



AfCFTA's potential solutions to Africa's trade obstacles

Lessons and Opportunities

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AfCFTA's potential solutions to Africa's trade obstacles

Increasing food security, fighting climate change, supporting growing e-commerce, and resolving trade disputes

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Introduction

International trade is pivotal to economic prosperity as no country can achieve meaningful economic development in isolation. Many countries open their economies to international trade through channels such as multilateral trading systems and increased regional integration and cooperation.

However, countries have different cultures, ideologies, political, social, and economic structures impacting trade needs. As such, it is only logical to expect that trade tensions would arise among trading countries. This necessitates international bodies such as the World Trade Organisation (WTO) to set structures that promote efficient economic activity globally.

The WTO was established in 1995 with the primary aim of ensuring that trade flows as smoothly, predictably, and freely as possible.¹ The WTO has since helped boost international trade. Since its establishment, the US dollar (US\$) value of world trade has nearly quadrupled, real volume of world trade expanded 2.7 times, and average tariffs declined from 10.5% to 6.4%.²

Despite these achievements, questions have been asked about the functionality of the organisation in certain aspects of regional cooperation. This is attributed to factors such as the politicisation of trade tensions, key appeals process suspended, and the advent of the COVID-19 pandemic. It is widely agreed that the WTO has been unable to optimally perform one of its core mandates, which includes providing a negotiation forum to liberalise trade, and resolve disputes among its 164 members.

Amidst these concerns, the outcome of the WTO's 12th Ministerial Conference (MC12) deliberations in June 2022 and the operationalisation of the African Continental Free Trade Area (AfCFTA) Agreement, present an opportunity for facilitating increased trade in Africa. The MC12 deliberations - which range from the commitment to food security to a comprehensive pandemic response - has important implications for trade in Africa. The AfCFTA could be instrumental in addressing Africa's trade and economic development needs.

1 https://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr_e.htm

2 https://www.wto.org/english/news_e/news20_e/dgra_01jan20_e.htm

AfCFTA: The untapped goldmine

The AfCFTA presents an untapped opportunity for facilitating trade in Africa. According to the World Bank, the operationalisation of the AfCFTA is anticipated to lift over 50 million Africans from extreme poverty by 2035.³ It is also projected that the AfCFTA will help diversify intra-African trade away from extractive and natural resources focus to production and industrial goods.

Commencement of trade under the AfCFTA Agreement was marked on 1 January 2021 with the inaugural shipment flagged off from Ghana. However, trade was only officially launched in October 2022 under the AfCFTA Guided Trade Initiative (GTI), a pilot program featuring 8 state parties, namely, Cameroon, Egypt, Ghana, Kenya, Mauritius, Rwanda, Tanzania, and Tunisia, representing the five trade regions within the continent. The AfCFTA GTI seeks to facilitate commercially meaningful trading, and test the operational, institutional, legal and trade policy environment under the AfCFTA. In September 2022, two East African countries, Kenya and Rwanda, exported their first goods under the AfCFTA GTI to Ghana.

There are still ongoing negotiations on rules of origin and trade services. Rules of origin have been concluded on 88% of tariff lines as of 31 May 2022. Rules of origin for automobiles, textile and apparels, fisheries, sugar, and tobacco remain outstanding. Furthermore, there is still ongoing conversation on how to treat goods produced within free trade zones and special economic zones.

The AfCFTA was established with the objective of creating a single continental market for goods and services, with free movement of persons, capital and investments. Narrowing down to some of the specific objectives of the AfCFTA include but not limited to, progressive elimination of tariff and non-tariff barriers, increased market access for trade in services, better reallocation of resources and cooperation on intellectual property rights, among other objectives.

Importance of intra-African trade



Source: PwC

PwC view: *To bolster the strength of the AfCFTA Agreement, state parties would need to update trade and complementary policies, regulations, and laws to align with the provisions of the AfCFTA Agreement and to conform with contemporary practices. State parties are encouraged to establish a national institutional framework to coordinate the multiple agencies in the public and private sectors involved in implementing the provisions of the AfCFTA Agreement.*

³ <https://www.worldbank.org/en/topic/trade/publication/free-trade-deal-boosts-africa-economic-development>

WTO 12th Ministerial Conference (MC12)



The highest decision-making body of the WTO is the Ministerial Conference, which convenes every two years. It consists of all members of the WTO. The Ministerial Conference can take decisions on all matters under any of the multilateral trade agreements.⁴

The 12th Ministerial Conference (MC12) was concluded on 17 June 2022 with the 164 WTO members reaching a series of agreements. Member states met at a time where global supply chain disruptions challenged the global economy which was still recovering from the COVID-19 pandemic. The World Bank further noted in June 2022 that the impact of the Russian invasion of Ukraine and its effects on global commodity markets, international supply chains, producer and consumer inflation, as well as financial conditions have steepened the slowdown in global economic growth.⁵

Forty-four (44) out of the fifty-five (55) member states of the African Union (AU) are members of the WTO as well. Ahead of MC12, African Ministers of Trade (AMOT) presented a declaration of a common position on many topics under discussion. These were related to the WTO's response to COVID-19 pandemic, the proposed temporary waiver on pandemic-related medicines, as well as particular areas around fisheries, agriculture, and food security.⁶

Under the leadership of WTO Director-General Ngozi Okonjo-Iweala, delegates from 164 countries agreed at MC12 on a package of deals. Notably a moratorium on e-commerce trade, food security, temporary waivers on COVID-19 vaccines, and setting limits on harmful fishing subsidies.

⁴ https://www.wto.org/english/thewto_e/minist_e/minist_e.htm

⁵ <https://www.worldbank.org/en/publication/global-economic-prospects>

⁶ <https://au.int/en/pressreleases/20220612/african-ministers-trade-adopt-declaration-common-position-tabled-geneva-12th>

4.1 Food security

Developing regions like Africa are particularly vulnerable to the recent rise in global food insecurity. Africa's susceptibility is hinged on high food import dependency. The global rise in food insecurity has been exacerbated by factors such as climate change, conflicts, socio-economic conditions, natural hazards, supply chain disruptions, and, most recently, the Russian invasion of Ukraine.

The conflict in Central and Eastern Europe has led to higher basic commodity prices such as maize, wheat and fertilisers, threatening global food security. In reaction, all WTO members jointly agreed to make food prices less volatile by facilitating trade in food, fertilisers, and other agricultural inputs. To achieve this, member countries committed to:

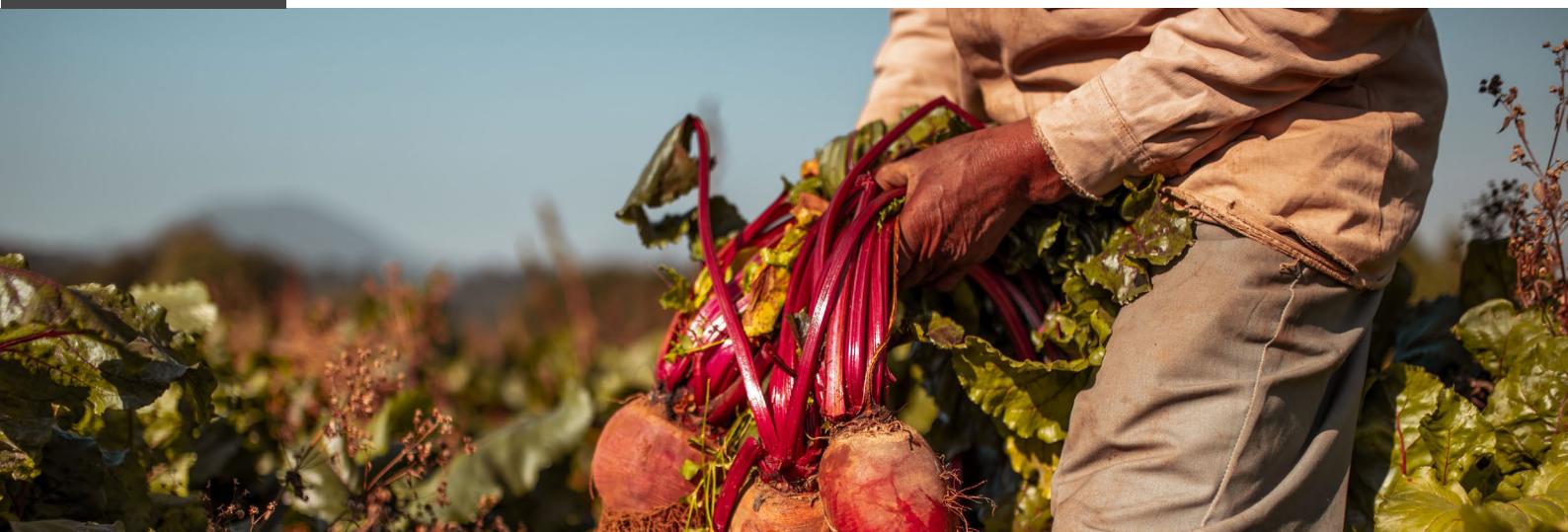
- *Refrain from export prohibitions:* Avoid imposing export prohibitions or restrictions inconsistent with relevant WTO provisions.
- *Minimise other trade distortions:* Ensure that any future emergency measures introduced to address food security concerns will minimise trade distortions; be temporary, targeted, and transparent; and be notified and implemented in accordance with WTO rules.
- *Focus on food production and affordability:* Ensure enhanced productivity and production, affordability, availability and accessibility of food for those who need it, especially in humanitarian emergencies.

These agreements attest to the commitment by WTO members to take concrete steps to facilitate trade and improve the functioning and long-term resilience of the global food markets. However, members can implement measures that guarantee their domestic food security.

The World Bank reported that the conflict in Central and Eastern Europe resulted in an increase in country trade-related policies. It noted that by the end of June 2022, 18 countries had implemented 31 food export policy measures affecting 5.5% of calories traded in global markets, and five countries had implemented six export-limiting measures.⁷ For example, Indonesia banned the export of palm oil in April 2022. It is the world's largest exporter of the product.

Despite having about 60% of the world's arable land, many African countries are battling food inflation due to the global rise in commodity prices. To ease the effect of food inflation some African countries adopted measures such as domestic price controls, export bans, and cash subsidies to the vulnerable.

For example, in March 2022, Côte d'Ivoire put a price ceiling on products such as refined palm oil, sugar, milk, rice, tomato paste, beef, and pasta for a period of three months. The government also provided US\$91 million worth of fuel subsidies earlier in the year. While some of these policy measures may provide temporary relief to the vulnerable, they may have unintended fiscal consequences. This could be, for example, the need to borrow money (thereby increase public debt) to finance subsidies.



⁷ <https://www.worldbank.org/en/topic/agriculture/brief/food-security-update#:~:text=Globally%20hunger%20levels%20remain%20alarmingly,previous%20high%20reached%20in%202020>.

The AfCFTA serves as a potential remedy to Africa's food insecurity and huge food import bill. The elimination of tariff and non-tariff barriers will facilitate a possibly cheaper trade of agricultural produce within the continent. It would be expected to reduce the cost of food supplies via easy movement of agricultural produce from surplus regions to deficit regions. This can be facilitated where barriers such as lack of reliable infrastructural networks that plagues transport and logistics services within the continent, are expeditiously eliminated.

Africa's economic communities have identified strategic products for further improvement in regional streams of quality improvement, that will help boost food security. East Africa's strategically important products include rice, beans, and dairy products, among others. West Africa's strategic products include cocoa, cassava, millet, livestock, fish, and aquatic products, among others. The most important Southern African products are agricultural produce such as maize, soybean, and groundnuts.⁸

To optimise intra-African trade through AfCFTA, governments would need to introduce favourable policies and provide capacity-building support to the private sector. Other ways that governments can facilitate intra-African trade through the private sector include investments in critical input and output market infrastructure, programme development, knowledge management, and data collection.⁹ In addition, MSMEs are very integral in boosting food security in Africa. To optimise the benefits of AfCFTA in boosting food security, it is important for large companies to train and onboard SMEs into their supply chains.

PwC view: *Although WTO members agreed not to restrict the export of food to the World Food Programme (WFP), they would still be free to adopt measures to ensure their own food security. To boost food security in Africa, it is important that African leaders utilise Free Trade Agreements (FTAs) that will help reduce the cost of food logistics. Furthermore, policy makers should emphasise backward integration which has the potential to ameliorate food insecurity and environmental damage.*



8 <https://www.un.org/africarenewal/magazine/may-2021/agriculture-will-make-or-break-africas-free-trade>

9 <https://www.un.org/africarenewal/magazine/january-2022/afcfta-what-has-worked-and-way-forward%C2%A0-agricultural%C2%A0trade>



4.2 Climate change

Africa has the lowest emissions per capita but it is very prone to adverse climate change. Climate change poses risk to infrastructure investments, water and food systems, public health, livelihoods, and agriculture.¹⁰ Furthermore, climate change could undermine any potential economic benefits that may accrue on account of the AfCFTA.

The MC12 discussion focused on ways trade and trade policies can support the Paris Climate Accords, sustainable development, environmental sustainability, and a just transition. The initiatives to be taken include:

- a. *Remove tariffs on renewable technologies:* The removal of tariffs on environmentally-conducive goods such as renewable energy technologies and pollution management systems.
- b. *Listing of environment-related services:* Classifying and developing an ambitious list of environment-related services.
- c. *Eco-labelling:* Finalising the principles-based guidelines for voluntary eco-labelling.
- d. *Eliminate harmful fuel subsidies:* Advancing disciplines to eliminate harmful fossil fuel subsidies.

Although there are barely any references to the environment in the AfCFTA Agreement, the pact could serve as a lever for sustainable growth. To achieve Africa's Sustainable Development Goals (SDGs) through the AfCFTA, countries should adopt proactive steps in removing tariff and non-tariff barriers to trade in sustainable and environmentally-friendly goods and services. In addition, we suggest that the AfCFTA Secretariat explore countries' interest in adding a protocol on environment and sustainable development.¹¹

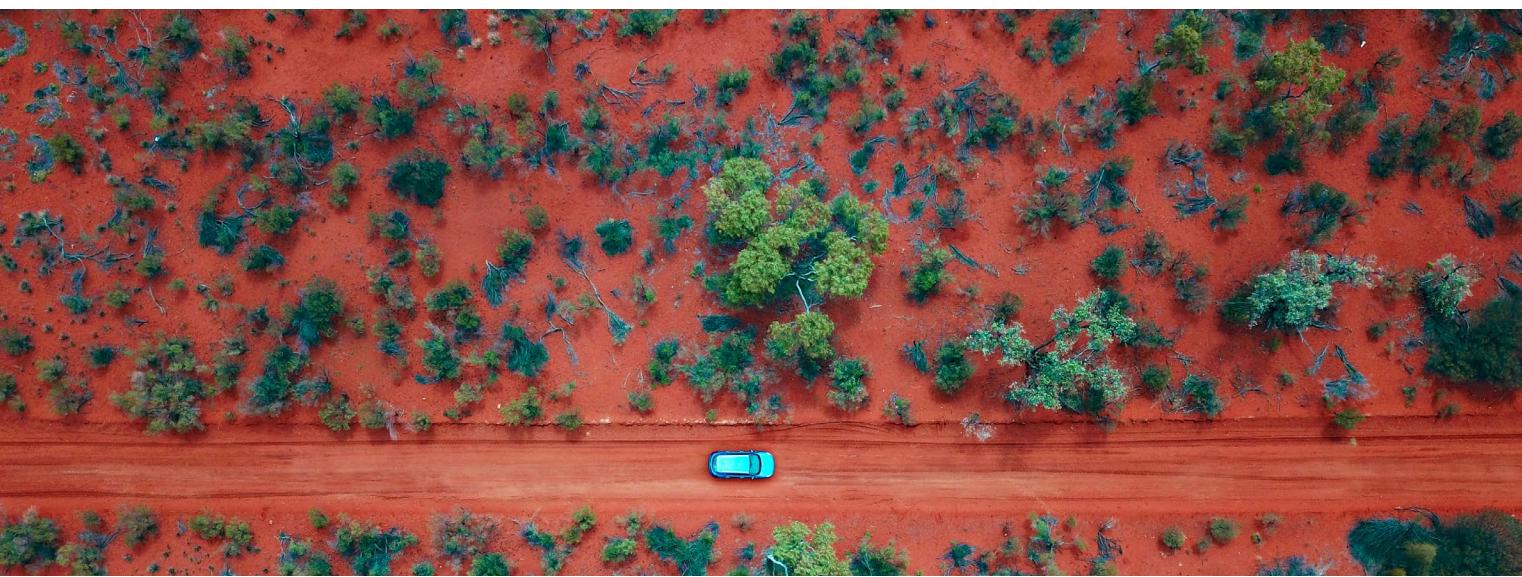
The AfCFTA through the intra-African market can create opportunities for businesses to invent sustainable technologies, goods and services via research and development incentives to be implemented by the countries. This has the potential of strengthening the value chain and reducing the region's dependency on imported sustainable technologies, goods and services from outside the region.

PwC view: *Africa is blessed with natural resources pivotal to the value chains needed for the green economy. Development of these opportunities requires transparency of public institutions to attract private climate finance.*

The AfCFTA could be a key tool in advancing green growth. To achieve Africa's development goals through the AfCFTA, countries should adopt proactive steps in removing tariff and non-tariff barriers to trade in sustainable goods and services. They should also adopt a carrot-and-stick approach to forestall unsustainable industrial practices whilst incentivising industries that foster the SDGs. Furthermore, the AfCFTA Secretariat should explore countries' interest in developing a Protocol on the Environment and Sustainable Development.

10 <https://www.afdb.org/en/cop25/climate-change>

11 <https://www.brookings.edu/wp-content/uploads/2021/09/21.09.15-Greening-the-AfCFTA.pdf>





4.3 E-commerce

The outbreak of the COVID-19 pandemic buttressed the importance of e-commerce, evidenced by the surge in digital transactions across the globe and in Africa. Yet, the continent's e-commerce growth remains disappointing due to weak digital economies which limit cross-border trade. Issues such as lack of well-structured e-commerce related rules and regulations (that touch on data protection and privacy, and consumer protection mechanisms) may have stunted the growth of Africa's digital economy. Other challenges include complex taxation regimes and digital trust issues.

An impediment to e-commerce is that it is intertwined with a couple of complex elements. For instance, e-commerce deals with market access factors such as customs duties, treatment of digital products, cross-border information flows, and electronic supply of services. In addition to that, e-commerce touches on the rules and regulations on matters such as consumer protection, protection of personal data, unsolicited commercial e-mails, intellectual property rights, competition policy and tax-related issues highlighted in the preceding paragraph. In light of this complicated relationship, 164 WTO members agreed to extend a moratorium on applying custom duties on electronic transmissions until the next Ministerial Conference, expected by the end of 2023.¹² The moratorium's fixed expiry date is on 31 March 2024, assuming the Ministerial Conference is not held by the end of 2023.

It is important that AfCFTA negotiators assess how deeply these issues will be regulated within the Digital Trade Protocol. Within the AfCFTA protocols, e-commerce evolved to digital trade which has a wider ambit to cover not only the digital platforms that permit e-commerce to take place, but also cover treatment of the data collected via the platforms. The AfCFTA Digital Trade Protocol aims to promote intra-African integration to achieve wider participation by enterprises at the national, regional, and international levels whilst promoting e-commerce activities. The Protocol should also consider the regulation of online dispute settlement because the usage of e-commerce channels and platforms varies across countries.

The negotiations on digital trade creates an avenue for state parties to operate under harmonised digital economy regulations, with the goal of collective economic growth from a trade perspective.¹³ The Protocol will help boost the growth of African micro, small and medium enterprises (MSMEs), facilitate innovation, create employment opportunities, and boost the GDP of the African continent. To optimally take advantage of the AfCFTA, it is very important that state parties create awareness on the AfCFTA for e-commerce entrepreneurs and businesses.

PwC view: *The e-commerce moratorium provides an ample opportunity for the development of the digital economy in Africa. Therefore, more policies should be enacted, logistics and infrastructure upgraded, and tech funding facilitated that will enable the digital economy to thrive. There is a revenue argument in favour of eliminating the moratorium on e-commerce. However, studies¹⁴ have shown that eliminating the moratorium on e-commerce could have adverse effects in the form of higher prices and reduced consumption. This in turn, will slow GDP growth and reduce tax revenues in developing regions like Africa.*

12 https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=254770,254764,254708,254719,254575,254574,254577,254349,254248,254192&CurrentCatalogueIdIndex=2&FullTextHash=237161575&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True

13 https://fieconsult.com/afcfta-protocol-on-digital-trade-core-provisions-that-drafters-should-address/?utm_source=rss&utm_medium=rss&utm_campaign=afcfta-protocol-on-digital-trade-core-provisions-that-drafters-should-address

14 <https://www.econstor.eu/bitstream/10419/227609/1/1671873424.pdf>



4.4 Trade disputes

A particular challenge for the WTO has been its inability to settle disputes among member countries. Representatives at MC12 agreed to be committed towards the reforms of all the WTO's functions and to have a fully functional dispute settlement system by 2024. The WTO's dispute appeals court has been inactive since 2020 after the United States prevented the appointment of new judges.

The WTO's inability to settle disputes buttresses the importance of the AfCFTA in settling trade disputes within Africa. In this regard, a vital attribute of the AfCFTA is the Protocol on Rules and Procedures on Settlement of Disputes (Dispute Protocol), which provides for the practical approach on dispute settlement for the state parties.¹⁵

Article 20 of the AfCFTA Agreement establishes the Dispute Settlement Mechanism (DSM). The AfCFTA-DSM is to be administered in accordance with the Dispute Protocol. The Dispute Protocol, in turn, created the Dispute Settlement Body (DSB) which will have the powers to interpret and apply all the AfCFTA legal instruments and determine state parties' rights and obligations under those legal instruments.¹⁶

A significant upgrade in the AfCFTA dispute settlement mechanism compared to the WTO is the structure of the Appellate body of AfCFTA. To avoid a similar incident, the AfCFTA Dispute Protocol empowers the Secretariat and the chair of the dispute settlement body to fill a vacancy in the appellate body, if state parties cannot reach consensus regarding appointments. This ensures that there are selected persons to address and settle disputes. An identified flaw of the AfCFTA Dispute Protocol is that it fails to clarify the type of consensus (positive or negative) needed for the creation of a panel which could muddle the process.

To bolster the strength of the AfCFTA Agreement, state parties would need to update trade and complementary policies, regulations, and laws to align with the provisions of the AfCFTA Agreement and to conform with contemporary practices.

PwC view: *There are improvements in the AfCFTA Dispute Protocol to prevent snags in dispute settlement recorded at the WTO. For example, Article 20 of the Protocol prevents internal sabotage by providing an alternative to Appellate Body appointments by the AfCFTA DSB. This will help prevent circumstances such as the blocking of the appointment of WTO Appellate Body Members by the United States.*

¹⁵ <https://www.mondaq.com/nigeria/international-trade-investment/1175724/dispute-resolution-protocols-in-african-continental-free-trade-area-reviewing-existing-protocols-and-rules>

¹⁶ <https://www.faa-law.com/dispute-settlement-system-under-the-africa-continental-free-trade-area-agreement-afcfta/>

4.5 Other key decisions

4.5.1 Fishing

Discussions on eliminating fishing subsidies have dragged on for over two decades. A deal was finally agreed to end subsidies to illegal, unreported, and unregulated (IUU) fishing and to the fishing of overfished stocks. The agreement includes measures that will enhance transparency and accountability for how governments support their fishing sector, e.g., each member is expected to report yearly the list of vessels and operators that it has affirmatively determined as having been engaged in IUU fishing. However, developing countries will be excused for two years starting from the date the agreement enters into force which is from 2022 to 2024. In addition, there was an agreement to provide a dedicated trust fund for technical assistance and capacity building for developing countries to implement the agreement.

PwC view: *The deal to eliminate illegal, unreported, and unregulated fishing in African countries would help support the long-term sustainability of fishing in the continent's waters.*

4.5.2 Intellectual property rights during a pandemic

All the ministers at MC12 agreed to a declaration on its response to COVID-19 and preparedness for future pandemics, appealing to the request of the developing countries. A consensus was reached on the waiver of certain procedural obligations under the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) which allows for the use of the patent for production and supply without the patent holder's consent for five years. It should be noted that this agreement does not disrupt the intellectual property framework which incentivises investment, research, and transfer of technology. It is expected that this will facilitate the development of new vaccines and medicines thereby strengthening the production capacity of African countries.

PwC view: *The agreement by the WTO members on waiving certain obligations under the TRIPS agreement would help propel the fair access and equitable distribution of vaccines in the African continent which depends on imports of pharmaceutical products. Also, the agreement reached on intellectual property would help strengthen and diversify pharmaceutical production in Africa.*

4.5.3 Small businesses and international trade

The achievements of the Informal Working Group on MSMEs were highlighted in a report launched in the margins of MC12.¹⁷ The report focuses on the progress made by the group and lays emphasis on strategies to help small businesses benefit from international trade. One major achievement mentioned in the report is the launch of the *Trade4MSMEs* platform, which provides MSMEs with access to information, thereby fostering trade. Other important accomplishments by the group include the launch of the Digital Small Business Champions, and annual meetings with the private sector.

PwC view: *The *Trade4MSMEs* platform will allow small businesses to access a diverse range of trade information brought together from a variety of sources. This platform could help strengthen the export capacity of the continent's MSMEs. However, there is a need for adequate sensitisation for MSMEs to take advantage of the platform. Furthermore, to optimise intra-African trade through AfCFTA, governments should introduce policies that would expand the private sector's access to finance and increase their access to the market. In addition, we also need more bilateral tax agreements between African countries as most of them have agreements with other continents but Africa. Also, there is a need to ensure businesspersons can move without visa obstacles.*

¹⁷ https://www.wto.org/english/news_e/news22_e/igmsm_15jun22_e.htm



The AfCFTA presents an opportunity for African countries to resolve some of the obstacles to trade prevalent in the global economy. Recent decisions by WTO members will go some way towards supporting this, however, for Africa's economies, the future lies in shaping the AfCFTA as a tool for trade and socio-economic development.

To make the AfCFTA more operational, member countries should:

- Synchronise their domestic trade policies with the protocols of the AfCFTA.
- Enact other trade and industrial policies with primary focus on value-addition.
- Improve on treaty networks within Africa including reducing immigration hurdles.
- Intensify efforts to publicise the benefits, progress, and latest updates on the AfCFTA to stakeholders such as the chambers of commerce, private sector associations, and the public.
- Expedite actions on the use of AfCFTA documents available in the appendices to the annexures of the respective protocols, by all relevant stakeholders and encourage companies to register for export under the AfCFTA rules of origin and other export regulations.

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