodity Exchange or Derivative Trading Facility (Section 22) and superintend over the disciplinary processes undertaken by the Commodity Exchanges or Derivate Trading Facilities over an operator within those markets.

Section 29 details the powers of the Commission concerning the registration of "commodity market operators", which include "floor dealer, floor broker, sub-broker, transfer agent, futures commission merchant, commodity pool operator, commodity trading adviser and such other intermediaries associated with the commodities industry". The Commission also retains the power to cancel or suspend any license granted to a commodity market operator. The Bill contains sundry rules aimed at safeguarding the integrity of commodity transactions within the Exchanges. There are rules against margin trading and market rigging transactions (Section 38); commodities market manipulation (Section 39); false or misleading statements (Section 40); fraudulently inducing a person to deal in security (Section 41); dissemination of illegal information (Section 42); prohibition of fraudulent means (Section 43); prohibition of insider dealings (Section 45); etc. The Bill further proposes appropriate penalties and remedies for infringement.

Appeals lie from the decisions or actions of the Commission to the Securities and Exchange Tribunal set up under the Investment and Securities Act (ISA) of 2007 (Section 59). The Bill further seeks to save the provisions of the ISA that relate to commodity trading but further proposes that the provisions of the Bill take precedence where there is any inconsistency between it and the ISA or any other law (Section 70).

b. ***Nigeria Independent Warehouse Regulatory Agency (Establishment) Bill***

The warehouse receipt system allows the owner or producer of a commodity to deposit the commodity in a licensed warehouse in Exchange for a receipt which serves as proof of the depositor's proprietary interest over (as well as the quality and quantity of) the commodity and which can be used as security for a loan or transferred to a third party. The only system that comes close to this is the private warehouse receipt system operated by AFEX.

This bill seeks to "establish the Nigeria Independent Warehouse Regulatory Agency to regulate the operations of licensed warehouses and to provide a regulatory framework for trading in warehouse receipts and for related matters". Section 1 of the Bill lists the objectives as follows: establish the Nigeria Independent Warehouse Regulatory Agency; provide a regulatory framework for trading in warehouse receipts; institutionalise best practices in commercial warehousing in Nigeria; enable depositors to store and retrieve agricultural and other commodities in commercial warehouses; and enhance the issuance and use of negotiable warehouse receipts as valid negotiable instruments and acceptable collateral by financial institutions in Nigeria.

The Agency proposed under the Bill would have the power to license and regulate warehouse operations, including the various operators, inspectors, samplers, graders, and weightiers (sic); the Agency also has the responsibility to establish and maintain links between the Warehouse Receipt Registry and the existing commodity exchanges (Section 9). Warehouse receipts are tradable in commodity exchanges (Section 40). Section 67 prohibits the operation of a commercial warehouse without a license issued by the Agency. Section 68 gives the Agency the power to create a transitional window of not more than two years for existing commercial warehouse operators to fully comply and bring their operations in line with the provisions of the Act. There are also provisions relating to conditions for issuance, suspension, and revocation of licenses.

The Bill proposes a Central Registry for Warehouse Receipts to be run by the Agency, where all warehouse receipts issued under the Bill (Act) would be registered, including any cancellation, modification, or endorsement (sections 81 and 83). The Registrar (DG) would maintain the Register, while provisions would be made for online operations of the Central Registry (Section 84). Other rules in the Bill relate to safeguarding the integrity of the system, including penalties for infringement of the rules.

c. ***The Warehouse Receipt Bill***

This Bill is another version of the Nigeria Independent Warehouse Regulatory Agency (NIWRA) Bill. The provisions are the same in substance, but the Warehouse Receipt (WR) Bill is a better draft in terms of clarity of language and contains some additional provisions. For example, in enumerating the functions of the proposed Agency, the Warehouse Receipt Bill has other functions such as: classify licensed warehouses into categories; provide requisite training for licensed certified warehouse operators and persons employed in the licensed

warehouses; promote awareness and use of warehouse receipts; create electronic linkage between the Warehouse receipts registry and existing commodity exchanges. Other functions relate to applying weights and measures and quality standards to the commodities under the scheme. In consultation with the Minister, the Agency is also mandated to develop a programme to support the setting up of processing centres and increased capacity to process stored agricultural products by licensed Warehouse Operators (Section 7 subsection (1). Also, compare the provisions of Section 9(2) of the NIWRA Bill and Section 7(2) of the present Bill as it relates to the investigative and enforcement powers of the Agency. An additional provision in the current Bill allows the Agency to take steps to ensure the attendance of witnesses and production of records and information in investigating warehouse operations.

However, one problematic provision common to the two Bills is found in Section 9(1)(d) of the NIWRA Bill and Section 7(1)(d) of the WR Bill. The former Bill states one of the functions of the Agency as "certify licenced warehouse operators…"; while in the latter Bill, it says "certify in licence warehouse operators…". Apparently, something is missing in the wording of these provisions. In the first-mentioned Bill, there is a question of whose responsibility it is to license the operators certified by the Agency. The provision in the second-mentioned Bill, which reads "certify in license warehouse operators…" makes no grammatical sense. This provision found in both Bills captures a cardinal function of the Agency, hence the need to ensure clarity in the expression. It is suggested that the paragraph should read "certify and license warehouse operators…". The implication is that the Agency would have the power to run certification programmes/examinations as a pre-condition to licensing.

Further, on the comparison between the two Bills, the arrangement of the parts and sections are different in the two Bills, but it seems that the structure of the WR Bill is preferable.

***Recommendations on commodity market reforms***

It has been noted above that the function of commodity exchange regulation is being performed by the SEC under the ISA. Some questions to be considered by the government and the stakeholders in designing a regulatory framework for commodity exchange include: Does Nigeria need a separate regulator for commodity exchanges, or should SEC be strengthened to perform that role effectively? Should the government still own commodity exchanges? How many commodity exchanges – private and public – can Nigeria maintain? Some of the options for reforming the commodity market include:

i. Establish one new regulator: Establish a new regulatory body for commodity exchange in Nigeria. This would mean enacting the Commodities and Exchange Commission Bill and expressly repealing the powers of SEC in this regard. In following this option, it is necessary to merge (at least incorporate elements of) the Warehouse Receipt Bill while leaving out the Agency proposed under the Bill. This would leave the proposed Commodities Exchange and Futures Trading Commission to also manage the warehouse receipt system. This approach would be in line with the government's policy to streamline or merge existing agencies and avoid creating new ones as much as possible. Ethiopia has a dedicated commodity exchange law and regulator but also a warehouse receipt system law[151], which was initially placed under the mandate of the Ministry of Trade. However, when the Ethiopia Commodity Exchange was set up in 2008, it was assigned the responsibility for managing the warehouse receipt system. In essence, the warehouse receipt system is an integral part of the Ethiopian Commodity Exchange ecosystem.

ii. Pass new legislation to regulate warehouse receipt system, but do not establish a new regulator for warehouse receipts: this approach would (a) retain the powers of SEC in respect of Commodity Exchanges (b) enact the Warehouse Receipts Bill to enable the utilisation of the warehouse receipt system within the commodity exchange ecosystem in Nigeria. This approach would also involve strengthening the SEC's capacity to license and regulate commodity exchange operations. To achieve this, SEC would need to issue a comprehensive regulation on commodity exchange operations. In the alternative, the ISA could be amended to spell out more clearly the powers of SEC in respect of the commodity exchange operation. Here also, the experience of Ethiopia is instructive. Different laws and regulators existed for commodity exchange and warehouse receipt. The regulator of the warehouse receipt system in Ethiopia is the Ministry of Trade (which has now assigned the responsibility to the Ethiopian Commodity Exchange), while the Ethiopia Commodity Exchange Authority (ECEA) regulates the Commodity Exchange itself. However, we recommend that Nigeria avoids setting up a regulator just for the warehouse receipt system but may consider assigning this function to a dedicated unit in the Federal Ministry of Industry Trade and Investment.

iii. No new regulator and no new legislation: this approach would involve the following: (a) retain the regulatory powers of SEC in respect of commodity exchanges, then solve the problem of lack of details of the powers of SEC as enshrined in the ISA by issuing new regulations (by SEC) to close the gap in the ISA. (b) include warehouse receipt system as part of the new commodity exchange regulation. There are experiences from across Africa to show that the operations of the warehouse receipt system are usually tied to the commodity exchange ecosystem[152]. In fact, in Ghana, the securities regulator regulates the commodity exchange and warehouse receipts system[153]. The Ghana Security and Exchange Commission issued Guidelines on Commodity Exchange[154] and Warehouse Receipts[155] in 2019.

Other recommendations include:

iv. Some stakeholders are of the view that the establishment of a new regulator holds the most potential for a more significant impact on the market in light of SEC's extensive regulatory burden across various spheres of the securities market. Transparency reduced bottlenecks, and innovation should be the hallmark of the new regulator to guarantee efficiency.

v. The Bill should prohibit the commodity exchange from buying commodities. The commodity exchange system should focus on developing a transparent system for price discovery, quality assurance, and sanctity of commodity contracts.

vi. Following the trend of e-commerce platforms, provisions relating to the regulation of e-commerce should be included in the Bill and the succeeding rules. Technology is critical in facilitating trade. There is a need for a regulatory framework and guidelines for MSMEs who would want to leverage technology to conduct exchanges nationally and internationally.

vii. Commodity exchanges play a critical role in quality assurance. Hence, the proposed regulations should also cover issues relating to quality and standardisation. This is vital in boosting market confidence and credibility in the international market. Farmers, suppliers, and every other person who is a player on this scene must be educated

adequately on the rigorous assessments to ensure that quality is never compromised at any level within the value chain.

Nigeria's economy and commodity market would benefit from a functioning commodity exchange ecosystem. There is a need for concerted action on the part of the stakeholders towards resolving the questions raised and proffering a clear pathway to the emergence of a sound regulatory environment for commodity exchanges in Nigeria.

### 4.2. Industrialisation and Export Development

Some of the Bills reviewed seek to promote industrialisation and export development. Some of the Bills are proposals for fresh legislations like the National Industrial Revolution Plan (NIRP) Bill, which seeks to provide a legal framework for the implementation of the NIRP, and the Agriculture Export processing Zones Bill. Other are proposed reforms to existing legislation such as the Bill seeking to repeal and re-enact the NEPZA Act and the OGEFZA Act.

#### a. *National Industrial Revolution Plan Bill 2019.*

***Overview***

The National Industrial Revolution Plan (NIRP) was adopted by the government of Nigeria in 2014 to run for five years (until 2019). The Bill was first introduced in the 8th National Assembly in 2015. The long title of the Bill describes it as "[A]n Act to provide for the rapid build-up of industrial capacity in Nigeria and to promote the competitiveness of Nigeria's manufactured goods and products, and for related matters". The Bill was an attempt to create statutory support for the adoption and implementation of the NIRP. The Bill rehearsed the objectives of the NIRP and went ahead to define an institutional framework for its implementation. The Presidential Advisory Council is proposed as the "apex regulatory body" for the NIRP (Section 5). The Presidential Advisory Council is a mix of public and private sector representatives. The Industry Department and its Director in the Federal Ministry of Industry, Trade and Investment are designated the Secretariat and Secretary, respectively. Section 6 provides for the establishment of an Inter-Ministerial National Steering Committee made up of several relevant MDAs.

The Bill also includes provision for a Project Office to be domiciled in the Federal Ministry of Industry Trade and Investment manned by officials drawn from the relevant agencies as well as specialist consultants and representatives of development partners as may be assigned to the Office for specific functions. The Project Office, operating under the Project Manager is supposed to perform project management functions, policy analysis and coordination, impact assessment, resource mobilization, etc concerning implementing the NIRP. The Bill also seeks to provide dedicated funding for the implementation of the NIRP through direct budgetary allocations and grants from the government and other bodies or persons (Section 18). The Bill also covered the National Enterprise Development Programme (NEDP) which was launched as a complementary initiative to the NIRP in 2014.

***Key issues***

This Bill tells the story of the uncoordinated manner policies are made, implemented, and discarded in Nigeria. One would have expected a coordinated approach between the Executive and the Legislature in passing this Bill into law in the 8th Assembly when it was introduced. Unfortunately, the NIRP was a policy of the preceding administration to which the

present administration has not paid much attention to implementing. This NIRP was and still is a private member Bill and one that must be commended. It is remarkable because it is arguably the first time that a government industrialisation plan was translated into a legislative proposal to ensure its institutionalisation and sustainability. Unfortunately, the Bill could not go beyond the Committee stage in the 8th House of Representatives. More so, the Bill has been reintroduced at a time when the NIRP is overdue for revision, with no clear statement of intent on the part of the Government on what they intend to do with the NIRP.

***Recommendations***

It is recommended that the passage of this bill be put on hold while the National Assembly engages with the Executive to determine the fate of the NIRP. If there is a consensus on the revision and continued implementation of the NIRP, then a fresh Bill based on the revised NIRP should be presented in place of this.

### b. *Nigeria Agricultural Processing Zones Bill, 2019.*

***Overview***

This Bill was first introduced in the 8th National Assembly in 2015 but could not go beyond the Committee stage. The Long Title describes the Bill as "[A] Bill for an Act to provide for the establishment, development and operational maintenance, management and administration of Nigerian Agricultural Processing Zones, and for other connected matters". This Bill seeks to replicate the provisions of the Nigerian Export Processing Zones Authority (NEPZA) Act for the agriculture sector. It proposes a Nigerian Agriculture Export Processing Zones Authority with a similar mandate as NEPZA but with a restricted focus on the development administration and management of agriculture export processing zones.

***Key issues***

The idea of setting up a new agency for agriculture export processing zones does not seem to be an optimal approach. This is more so when viewed in the context of the various moves to reform the regulatory framework for special economic zones in Nigeria. We shall take these comments together with the comments on the Nigeria Export Processing Zones Act (Repeal and Re-enactment) Bill and the Oil and Gas Export Free Zone (Amendment Bill) and other Bills on special economic zones.

### c. *Nigeria Export Processing Zones Authority Act (Repeal and Enactment) Bill, 2019*

***Overview***

This bill seeks to repeal the NEPZA Act and in the place of NEPZA proposes a new agency to be known as the Nigerian Industrial Development and Special Economic Zones Authority (NIDSEZA). This new agency would have a mandate over the articulation, formulation, and implementation of policies for industrial development in Nigeria as well as the promotion, licensing, and regulation of industrial enclaves with or without special economic zones (SEZ) status (Section 2). The Bill defines "special economic zones" as any area of land so designated by the President upon the recommendation of the Authority, under this Bill, with rights to tax incentives, tariffs, and regulations different from what is applicable in the customs territory. These shall include but not be limited to "Export Processing factories" (Section 30: Interpretation). The Authority would also have the power to implement the objectives of the NIRP (Section 3b).

The regulatory framework proposed under this Bill encompasses the present mandate of NEPZA and adds a wide industrial development mandate to the proposed Authority. The Bill expressly proposes the use of concessions for infrastructure development in the SEZs (Section 3, para. k); the establishment of a Dispute Resolution Centre with jurisdiction over civil disputes within the zones (Section 3(l), Section 27). These are remarkable improvements to the extant NEPZA Act. other improvements include:

i. the proposal of registration/licensing regime for different actors in the development and management of zones. These include Zone Promoters, Zone Developers, Zone Managers, Zone Independent Contractors, and Zone Service Providers. The Bill refers to them as Zone Operators (Section 4, subsections 5 and 6).
ii. The possibility of exporting from the Zones to the customs territory goods that are ordinarily under import prohibition so long as their processing in an SEZ meets up to 35% value addition (Section 12, subsection 10).
iii. The companies in the SEZs can export up to 100% of the products to the customs territory (Section 18, subsection 1(j)) as against 25% under the extant legislation. Furthermore, the import duty payable on goods manufactured or assembled in an SEZ but exported into the customs territory is equal to the duty payable on the raw materials in the state in which they were introduced in the SEZ (Section 12, subsection 11. Section 18 subsection 1(g)). In cases where the raw materials are sourced from the customs territory, the raw materials shall attract zero duty (subsection 12).
iv. Where products imported into the SEZ have gone through value addition without changing the essential attraction (sic) of the product and are exported into the customs territory, such products would attract a tariff rebate of 75%.

***Key issues***

The extension of the mandate of the authority to “industrial enclaves” other than special economic zones poses some challenges. For example, there is no clarity on the incentives applicable to industrials enclaves without an SEZ status as distinct from those with an SEZ status. Section 18(1) provides that “All enterprises shall be entitled to the general incentives provided under this Bill, while new or special incentives shall be as approved for any industrial enclave as may be recommended and approved by Mr. President”. Subsection 2 goes ahead to list the “general incentives”, which are the traditional incentives available in export processing zones (relief from legislation on tax, duties, etc.). It would be absurd to conclude that these traditional export processing zones/special economic zones incentives would apply to the other industrial enclaves not designated as such.

Indeed, to take the observation further: what is the rationale for the attempt to bring the licensing and regulation of non-SEZ industrial enclaves within the mandate of the Authority? The practice of developing industrial estates or layouts is an established one in Nigeria and has traditionally been done by the state governments. The only justification for federal regulation of this space would be the provision of special incentives for the industrial enclaves regulated by the Authority. Even in that case, it is doubtful whether there is any merit in seeking such regulation of non-SEZ industrial enclaves.

Perhaps, a few notes on the concept of SEZ would help. SEZ is a more encompassing term that includes free trade zones (EPZs), export processing zones (EPZs), free ports, enterprise zones, etc. while some are separated from the customs territory (host country) to apply duties;

others only enjoy sundry regulatory and infrastructure incentives. According to the World Bank (2017)[156], "a special economic zone is a delimited geographical area within a country with a zone's management providing infrastructure and services to tenant companies, where the rules for doing business are different— promoted by a set of policy instruments that are not generally applicable to the rest of the country. So, the test of an SEZ "is whether they offer a special regulatory framework and incentive regime that is available only to enterprises locating within the zone"[157].

The point being made here is that going by the acceptable definition of SEZs, the NIDSEZA Bill is defective because it confuses the concept of SEZs and EPZs. This is evident in the suite of incentives it offers. For example, Section 10 provides an exemption from all federal, state, and local government taxes, levies, rates, contributions, and/or funds; the zone is separate from the customs territory in respect of imports, exports, and treatment of goods manufactured in them (Sections 11, 12, 23, 14, 15); companies registered in the zone are subject to the sole regulation of the Authority, including their registration (no recourse to the Corporate Affairs Commission); civil dispute settlement, labour matters, etc. These are classical features of an EPZ or FTZ. This leaves no room for non-EPZ/FTZ zones, which the Bill also seeks to regulate.

We can contrast the provisions of this Bill with the provision of a similar Bill which was introduced in the 8th National Assembly: The *Nigerian Export Processing Zones Authority Act (Repeal and Re-enactment) Bill*. This Bill proposed to replace NEPZA with a new agency named Industrial Development and Special Economic Zones Commission. The Bill recognised the scope of the SEZ concept[158]. Besides the clear categorisation of the types of SEZs that could be licensed, the Bill went ahead to define SEZ as

> designated areas of land allocated by government as an industrial, processing, or service cluster. In these zones business and trade laws differ from the rest of Nigeria. This will include but not be limited to 'Free Zones' and 'Other Special Economic Zones. It will also include Nigeria's Industrial\Service Cities, Industrial\Service Parks, Industrial\Service Clusters, Processing Zones, and other similar Zone structures. <u>These Zones will be supported with specific Infrastructure, fiscal incentives, non-fiscal incentives, and regulatory requirements, to promote investments and developments within these Zones</u>. (Emphasis added).

This definition underscores the common feature of all SEZs as shown in the underlined portion. It recognizes the variety of industrial/economic enclaves that can fall under an SEZ regime and the fact that they all do not enjoy the EPZ/FTZ incentives.

Another problematic provision is Section 9 which deals with the vesting of property in the Authority. While subsection (1) is a rehash of the extant law – stating the power of the President or Governor of a State to, by Order[159], transfer land belonging to the federal or state government, as the case may be, to the Authority; a new provision is added in subsection (2). By virtue of subsection (2), a designation of an area as a Zone by the President in accordance with the Bill is sufficient to vest the property in the Authority. This position conflicts with Section 1 of the Land Use Act which has vested all land in a State in the Governor of the State. The President or any other federal authority cannot by fait acquire land within any State even for overriding public interest.
Further comments on this Bill will be taken together with the overall comments on all the other

Bills on SEZs.

### d. *Free Trade Zones Bill 2019*

***Overview***

This Bill is substantially the same as the NIDSEZA Bill. It seeks to repeal the NEPZA Act and establish the Nigeria Free Trade Zones Authority (NFTZA) in the place of NEPZA. It differs from the NIDSEZA Bill in that it does not propose the inclusion of other "industrial enclaves".

***Key issues***

Even though this Bill has not defined the concept of "free zones" in the interpretation section, it seems that the intent is to move away from the narrow EPZ orientation of the NEPZA Act but looking at the list of "approval activities" under the Third Schedule, it is the same as the list under the Third Schedule of the NEPZA Act. This raises the question as to the material improvement this Bill is introducing to the extant legislation (NEPZA) Act. The only remarkable change is the provision making it possible for companies in the zones to export 100% of their production into the customs territory as against 25% under the extant law.

### e. *Oil and Gas Investment and Free Zones Bill 2019.*

***Overview***

This bill seeks to repeal the Oil and Gas Export Free Zone Act. It proposes to establish a new agency to be called the Oil and Gas Investment and Free Zone Authority (OGIFZA) in place of the Oil and Gas Export Free Zone Authority (OGEFZA). The Bill seeks to resolve the turf war between NEPZA and OGEFZA by reinforcing the provision of Section 5(2) the OGEFZA Act which authorises it to take over and perform such other functions being hitherto performed by NEPZA as they relate to the export of oil and gas from any of the Nigerian Export Processing Zones established by the NEPZA[160].

***Key issues***

It was highlighted in Chapter 3 of this Report that the wordings of the OGEFZA Act seem to have limited its operations to the Onne/Ikpokiri Oil and Gas Export Processing Zone. This is because the Act started with the designation of the area as an Oil and Gas EFZ and went on to establish OGEFZA to administer the Zone (Sections 1, 2, and 5 (1)). All references use the definite article to refer to the "Zone" and in the singular, hence the provision in Section 5(2) has been subject of controversy. This bill seeks to resolve that by creating a general power vested on the President to designate an Oil and Gas Free Zone or Oil and Gas Special Investment Area (Section 1). The Authority prosed under the Bill (OGIFZA) is then vested with the administration and management of all such Zones or Investment Areas designated in accordance with the Act.

Proposed changes to the extant legislation mostly affect the incentives regime under Section 18. They include:

i. Up to 100% of production can be exported to the customs territory, as against a minimum of 25% under the extant Act.
ii. up to 75% rebate on import of special products imported into a zone on which value has been added without changing the essential character of the product after processing in a zone and intended for the customs territory.

iii. government guarantee for supply of crude oil to the zone, protection of critical infrastructure in the zone; provide market assurance for value-added products from the zone.
iv. the tax break is pegged at 15 years rather than indefinite.
v. Section 19 provides similar incentive regimes for the Special Investment Areas, except that the blanket exemption from domestic taxes, tariffs, and levies would only apply to them in a modified manner.
vi. There is also the dedicated Labour Council that would handle labour disputes and advise on labour relations within the Zones and Special Investment Areas.

***General recommendations on Special Economic Zones***

Our general comment on the regulatory framework for the special economic zones in the country is as follows:

- There is a need for a consensus on the number of free zones agencies/regulators Nigeria needs in this space. Ideally – and in line with the recent move of the government to reduce the number of agencies – one regulator is enough. What needs to be done is to strengthen the regulator, in its legislation and institutional capacity, to be able to perform the task. In this regard, the Nigerian Industrial Development and Special Economic Zones Authority Bill provide the closest ideal bill; but it must be strengthened in line with the recommendations made concerning it. Like a proper SEZ regulator, the sole regulator we propose would be able to license and regulate all categories of specialised SEZs by whatever name called. This is the trend in most parts of the world.
- The country may also decide to retain a separate regulator for the oil and gas export free zones, but this care must be taken to properly define the mandate so that there are no potential conflicts with the general SEZ regulator. The Oil and Gas Investment and Free Zones Bill would be a good place to start from, as it has largely resolved the conflict by its drafting. The only reason why retaining a separate regulator for oil and gas export free zones may be considered is because of the foreseen difficulty in merging the two due to the political economy dynamics of the operations of the oil and gas free zones at the moment.
- We strongly recommend against a separate authority for the agriculture export processing zones as this would amount to unnecessary duplication. While we acknowledge the need to fast-track the development of agro-processing zones in Nigeria, it is our considered opinion that the establishment of a well-resourced SEZ authority would more than cater to the needs of agro-processing zones.

Already, the turf war between NEPZA and OGEFZA is deep with complex political economy dynamics. There are private interests at stake (especially in the case of OGEFZA) and both agencies seem determined to win as many people in authority as possible to their sides. Engagement should be targeted towards accelerating the adoption of a framework for agro-processing zones under the present NEPZA Act.

### 4.3. Trade Remedies (Trade Defence)

***Introduction***

Nigeria needs a trade remedies legislation and institution, especially as the country joins other African countries to commence trading under the AfCFTA. Trade remedies laws and

institutions allow a country to protect its domestic industries from unfair import competition. It addresses such issues as a safeguard from import surges, dumping, and subsidised imports. Many stakeholders have raised concerns over the threat of dumping and sundry threats to local industries, most of which could be addressed by an effective trade remedies framework. The Nigerian Office for Trade Negotiations (NOTN) is reported to have worked on a trade remedies framework, including drafting a new Bill and making proposals for interim application based on extant laws pending the passage of the Bill. However, this Bill has neither been approved by the Federal Executive Council nor submitted to the National Assembly for consideration. The only Bill before the National Assembly on this issue is the International Trade Commission Bill.

***Overview***

The International Trade Commission of Nigeria Bill, which was also presented but not passed in the 8th Assembly, seeks to set up the International Trade Commission of Nigeria (ITCON). The objectives of the proposed Commission include: to promote efficiency, adaptability and sustainable development of the Nigerian economy through international trade; protect Nigerian industries from unfair trade practices; ensure, from time to time, that the multilateral rule-based international trading system is promoted in Nigeria and applied to Nigeria's advantage. The functions of the proposed Commission include the administration of Nigeria's trade remedy law in a fair and objective manner; the maintenance of the Harmonised Tariffs Schedule (HTS) of Nigeria; making recommendations to the relevant ministries, extra-ministerial departments and agencies regarding relief for an industry seriously injured by increased imports; etc. (Section 8). Section 9 vests the Commission with the power to administer and implement the provisions of any law relating to dumping and subsidied (sic) imports, intellectual property in international trade, safeguards, and countervailing (sic), other related matters. Section 11 present a rather strange list of the proposed departments of the Commission; these include trade defence, trade diplomacy and negotiations, trade justice, etc.

***Key issues***

This Bill is defective in the following ways:

- It seeks only to set up an institution to implement the "provisions of any law" relating to trade remedies. But the challenge is that the only law that relates to trade remedies in Nigeria is the 1958 Customs Duties (Dumped and Subsidised Goods) Act. This law merely provides for the imposition of countervailing duties in the event of dumping or importation of goods that have benefited from subsidies in their country of export. The Bill does not cover safeguards. Moreover, the standard of determination of dumping or subsidised import for the purpose of imposition of countervailing duties does not meet up to the WTO standards. So, the gap occasioned by the absence of substantive law on the subject can only be filled by enacting a WTO complaint trade remedies legislation. The closest attempt to do this was the Nigerian Trade and Competition Commission Bill that was championed by the Federal Ministry of Industry Trade and Investment (then Federal Ministry of Commerce and Industry) around 2007, which was never passed into law[161]. The NOTN also attempted to draft a trade remedies framework for Nigeria but is yet to be approved by the government as an executive Bill before transmission to the National Assembly.
- In vesting the powers over trade remedies administration, the Bill has used the wrong terminologies: "dumping and subsidised (sic) good"; as well as "safeguards and

countervailing". Conceptually, the classifications ought to be "subsidy and countervailing measures", "anti-dumping", and "safeguards" as separate categories as established under the relevant WTO agreements.

- The proposed power of the Commission regarding "intellectual property in international trade" comes directly in conflict with the scope of some existing legislation such as the Patent and Designs Act, the Copyrights Act, the Trade Marks Act, the Trade Malpractices Act, and even the Customs and Excise Management Act, without any reference to those extant laws. This also runs counter to current efforts at reforming and streamlining the legal framework for intellectual property rights in Nigeria, which aims to bring intellectual property administration under one institution, as opposed to multiple institutions as obtainable at the moment.
- The Bill becomes even more confusing in the departments it proposes. For example, why would the Commission have a department for "trade diplomacy and negotiations", seeing that it would not be vested with powers for trade negotiations? This runs contrary to the mandate of the Nigerian Office for Trade Negotiations (NOTN). Furthermore, what would be the role of the department for "trade justice" proposed under the Bill?

It is important to note that the WTO rules only permit member states to apply trade remedies or defence based on a national legal instrument that meets the standard set in the relevant agreements. In this regard, any law or administrative procedure that is inconsistent with Nigeria's obligations at the WTO would be challenged by Nigeria's trading partners. While Nigeria has failed to adopt a domestic law and institution for the administration of trade remedies, the country has continued to use quantitative restrictions (sundry import restrictions or outright import prohibitions) to either protect domestic industries from unfair import competition or to promote local production in specific industries. This approach is contrary to the WTO rules and can potentially lead to a challenge at the WTO dispute settlement body.

Beyond the risk of dispute, import prohibition cannot capture the threat that could be posed to local industries by some items that are not on the prohibition list. However, the enactment and proper application of trade remedies law in Nigeria would ensure a legal means of protecting local industries from a sharp rise in imports (safeguard rules would apply), dumping (anti-dumping rules would apply), and subsidised goods from other countries (subsidies and countervailing measures rules would apply). The implication is that in using a short-cut route to protection, we deprive domestic businesses, especially MSMEs, of the robust protection they deserve.

***Recommendations***

1. An enabling law containing the domestic WTO-compliant rules on anti-dumping and safeguards and countervailing measures is overdue. Hence, there is a clarion call to ensure that Nigeria's trade remedy framework is in place and the International Trade Commission Bill is passed with the substantive rules on trade remedies and other necessary amendments proposed in this position paper. To realise this and make the current legislative process on the Bill worthy of the effort and resources invested in it, requires engagement between the Executive and the Legislature with the support of the private sector stakeholders. The engagement would aim to ensure that the final report of the Committee for consideration by either the Senate or the House of Representatives incorporates the substantive rules. Ordinarily, after a public hearing on a Bill, the Committee of the Legislature to which the Bill was referred would produce

a Report that ought to reflect accepted inputs from stakeholders. The Bill has not gone through public hearings and reporting by the Committee, so there is still an opportunity for improving on the Bill as proposed in this position paper.

2. The second option for enacting a law on trade remedies in Nigeria would be for the Executive to transmit an Executive Bill on the subject to the National Assembly.
3. In the interim, the President could issue an Executive Order to enable the interim implementation of trade remedies based on extant laws and policies, pending a substantive law. Indeed, this approach was reported to be under consideration by the government in 2019.
4. Organised MSME groups should equip themselves to lobby effectively for policies that protect their interest. The sensitisation of stakeholders on the legitimate tools of protection available to them under international instruments remains crucial. There is also a need to balance the interest of manufacturers and consumers. The wording of this Bill should reflect that balance.
5. There is a need for the government (FMITI and NOTN) to expose the draft Executive Bill to stakeholders for comments. This is important regardless of the eventual approach adopted in enacting the law. On the one hand, the draft Executive Bill could be the basis for reworking the Bill already before the National Assembly. On the other hand, if the Executive decided to transmit it as a new Bill, it would still benefit from stakeholders' inputs.
6. This Bill is critical in streamlining the trade remedies framework in Nigeria. It is essential that its wordings are clear and there are no blur lines between the mandate of the ITCOM and the NOTN.

## 4.4. Intellectual Property

The analysis in Chapter 3 shows the deficiencies in the legal framework for the protection of intellectual property rights in Nigeria. Particularly, the analysis showed that all the laws are obsolete and have gaps in terms of modern concepts and practices as well as the demands of international bodies and agreements to which Nigeria belongs. We had also recommended the approach of a single administrative entity for intellectual property rights. This section examines a Bill that prescribed this consolidation (and updating of substantive laws), following the second approach mentioned in Chapter 3 (separation of industrial property rights from intellectual property rights). This is without prejudice to the merits of the first proposal to bring all the aspects under one administrative entity.

### *Industrial Property Commission Bill, 2016.*

***Introduction***

Intellectual property regulation and administration in Nigeria has been ripe for an overhaul. Several attempts have been made to harmonise and develop a comprehensive framework for intellectual property rights in Nigeria. The idea of an Industrial Property Commission represents one of such attempts. The crux of the idea is a consolidation of the various aspects of intellectual property that relate directly to industrial application (such as trademarks, patents, and industrial designs) and place them under a single administrative regime. Notably, the draftsmen left out copyrights administration in this proposal as it is not considered an industrial property. The Industrial Property Commission Bill featured but was not passed in the 8$^{th}$ National Assembly.

The Bill seeks to establish the Industrial Property Commission of Nigeria (Section 1) to "supervise the administration of the law relating to intellectual property[162] and ensure the rapid and coordinated development of intellectual property in Nigeria", among other related goals as contained in Section 4 of the Bill. The Bill proposes a Governing Board for the Commission, predominantly constituted by representatives of various MDAs (Section 3). The Bill also proposes a Registrar-General who shall be the Chief Executive and Accounting Officer of the Commission (Section 9). The Bill proposes five departments for the Commission, made up of three Registries (Patents and Designs, Trademarks, and Plant Varieties and Animal Breeds Rights), each of which is to be headed by a Registrar supported by Deputy and Assist Registrars. The other two departments are Administration and Finance; and Research, Planning and Statistics (Section 13). The three Registries have the mandate of implementing the different parts of the Bill as their names imply.

The scope of the Industrial Property Bill includes patents and industrial designs (including layout and circuit designs), trademarks (including service marks, collective marks, certification marks and geographic indication), and plant varieties and animal breeders' rights (including the rights of farmers). Section 22 of the Bill proposes the establishment of an Industrial Property Appeal Board "which shall be charged with the duty of considering and determining any case referred to it by any party aggrieved as a result of the Competent Authority's refusal to grant it a compulsory license and any other case it has cognisance under the Act".

The Bill proposes several changes to the extant laws regulating intellectual property in Nigeria (Trade Marks Act and Patents and Designs Act) and introducing a new law on Plan Varieties and Animal Breeder and Farmer Rights.

Some of the reforms to the trademarks regime proposed under the Bill include:

- the express recognition of service marks; hence a trademark could be registered in relation to goods or services (section 29). This contrasts with the extant law that only makes express provision for registration of trademarks in relation to goods.[163]
- The Bill seeks to introduce civil proceedings for infringement of trademarks at the Industrial Property Appeal Board (Section 33). This can only be done at the Federal High Court under the extant laws.
- Introduction of the power of the court to make an interim order, upon an *ex parte* application, for inspection and seizure of goods bearing the infringed trademarks or the infringed trademarks itself prepared to be used on goods or in respect of services (section 34).
- Section 44 introduces the registration of geographic indication, which are marks used to identify a good as originating from "a country or region or locality in that country where a given quality, reputation or other characteristics of the good is attributable to its geographical origin". A geographical indication is particularly relevant for identifying traditional crafts, agricultural produces, etc.
- Section 98 proposes a new regime for the protection of trademarks from imported counterfeits. Owners of a trademark may notify the Customs stating that they own the mark and request the Customs to treat any importation of such goods as prohibited goods for five years, but not longer than the period for which the trademark subsists. The Bill proposes confiscation as the penalty for the importation of counterfeits.

For patents and designs, some of the reforms include:

- The addition of computer programmes to the list of patentable inventions – if it is of a scientific or mathematical nature and does not contravene the provisions of the Bill (S.105(1)(c)).
- Modification of the scope of non-patentable inventions to include in the list diagnostic, therapeutic and surgical methods for the treatment of humans or animals. It also contains inventions, the publication or exploitation of which are contrary to the protection of human, animal or plant life and health or which are likely to be seriously prejudicial to the environment (S.105(4))
- Section 113(1) provides for the protection of proprietary information (undisclosed test or data, origination of which involves considerable effort) submitted in the course of the application for a patent from unfair commercial use.
- Section 119 introduces the protection of layout designs (in integration circuits)
- S.133 provided that any international treaty relating to industrial properties to which Nigeria is a party shall apply to matters dealt with by this Act. This seems to create a blanket application of international treaties on IP (existing and future) to which Nigeria is a party, without a further need for express enactment into national laws.
- S.137 provides for the grant of utility model certificates for inventions that qualify as a utility model, according to the Bill
- S.143 retains the provisions relating to Industrial Designs in the extant Act
- S.164 makes it an offence to falsify the Register, while section 165 makes it an offence to make false claims regarding the patent status of a product.
- Plant varieties and animal breeders' rights: An entirely new provision has been introduced to the IP regime in Nigeria to cover the registration and protection of plant variety and animal breeder rights (Part D: Sections 171-187).

***Key issues***

Some concerns and grey areas in the Bill would require correction or further consideration:

- As a general note, the Bill is inelegantly drafted, resulting in the absence of consistency in the provisions. For example, there is inconsistent use of the expression "goods and services" to indicate that the provisions of the Bill relating to trademarks are supposed to apply to both. While it is admitted that some provisions are only suitable for goods, it seems the use of "services" was dropped soon after it was introduced at the early part of the Bill. For example, in describing the rights given by registration under Section 31, all the reference was to "goods" and never to "services", hence creating the wrong impression that the rights do not extend to marks registered in respect of "services".
- The Bill does not cover all aspects of intellectual property as it has notably omitted copyrights. Hence, the controversy over the use of "intellectual property" in stating the Commission's functions under Section 4. This has informed the use of the expression "industrial property" in describing the Bill. Maintaining this usage throughout the Bill is essential. The use of the term "intellectual property" to define the scope of the Bill and the mandate of the Commission raises questions about the status of the Nigerian Copyrights Commission.
- This inelegant drafting stretches to the interpretation section, where most of the keywords were omitted. For example, "layout design" is not interpreted in the Bill; neither is the expression "industrial property".
- In the institutional set-up of the Industrial Property Commission of Nigeria, the Governing Board is dominated by public sector employees representing various MDAs. It is

submitted that a Commission of this nature should have a Board made up of predominantly reputable professionals as Executive and Non-executive members in the manner of the Boards of SEC, NERC and NCC.

- Another institutional issue that shows inconsistency in the Bill is the powers of the Industrial Property Appeal Board. It is not clear what the scope of the jurisdiction of the Appeal Board is. In Section 22, the jurisdiction of the Appeal Board is stated as "considering and determining any case referred to it by any party aggrieved as a result of the Competent Authority's refusal to grant it a compulsory license and any other case it has cognisance under the Act". Again, "Competent Authority" is not defined in the Bill. The Appeal Board is mentioned again in Section 33, where it is granted the power to entertain civil proceedings for trademarks violations. The remaining part of the Bill referred to the "court". It is not clear where the jurisdiction of the Appeal Board begins and ends and where that of the court begins. For example, under Section 29, any person who is not satisfied with the determination of the Registrar-General about the class within which any goods or services fall may apply to the court for a review. The same applies in the case of refusal or conditional acceptance of an application by the Registrar-General; an appeal shall lie to the court[164]. It would be expected that a hierarchy of review would be spelt out to show the flow from the decisions of the head of the various Registries to that of the Registrar-General and the Appeal Board. More importantly, what appeals go to the Appeal Board and which bypass the Appeal Board and go straight to the court?
- Section 46(5) is drafted in such a way that suggests that it is the Registrar General rather than the court that should make the order referred to therein. It should read, "…the court shall hear the applicant and the Registrar-General and shall make an order…". Similarly, Section 54(1) should read "…connection with the goodwill of (not or) of a business…".
- Section 98 addresses counterfeiting and then attempts to address parallel importation but leaves the statement hanging[165]. Furthermore, the section only provided for the confiscation of the offending imports without stating whether the Customs would auction the goods or whether the trademarks owners would receive custody of the goods.
- Still, on Section 98, the Bill has provided that the Customs and its officials cannot be held liable for failing to intercept and confiscate the offending goods, provided that where the trademark owner has suffered a loss as a result of such failure and has paid some fees/charges to the Customs as part of the notification, an amount of money equal to the loss suffered or the fees paid to Customs (whichever is less) would be paid to the trademark owner (subsection 4). Similarly, no penalty applies to the importer of the offending goods beyond the confiscation of the goods (subsection 8).
- Finally, on Section 98, subsection (5) grants the Minister of Interior the power to make regulations to guide the implementation of the section for the form of notice to be given to the customs, the evidence to support the claim of trademarks' ownership and other conditions incidental to the application of the section. It is noted that the Customs is not under the control of the Minister of Interior but the Ministry of Finance, hence the appropriate authority to issue notices in this regard in the latter. This is more so since subsection (9) states that the section will operate as if it forms part of the Customs and Excise Management Act.
- The exception to Section 113 dealing with the protection of proprietary information (undisclosed test or data, origination of which involves considerable effort) is not clear. Subsection (2) has two exceptions: paragraph (a) relates to where disclosure is

necessary to protect the public; paragraph (b) exception is where "necessary steps are taken to ensure that data is protected against unfair commercial use". The question that arises is: who does this apply to? Does it apply where the Commission has taken the necessary precaution, and the data still got disclosed and was used unfairly by a competitor? This seems the only reading that would justify the exception.

- Sections 118 seeks to provide for the procedure for compulsory licensing but has only stated that it would be in accordance with the First and Second Schedule to the Bill. Unfortunately, there are no such Schedules attached to the Bill, thereby leaving a gaping hole in what is arguably the most critical aspect of patents law in Nigeria. The need for a regime for compulsory licensing that is consistent with Nigeria's external obligation, especially under WTO-TRIPS, is long overdue. This is particularly important for the pharmaceutical industry to produce generic versions of life-saving drugs and vaccines. It also applies to the adaptation and application of specific machines and other inventions that may be required for the accelerated development of the country.
- On plant varieties and animal breeders' rights: presently, there are no intellectual property protections afforded to the developers of new plant varieties or animal breeds besides the laws/regulations merely covering the registration and release of plant varieties under the auspices of the agencies of the Ministry of Agriculture. The Patents and Designs Act of 1970 expressly renders plant varieties and animal breeds unpatentable in Nigeria. The WTO TRIPS Agreement requires Nigeria to protect plant varieties and animal breeds through patents or a *sui generis* system. It is also essential that this Bill has also made provision for the recognition of farmer’s rights over varieties or breed with specific attributes identified by a farmer or community without going through the stringent requirement as applicable in other cases of registration (Section 173 (2)). Several stakeholders ranging from international NGOs to government officials have been actively involved in developing a system of IP protection for plant varieties and animal breeds over the past few years.

There are other Bills in the National Assembly proposing to repeal, re-enact or amend the extant IP laws in Nigeria. Unfortunately, these are not accessible now, so we could not review them[166].

It has been argued that it is more beneficial to develop policies addressing specific concerns of intellectual property rights than enacting a holistic law on intellectual property rights. While this may be true, concerted efforts should be made to push for harmonising this Bill into law in the nearest future. This process does not stop the formulation of policies that can enhance the administration of intellectual property rights in Nigeria.

Special attention needs to be given to the concept of geographical indication because it is crucial in ensuring that local producers gain optimum benefit from their unique produce. Geographical indication, if utilised accordingly, has the potential of rewarding local producers and creating global brands that would invariably increase Nigeria's GDP. With over 4000 products with the prospect of GI, structure and protection are vital, especially following the opportunities presented by the AfCFTA.

***Recommendations***

It is recommended that a reform of the IP regime in Nigeria should commence with an updated bill that consolidates all intellectual property rights, not just industrial property rights, to bring them under one administrative agency. This would ensure uniform development and

consistent application of the various aspect of IP law in Nigeria. This was proposed in another Bill several years ago. This implies that the name of the Bill and the Commission would change to the Intellectual Property Commission Bill and Intellectual Property Commission of Nigeria, respectively. Consequently, the ideal Bill should cover the administration of intellectual property rights and a substantive law on trademarks, patent and design, copyrights, etc.

Furthermore, the concept of geographical indication should have well-developed provisions in any new law on intellectual property in Nigeria.

We recognise the various initiatives at projecting a common front among public and non-public sector stakeholders on reforming intellectual property administration in Nigeria, and we recommend that these initiatives be revitalised. In this regard, platforms like the National Assembly Business Environment Roundtable (NASSBER) driven by the Nigerian Economic Summit Group (NESG) provide a viable platform for engagement and coordination of efforts[167].

The stakeholder could also consider floating an IPR experts working group to fine-tune the Bills and subject them to broader consultation.

The non-public sector stakeholders need to engage with the political class, legislators and executive alike to ensure that any Bill emerges from their engagement receive the necessary legislative attention.

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## 4.5. Access to Finance and Markets

This section analyses proposed laws and regulations that impact the ability of the MSMEs to access finance for their operations. The proposals considered here include the draft regulations by the Securities and Exchange Commission (SEC) for the regulation of Crowdfunding, the Factoring Bill and the Franchise Bill.

### a. *Draft SEC Regulation on Crowdfunding*

Crowdfunding has emerged as an innovative funding mechanism for MSMEs, especially in the agricultural sector. Crowdfunding involves raising money from many people using an online platform. Crowdfunding is relatively well developed in more advanced economies. However, the phenomenon is gaining increasing popularity in Nigeria, especially in the agricultural sector. Several start-ups online platforms, such as Farmcrowdy, Pork Money and Thrive Agric, have carved a niche in the market. These platforms help farmers raise funds for their projects, and the farmers, in turn, repay the investing public based on the pre-agreed interest rate. According to the Crowdfunding Hub report, Crowdfunding Potential for Nigeria (2017), Nigeria accounted for between $7 to $8m out of the $83.3 million raised by the African crowdfunding market in 2015. 90% of this amount is attributed to peer-to-peer business lending and equity crowdfunding, while microfinance, donation and reward-based crowdfunding accounted for 10%. After several years of existence without a regulatory framework, the SEC has now issued a regulation for this emerging financial market to protect market participants from uncertainties and risks.

In March 2020, the Securities and Exchange Commission (SEC) published the “Exposure of New Rules to the Rules and Regulations of the Commission”, which contained the recently

adopted Rules on crowdfunding in Nigeria. The Rules defined crowdfunding as "[t]he process of raising funds to finance a project or business from the public through an online platform". According to the Rules, all "MSMEs incorporated as a company in Nigeria with a minimum of two-years operating track record shall be eligible to raise funds through a Crowdfunding Portal registered by the Commission, in exchange for the issuance of shares, debentures, or such other investment instrument as the Commission may determine from time to time" (Section 2).

Furthermore, the Rules set limits on the maximum amount of money that can be raised by Medium Enterprises (NGN100m), Small Enterprises (NGN70m) and Micro Enterprises (NGN50m) (Section 3) within 12 months. However, subsection (2) of Section 3 makes an important distinction between traditional investment instruments and the commodity sponsorship kind of investment. It provides that the "limits set forth above shall not apply to MSMEs operating as digital commodities investment platforms…". A "digital commodities platform" is defined under the Rules as a "digital platform that connects investors to specific agricultural or commodities projects for the purpose of sponsoring such projects in exchange for a return". This definition captures agritech platforms that farmers use to raise funds for seasonal farming, commodity processing, export financing, etc.

The value of crowdfunding to MSMEs in Nigeria lies in the fact that while traditional sources, such as bank loans, come with cumbersome documentation/collateral requirements and high-interest rates, extant laws make it illegal for MSMEs to seek investments from the public in return for equity. By Section 67 (1) of the Investment and Securities Act (ISA) 2007, "no person shall make any invitation to the public to acquire or dispose of any securities of a body corporate…" unless it is a public company, or a statutory body empowered to do so". Similarly, Section 22(5) (a) of CAMA prohibits a private company, unless authorised by law, from inviting the public to subscribe for any shares or debentures of the company; while subsection (b) prohibits a private company from inviting the public to deposit money for fixed periods or payable at call, whether or not bearing interest. In keeping with these statutory impediments, the SEC had in 2016 placed a ban on crowdfunding for equity type of investment. The adopted Rules seek to regulate the practice of crowdfunding, including equity-type investment instruments.

The Rules contain other provisions to safeguard the interest of investors and the integrity of the market. It also defines and sets out regulations for the various operators/mechanisms such as the crowdfunding portal (the platform used to raise the funding), the crowdfunding intermediary (the company running the portal) and the issuer (the company seeking the financing). The Rules also exempt from registration the digital commodity investment portals in operation before coming into force of the Rules and imposes on them only the duty to obtain a "no objection" from SEC (Section 43).

**Key issues**

The major concern around the Rules is that it has not addressed the legal impediment contained in section 22(5) (a-b) of CAMA, which prohibits a private company from inviting the public to subscribe for any shares or debentures of the company, and to deposit money for fixed periods or payable at call, whether or not bearing interest. It is also doubtful whether it has addressed the legal impediment in Section 67 of ISA. There is a wiggle room to address the limitation in Section 67 of the ISA: it can be argued that the SEC could rely on Section

313(1)(h)[168] of the ISA to exempt crowdfunding from the application of specific provisions of the ISA, including Section 67. However, such regulation/exemption by SEC does not cure the impediments posed by CAMA. These proposed Rules by SEC cannot operate as a "law" authorising private companies to deviate from the provision of Section 22(5)(a)-(b). It is important to note that the current operations of the digital commodity platforms seem to violate Section 22 of CAMA to the extent that they receive deposits in return for interest. These conflicting legal provisions would have been addressed in the recent re-enactment of CAMA had the stakeholders taken up the cause of advocating for the change.

It is acknowledged that the Rules would not fetter the operations of commodity-focused crowdfunding platforms. However, the minimum capital requirement is a risk management and protection mechanism against uncertainties. There is a precautionary principle within the rules that states that retail investors should not invest more than 10% of their annual income. This is in recognition of the associated high risk to this venture. For every market operator, there is insurance that assesses these risks, and this is adequately by the Rules and provides some confidence for investors.

Other concerns revolve around the minimum capital requirement of NGN100m for the registration of crowdfunding portals; the seeming misplacement of obligations between the crowdfunding platform and crowdfunding intermediary (such as placing due diligence obligations on the platform rather than on the intermediary, which is the operator of the platform); lack of provision for a secondary market for the securities as obtainable in countries like the UK, etc[169].

### Conclusion and Recommendations

The concerns raised around Section 67 of the ISA is arguably cured by Section 313 of the ISA, as shown above. This cannot be said about the concern around CAMA. Section 22 of CAMA should be amended to reflect the reality that the SEC has accepted, that is, the emergence of crowdfunding as a source of raising funds for businesses.

Given the importance of crowdfunding as an innovative financing mechanism for MSME and the need to eliminate all regulatory uncertainties, it is recommended that SEC and other stakeholders should approach the National Assembly for bespoke legislation on crowdfunding. The Rules already present a good draft for a Bill in this regard.

### b. *Factoring Assignments (Establishment, Etc.) Bill, 2019*

#### *Overview*

Overall, the Factoring Assignments Bill presents one of the best opportunities to introduce something new and impactful into the regulatory environment for MSMEs in Nigeria. Despite the increasing prominence of factoring globally and in Africa, Nigeria is yet to tap into this financing mechanism. According to the Afreximbank[170], which is the major promotor of factoring in Africa, the continent accounted for less than 1 per cent of global factoring volumes in 2017. The Bank also noted that factoring volumes in Africa grew from Euro 14.9 billion in 2009 to approximately Euro 22.3 billion in 2017, with most of those volumes concentrated in South Africa, Tunisia, Morocco, Egypt, Mauritius, and Kenya. Enacting this bill into law is a critical step in positioning Nigeria to take advantage of the African factoring market which is projected to reach about Euro 200 billion by 2021. This would go a long way in closing the trade/MSMEs finance gap in the country.

The Factoring Assignments Bill is one of the Bills that got to an advanced stage (Committee stage in the House of Representatives) but could not be passed by the 8th Assembly. The rather unwieldy Long Title of the Bill says it is a "Bill for Act to establish Factoring Assignments Act to provide for principles and to adopt rules relating to the assignment of receivables in order to create certainty and transparency and to promote the modernisation of the law relating to assignments whilst protecting the existing assignment practices and facilitating the development of new practices and ensuring adequate protection for the interests of debtors to promote the availability of capital and credit and to facilitate domestic and international trade and for related matters".

However, another draft bill exists with the title Factoring (Assignment of Receivable) Bill, 2016. Its long title is "a Bill for an Act to provide for factoring transactions and the assignment of receivables and other related matters." The Bill was deliberated upon by stakeholders in 2018 during the 25th AGM of Afrieximbank in Abuja. The Bill was produced through a collaborative effort of FCI[171], NEXIM, Afrieximbank, PWC, Ministry of Justice (MoJ), and other external consultants. In 2020, Nexim, Afrieximbank and the Senate Committee on Banking sought collaboration to re-establish contact and increased partnership with relevant stakeholders on the passage of the Bill by the 9th Assembly. Despite commitments made to pursue its passage within the shortest time possible as a matter of national economic priority, there is currently no commensurate effort to that end.

Factoring is recognised as "a type of supplier financing in which firms sell their credit-worthy accounts receivable at a discount (equal to interest plus service fees) and receive immediate cash"[172]. It is the practice whereby a company, having supplied goods to a buyer, then goes ahead to "sell" the invoice to a third party who assumes the responsibility of collecting the debt owed to the supplier by the buyer. The value of factoring is that the supplier goods do not have to wait for the buyer to pay as it (the supplier) would collect the amount due on the invoice from the factor (third party) with some discount. This allows companies to maintain their cash flow and finance their production without disruption. The Bill is an attempt to promote factoring as an alternative source of MSMEs financing in Nigeria.

The Bill under consideration defines "factoring contract" as a contract concluded between a client and a factor pursuant to which:

a) the client[173] assigns or will assign or will offer to assign to the factor trade receivables arising from supply contracts between the client and its debtors; and
b) the factor is to perform at least one of the following functions:
    i. Providing or procuring finance for the client, including loans and advance payments that are directly related to the value of each trade receivable and its perceived credit risk at the time the receivable is created or at any time thereafter.
    ii. maintenance of accounts (Ledgering) relating to the assigned receivables; or
    iii. collection of assigned receivables and:
    a. unless otherwise agreed any collection is for its own account and not as agent for the client;
    b. any collection made by the client for the benefit of the factor is deemed to be made by the factor; and
c) notice of the assignment of the receivables may or may not be given to debtors.

The Bill is proposed to apply to the assignment of domestic trade receivables and international trade receivables made pursuant to or under a factoring contract, as well as the subsequent assignment of same (Section 3).

This Bill noted that a national collateral registry exists, which already promotes the security of interests on proceeds from debtor companies and is governed by the Secured Transactions on Movable Assets Act 2017. The responsibilities of this registry are to be extended to include the registration of receivables/invoices assigned to a factor and made accessible to the public. This would ensure that a business is not able to fraudulently assign the same invoice/receivable to more than one factor simultaneously.

***Key issues***

The provisions of the Bill do not adequately cover the technicalities of factoring. This hampers the ability of investors and potential factoring companies to take advantage of underlying opportunities for their businesses.

It is important to note that while the Bill is pending, the CBN has already granted approval to some financial institutions to engage in factoring. However, this move by the CBN is hampered by the absence of a specific regulatory backing to the practice of factoring; hence the financial institutions are unable to deploy this service. Furthermore, the provisions of the Foreign Exchange Manual need to be reviewed to allow transactions under an open account. Following the CBN directive that exports can only be done based on letters of credit, there is a tendency for unrecorded transactions to be on the increase within the country as a way of circumventing this directive. In the long term, this directive would limit MSMEs from accessing the benefits of trading under the AfCFTA. An open account ensures that MSMEs can export and provide means for deferred payment structures.

***Recommendations and Conclusion***

Enactment of the Factoring Bill into law would assist in closing the financing gap for MSMEs in Nigeria and creating new tradable financial instruments. Some of the options and activities that could inform the renewed effort to pass a factoring law in Nigeria include:

- Liaise with NEXIM Bank to rally the stakeholders together to resuscitate the earlier process championed by NEXIM Bank.
- This collaboration should lead to the convening of a national policy dialogue, which would also involve the National Assembly, the Central Bank of Nigeria (CBN) and the existing NEXIM Bank stakeholders, like Afreximbank. The aim of the dialogue would be to explore the various options – including the use of regulation issued by the CBN – for the realisation of factoring in Nigeria. Egypt presents a good example of using a factoring regulation before a law came into operation to regulate the ecosystem.
- A need for regulation has become pertinent following the approval CBN has granted some financial institutions to engage in factoring. This regulation will support MSMEs by enabling the implementation of factoring assignments, particularly on the technical aspect and implementation structure such as MSME ratings, credit insurance, data sharing and data availability. The details covered by this regulation and the Act would

create new confidence for all the parties involved in the factoring arrangement. Fraudulent practices would equally be checked and credibility restored across board.

- Nigeria should consider signing up to international conventions on the assignment of receivables to be integrated into the global ecosystem and commit to international best practices. E.g., United Nations Convention on Assignment of Factoring 2001.

Given the importance of funding for MSMEs growth and sustainability in Nigeria, a funding mechanism such as factoring would fill the important gap in this regard. More advocacy needs to go into the enactment of a definite legal framework for factoring in Nigeria.

### c. *Franchise Bill, 2019*

***Overview***

This Bill is "for an Act to provide for the regulation of franchising in Nigeria; and for related matters". The franchise business model dates as far back as the early 1950s[174] in Nigeria but is mainly regulated by contract law. Other laws relating to intellectual property – such as the Trade Marks Act, Patent and Designs Act, NOTAP Act, etc. – apply to regulate the transfer and use of intellectual property in a franchise relationship. The Bill seeks to codify the contract rules and international best practices to provide legal certainty for the franchising market.

Franchise business model is "a method of distributing products or services involving a franchisor, who establishes the brand's trademark or trade name and a business system, and a franchisee, who pays a royalty and often an initial fee for the right to do business under the franchisor's name and system"[175]. Franchising provides MSMEs with opportunity in two ways: first, for an MSME wanting to scale their business, they can adopt the franchise model and enter into a franchise agreement (as a franchisor) whereby they allow other entrepreneurs to operate under their brand and business system as franchisees; for an MSMEs building a new business, taking up a franchise from an established brand provides an opportunity to bypass the full rigour of building brand equity and business systems over time.

The Franchise Bill defines a franchise as "the rights granted by a party (the franchisor) authorising and requiring another party (the franchisee), in exchange, for direct or indirect financial compensation, to engage in the business of selling goods or services on its behalf under a system designated by the franchisor which includes know-how and assistance, prescribes in substantial part how the franchised business is to be operated, includes significant and continuing operational control by the franchisor, and is substantially associated with a trademark, service mark, trade name or logo-type designated by the franchisor and includes: (a) the rights granted by a franchisor to a sub-franchisor under a master franchise agreement; (b) the rights granted by a sub-franchisor to a sub-franchisee under a sub-franchise agreement; (c) the rights granted by a franchisor to a party under a development agreement.

Perhaps the most significant contribution the Bill would make, if enacted into law, is the provisions regarding mandatory disclosure by the franchisor to the franchisee sequel to entering into a franchise agreement. Sections 5 to 9 spell out the duty of disclosure, the circumstances where disclosure is not necessary, the nature of the information to be disclosed, the manner of disclosure and acknowledgement of disclosure, etc. Section 10 spells out the effect of failure to disclosure on the franchise agreement (that is, the remedies available to the franchisee) and places a time limitation for the enforcement of the remedies.

Hopefully, these provisions have clarified the common law rules in respect of disclosure which is hardly straightforward from a business perspective.

The Bill proposes NOTAP as the agency (regulator) with the responsibility to implement the provisions of the Bill (Section 2 and 3). Similarly, Section 11 proposes to grant NOTAP the mandate to register every franchise agreement entered into between franchisees in Nigeria and franchisors outside Nigeria, as well as coordinate the licensing of indigenous business franchises to interested franchisees. Section 12 preserves the need to register all proprietary rights associated with any foreign business or franchise licenced to franchisees in Nigeria under the various intellectual property related laws. Section 14 mandates every franchise operator to ensure that they meet at least 20% local input in their operations. This aligns with practices in countries like South Africa and United Arab Emirates (UAE). Failure to comply with the provisions of the Bill when passed would be an offence attracting a term of imprisonment for a minimum of one year or the option of a fine of not less than NGN1,000,000 (One Million Naira), or both imprisonment and fine (Section 15). The Governing Board of NOTAP has the power to make regulations for the implementation of the Bill when passed into law. (Section 16).

Franchising is of particular importance for the fashion as well as food and beverages MSMEs. Franchising provides opportunities for MSMEs in these markets to expand their distribution networks with minimal investment on their part. A well-developed franchise system also provides backward linkages with the upstream operators (especially farmers) by creating a standard and secure market for their output. This is an excellent way to promote the value chain approach. Examples abound in the quick-service restaurant market, where the growth in the number of outlets of a franchise brand results in an expansion in demand for farm produces within the supply chain. Franchising also holds potential for deepening the agro-equipment leasing market in Nigeria. A franchise arrangement between foreign leasing companies and Nigerian businesses could provide the much-needed agricultural equipment at rental values to the farmers.

***Key issues***

Some of the gaps noticed in the Bill include:

- The appointment of NOTAP as the implementing agency: this would be problematic with the level of human resources and efficiency in NOTAP. There are reports of long delays in registering agreements with NOTAP and general inefficiency. While some countries have public sector bodies that regulate franchising (such as in the USA), others (such as the UK and South Africa) leave the regulation of the operators to industry associations who usually have a well-developed code of ethics. The report of a study titled "Tackling Access to Finance: The Potential of Franchising in Nigeria"[176] published in 2016 recommended that the role of NOTAP be confined to registering the franchise agreements while the regulation of the franchise business is left to strengthened private sector bodies like the Nigerian International Franchise Association (NIFA).
- The proposed power of NOTAP to coordinate the licensing of an indigenous business franchise to interested franchisees under Section 11 need further clarification as to its meaning. This is important because, in a situation like this, where regulation is trying to catch up with well-developed business practices, there is a need to minimise disruption

to a model that has been largely successful in Nigeria. Undue interference from the public sector in the name of regulation (or 'coordination') may not be in the businesses' interest.

- The Bill's requirements do not recognise the challenges of micro-businesses in low-income communities who want to start or scale. Moreover, these businesses neither lack the awareness of the business model. Hence, they are unable to grasp the advantage presented by franchising fully.

***Recommendations***

We, therefore, recommend as follows:

- There is a need to increase awareness of franchising as a business model to deepen the franchising market in Nigeria. Franchising cuts across various stakeholder groups – businesses, investors, business support services, etc. – whose input is pertinent in ascertaining the best regulatory framework for franchising in Nigeria.
- There is merit in exploring the industry-based regulation of franchising in Nigeria, with the public sector regulator(s) limited to such issues as registration and protection of intellectual property rights, protection of consumer rights and enforcement of competition rules in franchise operations. Since different agencies perform these functions presently, there may be no need for a centralised regulator in this market. It may just be enough to promote industry-based regulation through the Bill or regulation. For example, requiring that an applicant for the registration or renewal of franchise agreement with NOTAP shows evidence of good standing or compliance with the industry association's code. This practice would be akin to the model of the Nigerian Stock Exchange, which has its rules and codes, while the Securities and Exchanges Commission still plays an overall market oversight role and requires operators to abide by the rules of the Exchange.
- Besides the promotion of industry-led regulation advocated above, the Bill (or a regulation issued by a competent authority) should establish a centralised and automated franchise registry where all the necessary registrations relating to proprietary rights and transfer of technology can be done simultaneously, without taking away the existing mandates of the relevant agencies such as Trade Marks Registry. The proposed registry would operate as a one-stop-shop for franchise registration and administration. The extant practice of having to register all proprietary component rights (trademarks, industrial designs and patents) separately before visiting NOTAP for registration of the agreement is clumsy and time-consuming.
- Micro franchising should be adopted and covered in the Bill to help MSMEs in low-income communities scale their businesses. The Bill should integrate this model already in use by companies like Habib Yoghurt in an informal structure. Through this model, micro and small businesses would be integrated into the franchise ecosystem.
- A simplification of registration requirements and procedures for IP licensing is also recommended. Regulation of the ecosystem should not lead to a disruption of existing transactions and agreements. This simplification would consider the legal and commercial components of franchising, making it seamless to understand and utilise by MSMEs.
- The Bill ought to be amended to include a part and not just a section, covering the protection of intellectual property rights. Intellectual property is at the heart of franchising. The law should offer the same measure of protection to the franchisor as much as the franchisee. Trade secrets should be acknowledged as IP rights and protected by the law

following international practice to make them eligible for licensing. This will promote and encourage the creativity and technical expertise of start-up entrepreneurs. Logos, brand names, trademarks and other related intellectual property rights should be adequately highlighted and protected under the Bill. This propels small businesses to register them, accordingly, gain credibility and be assured of protection when they scale.

In conclusion, there is a need for more engagement among the stakeholders in this industry to widen the consultation and elicit informed views of experts and operators from within and outside the country before the Bill is passed. Franchising contributes to about 18% of South Africa's GDP. It holds enormous prospects for Nigeria's GDP, but Nigeria cannot make progress without including key stakeholders in these deliberations. The inputs from these consultations will strengthen the Bill, having recognised the pain points of the potential parties to a franchise.

# CHAPTER 5

## 5. GENERAL REMARKS AND RECOMMENDATIONS

The Chapter draws out general recommendations on the policies, laws, and regulations reviewed. The remarks and recommendations cover the need for stakeholders, especially the private sector, to track policy implementation as well as participate in policymaking and review. It also covers the need for holistic law reform initiatives to repeal or amend the numerous obsolete, overlapping, and conflicting laws in the statute books. Beyond the need for stakeholders to engage the National Assembly in the process of law-making, this Chapter also makes recommendations on the need for the National Assembly to adopt rules to ensure that it does not dissipate resources and energy in considering several bills on the same issue at any point in time.

### 5.1. Policies

Most of the Policies reviewed are well articulated but are either abandoned or poorly implemented. There are also the cases of different MDAs having similar but poorly coordinated policies or even one MDA having several policies. There is no doubt that relevant stakeholders could work together to initiate the process of resuscitating some of these policies. However, these would depend on the disposition of the relevant MDAs and the current focus of the government. Where processes have been commenced by the relevant MDA to review a policy, stakeholders should make inputs into such review processes through evidence-based position papers. The gaps that MSMEs need to address in policy-making processes include: (a) the need to ensure that MSMEs are adequately represented in the policymaking process; and (b) enhance the capacity of MSMEs to carry out evidence-based advocacy towards advancing their interests in the policymaking process.

As a principle, it is proposed that every MDA should take stock of all the policies and programmes under its remit with the view to reviewing, discarding, updating, or consolidating as the case may be. It seems that it would be easier to track performance when each MDA has a strategic plan that spans at least five years. The plan would set out the goals/targets of the MDA for the period as well as include a monitoring and evaluation plan which would be used to assess the performance of the head of the agency regularly. Any modification to the plan would require rigorous justification. Every policy/programme of the MDA should derive from this plan. It is only a disciplined approach to policymaking and implementation that could advance the development of the country.

### 5.2. Existing Legislations/Regulations

There is a need for a holistic law reform initiative to look at all the laws in Nigeria's statute books to determine which needs to be repealed or amended. There are too many obsolete, irrelevant, and conflicting laws in the statute books. For example, the Commodities Boards Act, Export Prohibition Act, Price Control Act, etc have no place in the kind of economic system Nigeria runs today. While the Commodity Marketing Boards system was abandoned in the mid-80s, the laws remain in the statute books. Similarly, while the government is promoting the export of food items such as yam, the Export Prohibition Act makes it illegal to export yams. There is a need for a holistic law reform initiative to look at all the laws in Nigeria's statute books to determine which needs to be repealed or amended.

We also observed an uncomfortable but historical disposition to law making in Nigeria where a new piece of legislation is made on issues that are already covered by an earlier piece of legislation, without any reference to the existing legislation. For example, this overlap is

present in the provisions of the *National Crop Varieties and Livestock Breeds (Registration, Etc.) Act, National Agricultural Seed Council Act, National Biosafety Management Agency, and National Agricultural Quarantine Service Act.* Each of these legislations vests various powers to different agencies for the registration, importation, and general regulation of agricultural seeds. Similarly, there is no connection between the Price Control Act and the price regulation provisions of the Federal Competition and Consumer Protection Act.

A complex web of policies, legislations, and regulations makes it difficult for businesses to navigate and substantially increases the cost of compliance. The complexity also creates room for rent-seeking behaviour on the part of government officials who would either offer businesses an escape route or simply mount tolls for extortion. The result is that businesses are not able to thrive. A fundamental danger in allowing obsolete and redundant legislation or policies to remain unrepealed is that these legislations or policies could become ready tools in the hands of unscrupulous officials who want to intimidate a business. For example, an MSME exporting yams would be in serious jeopardy if a government official decides to cripple its business by enforcing the Export Prohibition Act.

### 5.3. Bills before the National Assembly/Regulation

There is a need for speedy passage of some of the Bills as we have identified in the report. However, a few of them need to be subjected to wider stakeholders' consultation before a proper position would be presented to the National Assembly. There are three categories of Bills identified in this Report: one, the Bills seeking to amend specific provisions of some existing legislation; two, the Bills seeking to repeal and re-enact existing legislations – with radical changes; and three, the Bills seeking to introduce entirely new regulations on issues not covered by any existing legislation  Some of the bills we have identified as having the most impact on MSMEs in general and NICOP value chains, in particular, include the Franchise Bill, Factoring Assignments (Establishment, Etc) Bill; the exposure draft of the Regulation on Crowdfunding published by the Securities and Exchange Commission (all of which seek to cover subjects not covered by existing legislation/regulation). There is also the Industrial Property Commission Bill (which seeks a radical change in the content and institutional structure for the administration of intellectual property rights in Nigeria. These are all developments in the right direction. There is a need to ensure that the right stakeholders make inputs into these bills and draft regulations and that they are subject to robust debate before being passed/adopted.

### 5.4. On the Legislative Process

We also observed that there are often multiple bills on the same subject. In some instances, the provisions of the different bills are the same. In other instances, there are substantial differences in the provisions. Efforts should always be made to harmonise/consolidate these bills at the earliest stage (ideally, after the first reading) so that the National Assembly does not dissipate time and resources on two bills covering the same subject.

We recommend a system in the National Assembly that ensures that every Bill introduced before any of the chambers should be accompanied with an expert opinion showing:

- That the subject of the bill has not been partly or fully covered by any existing legislation.
- That no pending bill before the same chamber covers the subject of the bill in part or whole.
- That the goal of the bill would not be achieved by amending an existing legislation

- If an agency of government is proposed under the new Bill, the functions sought to be vested in the new agency could not be reasonably assigned to an existing agency.

This system would reduce the incidence of overlapping or conflicting provisions in the legislation, multiple bills on the same subject, multiple proposals for agencies of government. Experience has shown that the bills, even when passed, are rejected by the executive for these very reasons where they are not addressed in the legislative process.

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[24] Grow Africa, Strengthening Opportunities in the Tomato Value Chain in Nigeria. Available at https://www.growafrica.com/news/strengthening-opportunities-tomato-value-chain-nigeria#:~:text=In%20an%20effort%20to%20boost,USD1%2C%20500%20levy%20per%20tonne.

[25] https://guardian.ng/features/agro-care/two-years-after-stakeholders-still-waiting-for-tomato-policy/

[26] https://guardian.ng/business-services/industry/fg-mulls-standards-for-tomato-value-chain-three-years-after-import-policy/

[27] Available at https://scienceandtech.gov.ng/wp-content/uploads/2019/04/NATIONAL-LEATHER-LEATHER-POLICY.pdf

[28] https://www.tridge.com/intelligences/ginger/NG/production

[29] https://nepc.gov.ng/importer/nigeria-product/ginger/

[30] https://www.australiaawardsafrica.org/wp-content/uploads/2019/12/Australia-Awards-brochure_Janet.pdf

[31] https://www.australiaawardsafrica.org/wp-content/uploads/2019/12/Australia-Awards-brochure_Janet.pdf

[32] https://nrcri.gov.ng/ginger-programme/

[33] https://www.rmrdc.gov.ng/strategic-projects.php?project=development-of-ginger-value-chain-and-utilization-in-industries

[34] https://www.gingergrowers.org/

[35] https://businesstraffic.com.ng/how-cotton-textile-and-garment-sector-can-transform-nigerias-economy-cbn-governor/

[36] https://www.thisdaylive.com/index.php/2020/03/18/nigeria-and-benefits-of-reviving-cotton-sector/

[37] https://allafrica.com/stories/201910310070.html

[38] https://economicconfidential.com/2019/03/nigeria-2bn-textile-4yrs-policy/

[39] https://www.thisdaylive.com/index.php/2019/03/19/lcci-faults-forex-ban-on-textile-products/

[40] https://www.von.gov.ng/wheat-production-in-nigeria-to-improve-post-covid-19/

[41] Companies and Allied Matters Act (repeal and re-enactment) Bill, 2018 and later resubmitted in 2019.

[42] Some Bills pending before the National Assembly seek to address this gap. Some of these Bills are discussed in a subsequent part of this work. See the review Industrial Property Commission Bill 2019 in Section 5 of this Report.

[43] These development partners include the World Bank (WB), the African Development Bank (AfDB), the KfW Development Bank, the French Agency for Development (AFD) and the European Investment Bank (EIB). More details about the Bank is available at https://www.devbankng.com/who-we-are

[44] https://www.cbn.gov.ng/out/2012/publications/reports/dfd/brief%20on%20nigeria%20incentive-based%20risk%20sharing%20for%20agricultural%20lending.pdf

[45]https://www.cbn.gov.ng/out/2018/fprd/cacs%20guidelines%20incorporating%20non%20interest%20banks.pdf
[46] https://guardian.ng/news/dg-seeks-sons-return-to-ports-to-fight-influx-of-substandard-goods/
[47] 2019 Tariff Schedule. Available at https://www.nafdac.gov.ng/wp-content/uploads/Publications/NAFDAC-2019-Tariff_Final_Combined.pdf
[48] Being the Federal Capital Territory under the direct legislative powers of the federal government. The Act was applicable to the States/regions to the extent that the port of export was Lagos.
[49] Section 7.
[50] Section 2.
[51] Section 3.
[52] Section 1
[53] Section 2 (emphasis added)
[54] (a) the Inspectorate Division of the Ministry of Petroleum Resources; (b) the Quarantine Division of the Federal Ministry of Agriculture and Rural Development (now National Agriculture Quarantine Services); (c) the Standard Organisation of Nigeria; and (d) the National Agency for Food and Drug Administration and Control,
[55] Sections 16 and 17
[56] Section 1(4)(c) and(d)
[57] https://www.thisdaylive.com/index.php/2019/02/01/dilemma-of-nigerian-exporters-2/
[58] https://nepc.gov.ng/get-started/export-documents-procedures/
[59] Section 6.
[60] In charge of: (1) cocoa, cocoa butter, cocoa cake, cocoa liquor, cocoa powder, cocoa paste, cocoa nibs.
(2) coffee; (3) tea.
[61] (1) groundnuts, groundnut cake, groundnut oil, groundnut pellets; (2) soya beans, soya bean cake, soya bean oil, soya bean pellets; (3) beniseed, beniseed cake, beniseed oil, beniseed pellets; (4) sheanuts, sheanut oil, sheanut butter, sheanut cake; (5) ginger.
[62] (1) seed cotton; (2) cotton-seed, cotton-seed oil, cotton-seed cake, cotton-seed pellets; (3) cotton lint, cotton lintas; (4) kenaf; (5) tobacco.
[63] (1) Palm oil; (2) palm kernel, palm kernel oil, palm kernel cake, palm kernel pellets; (3) copra, coconut oil, coconut pellets.
[64] Rubber.
[65] (1) Guinea corn; (2) maize and corn oil; (3) millet; (4) wheat and wheat offals; (5) rice; (6) beans.
[66] Third Schedule
[67] Eight Schedule
[68] http://fmiti.gov.ng/
[69] Section 6, 7 and 8
[70] https://www.naqs.gov.ng/about-us/mandate.html
[71] Sections 1 and 23.
[72] http://fdvpcs.blogspot.com/p/importexport.html
[73] Chief Veterinary Officer
[74] https://www.naqs.gov.ng/news/news15.html
[75] Section 1
[76] Section 2
[77] Section 59
[78] Sections 70 and 71.
[79] Section 72
[80] Sections 92-102
[81] Sections 78-88
[82] Sections 88-91.

[83] Part XV
[84] XVI
[85] The inclusion of price regulation provisions in the FCCPA is a novel one in the world of competition regulation because, by its very nature, price regulation runs counter to competition but the drafter of FCCPA and the Legislature in passing it seems to have found merit in using price regulation as a temporary tool to restore optimal market condition in restricted cases. This can be contrasted with the provisions of the Price Control Act Cap P…LFN 2004, which is discussed below.
[86] Section 88
[87] Section 88(3)
[88] Section 89.
[89] Section 17(m)
[90] Section 17(q)
[91] Section 18(1)(d)
[92] Section 18(1)(f)
[93] The first version was enacted in 1970.
[94] Section 1
[95] Bicycles and spare parts; Flour; Matches; Milk; Motorcycles and spare parts; Motor vehicles and spare parts; Petroleum products; Salt; Sugar.
[96] Section 13
[97] Section 8
[98] https://sec.gov.ng/exposure-of-the-report-of-the-technical-committee-on-enhancing-the-commodities-trading-ecosystem/
[99] https://www.pressreader.com/nigeria/business-a-m/20180903/281805694805289
[100] Ibid
[101] https://afexnigeria.com/
[102] https://www.lcfe.ng/about.html#:~:text=Lagos%20Commodities%20and%20Futures%20Exchange%20(LCFE)%20was%20incorporated%20in%20May,trading%20of%204%20Asset%20classes.
[103] These Bills are analysed in Section 5 of the Report
[104] Progress on Implementation Commitments, Trade Facilitation Agreement Database, https://tfadatabase.org/implementation/progress/map
[105] Which is the weighted average of the country scores on the six key dimensions: 1) Efficiency of the clearance process (i.e., speed, simplicity and predictability of formalities) by border control agencies, including customs; 2) Quality of trade and transport-related infrastructure (e.g., ports, railroads, roads, information technology); 3) Ease of arranging competitively priced shipments; 4) Competence and quality of logistics services (e.g., transport operators, customs brokers); 5) Ability to track and trace consignments; 6) Timeliness of shipments in reaching the destination within the scheduled or expected delivery time.
[106] https://customs.gov.ng/?page_id=3101.
[107] Figures like N100
[108] Nigerian Shippers Council (Port Economic Regulator) Order 2015. Available at http://shipperscouncil.gov.ng/upload/Port%20Economic%20Regulator%20Order.pdf
[109] Read more: https://www.dailytrust.com.ng/shippers-council-is-ports-economic-regulator-appeal-court-rules.html
[110] https://www.businessamlive.com/ports-economic-regulator-debate-nigerian-shippers-council-need-legal-teeth-to-bite-as-surcharges-container-deposit-hit-importers-exporters-hard/
[111] Now Export (Incentives and Miscellaneous Provisions) Act Cap E19 LFN 2004. This Act repealed the Nigerian Export Promotion Council Decree of 1976.
[112] Now Nigerian Export Promotion Council Act Cap N108 LFN 2004

[113] Now Nigerian Export-Import Bank Act Cap N106 LFN 2004
[114] Now Nigerian Export Processing Zones Act Cap N107 LFN 2004
[115] Now Oil and Gas Export Free Zone Decree of 1996 Act Cap O5 LFN 2004
[116] https://www.unescap.org/sites/default/files/AWP%20No.%2054.pdf
[117] https://www.intracen.org/article/a-strategic-approach-to-sme-export-growth/
[118] Section 4
[119] Long title of the Act. Emphasis added.
[120] Section 4 of the Export (Incentives and Miscellaneous Provisions) Act
[121] Section 5 of the Export (Incentives and Miscellaneous Provisions) Act
[122] https://nepc.gov.ng/cms/wp-content/uploads/2018/05/REVISED-EEG-GUIDELINES.pdf
[123] Section 5 subsection 1. Emphasis added.
[124] There are two layers of the structure: the EEG Implementation Committee made up of NEPC, Federal Ministry of Finance, Federal Inland Revenue Service, Nigeria Customs Service, Central Bank of Nigeria and Federal Ministry of Industry, Trade and Investment; and the EEG Inter-Ministerial Committee made up of the Federal Ministry of Agriculture, Presidential Committee on Trade Malpractice, Organised private Sector represented by Manufacturers Association of Nigeria (MAN), Organised private Sector Exporter Association (OPEXA), Federation of Agricultural Commodities Exporters of Nigeria (FACAN) and the Economic and Financial Crimes Commission (EFCC). This Committee will be chaired by the Minister of Finance with the Minister for Industry, Trade and Investment as Alternate Chair.
[125] https://nepc.gov.ng/trade-facilitation/export-incentives/
[126] https://www.cbn.gov.ng/IntOps/
[127] Section 1
[128] Section 2
[129] Full list of functions is contained in Section 4.
[130] Section 6 of the Act. The List of approved activities is contained in the Third Schedule to the Act and includes the following: 1. Manufacturing of goods for export; 2. Warehousing, freight forwarding and customs clearance; 3. Handling of duty-free goods (transhipment, sorting, marketing, packaging, etc.); 4. Banking, stock exchange and other financial services, insurance and reinsurance; 5. Import of goods for special services, exhibitions and publicity; 6. International commercial arbitration services; 7. Activities relating to integrated Zones; 8. Other activities deemed appropriate by the Nigeria Export Processing Zones Authority.
[131] Within the domestic market of the host country.
[132] http://www1.worldbank.org/prem/PREMNotes/premnote11.pdf
[133] https://investclimate.projects.ecowas.int/wp-content/uploads/2019/10/ECOWAS-Investment-Climate-Scorecard-Tool.pdf
[134] This issue is discussed in more detail under the review of the OGFZA law.
[135] This issue is further explored under the review of the Nigerian Industrial Development and Zones Bill.
[136] Section 52. Emphasis added
[137] There were at least two Bills proposing to repeal this Act in the 8th Assembly, but none was passed. *Export Prohibition Act (Amendment) Bill. 2017* (HB 1085) only passed Second Reading and referred to the House Committee on Commerce but never made it out of the Committee for a Third (Final) Reading. The Senate version, *Export Prohibition Act (Amendment) Bill. 2017* (SB 575) also got stuck at the same point as the House Bill. In the 9th Assembly, there are at least three Bills at different stages seeking to repeal the Act. The most advanced is the House Bill (HB29): *Export Prohibition Act (Repeal) Bill, 2019*, which has gone through Second reading and referred to the House Committee on Commerce for further legislative work.
[138] https://www.von.gov.ng/fg-repeal-export-prohibition-act-to-promote-yam-exportation-association-pleads/
[139]https://www.firs.gov.ng/sites/Authoring/contentLibrary/178d5eb9-4bb4-4845-ee02-13ac6b10c2afNational%20Tax%20Policy%20(Revised)%202017.pdf

[140] https://businessday.ng/business-economy/article/fiscal-impact-of-the-2020-finance-act-on-msmes/amp/
[141] Section 2(1)
[142] Section 2(2) and Section 3
[143] Chukwuemeka Eze, Levies (Approved List for Collection) Act (Amendment) Order, 2015: Harmonisation or Legalisation of Multiplicity of Taxes and Levies? Available at https://businessday.ng/legal-business/article/levies-approved-list-for-collection-act-amendment-order-2015-harmonisation-or-legalisation-of-multiplicity-of-taxes-and-levies/
[144] https://andersentax.ng/federal-high-court-voids-taxes-and-levies-approved-list-for-collection-act-amendment-order-2015/#:~:text=The%20Court%20reached%20this%20decision,laws%20and%20is%20therefore%20unconstitutional.
[145] Details of the operations of the ETLS are available at https://www.etls.ecowas.int/. the good covered under the ETLS include the goods covered by the scheme are unprocessed foods, traditional handicraft products and industrial products.
[146] Deloitte – Senate Proposes Suspension of ECOWAS ETLS and CET December 6, 2016 http://blog.deloitte.com.ng/senate-proposes-suspension-of-ecowas-etls-and-cet/
[147] WTO, Nigeria's Trade Policy Review 2017.
[148] https://opinion.premiumtimesng.com/2017/02/06/nigeria-exports-two-million-jobs-to-china-as-textile-industry-is-dysfunctional-by-paul-alaje/
[149] https://www.wto.org/english/news_e/news19_e/agri_07oct19_e.htm
[150] Progress on Implementation Commitments, Trade Facilitation Agreement Database, https://tfadatabase.org/implementation/progress/map
[151] http://extwprlegs1.fao.org/docs/pdf/eth145717.pdf
[152] https://pdfs.semanticscholar.org/fa8f/c05ae5cafbea996280e357de06074782f46b.pdf
[153] http://moti.gov.gh/docs/GCX%20Project.pdf
[154] http://sec.gov.gh/wp-content/uploads/Final-Regulatory-Laws/Guidelines/Commodity_Exchange_Guidelines_2019.pdf
[155] http://sec.gov.gh/wp-content/uploads/Final-Regulatory-Laws/Guidelines/WAREHOUSE_RECEIPTS_2019.pdf
[156]https://openknowledge.worldbank.org/bitstream/handle/10986/29054/P154708-12-07-2017-1512640006382.pdf?sequence=1&isAllowed=y
[157]
http://documents.worldbank.org/curated/en/343901468330977533/pdf/458690WP0Box331s0April200801PUBLIC1.pdf
[158] Section 3 provides that:
The commission shall license Special Economic Zones, which can be categorized as follows:
1. Free Zones - 'Free Zones' shall mean an area of land designated by the President as outside the Customs Territory. Any goods introduced into a Free Zone are exempted from import duties, all taxes, and customs territory incorporation requirements, as they are outside the customs territory and are not subject to the usual customs controls. These exemptions will however be subject to the administration of the Commission. Free Zones will also be supported by specific infrastructural support and access controls as determined by the Commission. Free Zones shall include Export Processing Zones and other variants of the Free Zone that need to be regulated outside the Customs Territory.
(a) Other Special Economic Zones — 'Other SEZs' shall mean an area of land designated by the President as within the Customs territory, but given specific fiscal and non-fiscal incentives, access controls, and infrastructural support as determined by the Commission.
(2) The Commission shall license Special Economic Zones, along the following lines:
(i) Sectorial Focused Zones — Metals and Steel Zones, Agro-processing Zones, Oil & Gas
[159] Even though the extant law and the Bill has said the Order is sufficient to vest the property. It can be contended that by virtue of the Land Use Act, the Governor of a State

would still need to issue a certificate of occupancy in favour of the Authority for such transfer to be proper.

[160] However, the proposed Nigerian Export Processing Zones Act (Repeal and Re-enactment) Bill seeks to reinforce the position of NEPZA by stating in Section 3(r) that the Authority proposed under it shall regulate to the exclusion of any person, agency or body except as provided under the Bill, all Zones established under the NEPZA Act and going as far as stating that no provisions of any Act, law or regulation relating to taking over of any Zone established under the Bill shall have effect whatsoever.

[161] This Bill had a collection of about five different Bills covering trade remedies (safeguards, subsidies/countervailing measures, anti-dumping); competition, consumer protection, and weight and measures. A later Bill emerged with only competition and consumer protection and was signed into law in 2019.

[162] Underlining supplied. The Bill still uses the wider term 'intellectual property'. It is suggested that the Bill should still to the term 'industrial property' in line with the overall orientation of the Bill, which is the excise copyrights from the other intellectual property rights.

[163] Not consistently applied throughout the body of the Bill

[164] See also Section 49: Appeal from Registrar-General's decision on the opposed application.

[165] S.98(3): "Where notice has been given under this section in respect of any goods and has not been withdrawn, the importation into Nigeria at a time before the end of the period specified in the notice, of the goods to which the section applies shall subject to the provisions of this Act, be prohibited; provided that where the goods to which the trademark relates have been lawfully placed in the market in any country by or with the consent of the proprietor, a licensee or any other authorised person." The clause does not say what happens in this scenario. Does it absorb the importer of liability? Reduced liability?

[166] Patent and Designs Bill; Copyrights Bill; Trademarks Bill; Plant Variety Protection Bill

[167] Other relevant non-public sector stakeholders in this regard include the Intellectual Property Law Association of Nigeria (IPLAN), IPFirst, etc in pursuing these reforms to the finish line.

[168] Section 313(1)(h) of ISA provides that the Regulation making powers of the SEC extends to "prescribing that the provisions of this Act shall not apply or shall apply with such modifications (if any) as may be specified in the regulations to any person or class of persons or any securities or class of securities or to any transaction".

[169] http://www.olaniwunajayi.net/wp-content/uploads/2020/04/Unveiling-the-Securities-and-Exchange-Commission-Regulations-for-Crowdfunding.pdf

[170] https://www.afreximbank.com/afreximbank-proffers-factoring-to-ease-access-to-financing-for-african-smes/

[171] Global membership organisation promoting factoring and financing of open accounts domestic and international trade receivables. More information at https://fci.nl/en?destination=/en/about-fci

[172] https://openknowledge.worldbank.org/bitstream/handle/10986/8939/wps3593.pdf?sequence=1&isAllowed=y

[173] The supplier of the goods or services is the "client" of the "factor" (the company 'buying' the invoice) under a factoring contract.

[174] https://www.stearsng.com/article/micro-franchising-in-nigeria

[175] https://www.franchise.org/faqs/basics/what-is-a-franchise

[176] https://nourishingafrica.com/wp-content/uploads/formidable/9/Franchising-Nigeria-abridged-3.pdf Published by FMITI and DFID-PDFII,

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