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TRADE IN SERVICES IN WEST AFRICA: INTELLECTUAL PROPERTY RIGHT AND TRADE FACILITATION

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Abstract: As the twenty-first century progressively advances, services are increasingly becoming a paradigm for economic performance for countries and their organisations globally in the international markets. There are conceivable innate potentials for trade in services in West Africa, especially with the advent of the African Continental Free Trade Area (AfCFTA) economies, unlike their developed counterparts, are compelled to adhere to the requirements of the intellectual property guidelines because they have to model their intellectual property laws to provide norms. The exercise of IP rights has no protection for indigenous knowledge, thereby exasperating the well-being of developing countries in the context of West Africa, as the situation remains hamstrung over the years. The research work aimed at establishing how intellectual property relates to trade, competitive markets, industrial advancement, and economic growth. Since the efficiency of trade flow is strongly determined by the level of trade facilitation within the countries involved, regulatory efficiency in the form of IP rights is much required for the safekeeping of the creativity of the indigenous knowledge of entrepreneurs to maximally reap the best output returns in trade services. The research summed up that the West African story is pertinent as the region is resource full, with grassroots engagements through entrepreneurship activities in service trade and, if empowered by focus-driven IPRs, which in itself is a trade facilitator, the much-anticipated economic growth, hence economic fluidity is achievable.

1 Introduction

Successively, as the twenty-first century advances, services are increasingly becoming a paradigm for economic performance for countries and their

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organisations globally in the international markets.¹ The increasing visibility of services in domestic industries, alongside foreign investment, are principal elements for employment, economic growth, increase in income, education, and, consequently, poverty alleviation. The rate of increase in service trade is much faster than the trade in goods.² Developing economies have contributed to a greater proportion of this increase in service trade.³ Also, returns obtainable from trade in services are regardless of the income level of a nation, as countries ranging from high-income through to low-income economies engage in it with possible positive prospects. However, opportunities abound even more for low-income and developing economies due to innate potentials that are available for investment as well as high expected return on investment.⁴

Quite a number of developing economies have a wide array of service trade. These trades range from transport services, support business services, banking, telecommunications, information technology, health services, tourism, entertainment, transportation and travel. The improvement in service trade is further enhanced by the declining overhead of information communication technology as well as improved accessibility of internet usage.⁵ The growth trend could improve, thereby providing the opportunity for employment and skills acquisition essentially for the developing economies that possess gaps in both income and skills. The improved engagement creates the opportunity for trade in developing economies that would enable them to compete globally. Trade participation, hence, would improve domestic activities and, thereby, investment, creating an avenue for benefiting from the gains of globalisation.⁶ At the moment, developed economies have a greater share of world trade in services,

- 1 United Nations Conference on Trade and Development (UNCTAD) (2021) *Technology and Innovation Report: Catching Technological Waves Innovation with Equity*, https://unctad.org/system/files/official-document/tir2020_en.pdf (accessed 20 July 2022)
- 2 WTO (2019). *World Trade Report: The Future of Service Trade*, https://www.wto.org/english/res_e/booksp_e/executive_summary_world_trade_report19_e.pdf (accessed 12 April 2021)
- 3 WTO (2015) *World Trade Report 2015: Speeding Up Trade – Benefits and Challenges of Implementing the WTO Trade Facilitation Agreement*. Geneva.
- 4 World Bank (2019) *Trade in Services: Helping Countries Optimise Services in Trade*, <https://www.worldbank.org/en/topic/trade-in-services> (accessed 13 August 2021)
- 5 African Development Bank (AfDB) (2012) *The Transformational Use of Information and Communication Technologies in Africa*. eTransform AFRICA, https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/The_Transformational_Use_of_Information_and_Communication_Technologies_in_Africa.pdf (accessed 14 May, 2021)
- 6 World Bank (n 4)

with a proportion of 67 per cent in the export of total services in 2019,⁷ as against 75 per cent in 2000 and 66 per cent in 2012.⁸ It can be noted from this that the export potential of developing economies is gradually growing, as the proportion of service trade globally has increased from 23 per cent in 2000 to 33 per cent in 2019.⁹

Trade in services is premised on quite a number of domestic regulations that direct the accessibility and processes of the indigenous as well as the foreign investors. Regulations could assist the market to thrive and, contra wise, they could lead to market failure. Regulation is essential in aiding the performance of the service sector in countries as well as making them competitive globally. It improves the prospects of exports that are dearly required by developing economies for improved income levels and growth.¹⁰ The implementation of trade facilitation is favourable for service trade. It is essentially germane for the involvement of developing economies in the global value chains and trade in goods as well as services. The developing economies, much more than the developed countries, derive more value from service trade participation due to the implementation of trade facilitation.¹¹

There are conceivable innate potentials for trade in services in West Africa, especially with the advent of the African Continental Free Trade Area (AfCFTA). This free trade agreement in Africa, if supported by the essential workability of the contract, is expected to expand Intellectual Property (IP) rights.¹² Also, better engagement of the IP rights would improve trade service activities, hence facilitating trade in the region.

7 World Bank (n 4)

8 United Nations Conference on Trade and Development (UNCTAD) (2014) Trade and Development Report, https://unctad.org/system/files/official-document/tdr2014_en.pdf (accessed 14 May 2021)

9 P Karkare and others 'A system, not an error: Informal cross-border trade in West Africa' ECDPM Discussion Paper 300 (2021), <https://ecdpm.org/wp-content/uploads/System-Not-Error-Informal-Cross-Border-Trade-West-AfricaECDPM-Discussion-Paper-300-2021.pdf> (accessed 14 May 2022)

10 United Nations Conference on Trade and Development (UNCTAD) (2020) Key Statistics and Trend in International Trade, <https://unctad.org/key-statistics-and-trends-international-trade-2020> (accessed 14 May 2021)

11 United Nations Conference on Trade and Development (UNCTAD) (2016) Trade Facilitation and Development: Driving Trade Competitiveness Border Agency Effectiveness, and Strengthened Governance, <https://unctad.org/trade-facilitation-and-development-driving-trade-competitiveness-border-agency> (accessed 14 May 2021)

12 United Nations (2012) Trade Facilitation Implementation Guide: The Generic Approach to Trade Facilitation Implementation <https://tfig.unece.org/contents/generic-approach-TFimplementation.htm> (accessed 23 September 2022)

The fluidity of our world necessitates that rules are made¹³ imposed, to improve procedures for organised outputs that are much required for developing regions, essentially West Africa, where remarkable change is highly desired economically¹⁴. Trade in services stimulates improved performance and activities in the agricultural sector, as well as in the manufacturing sectors. Quite a number of services are essential resources; this is because they act as intermediaries, hence providing for other sectors of the economy.¹⁵ To a large extent, services have now become an essential feature in economic activity in addition to playing a critical part in infrastructural development, improved level of competition and, consequently, the facilitation of trade.¹⁶

2 The concept of trade in services

The concept of trade in services refers to the transaction and distribution of intangible goods, referred to as services, between a producer and the end-user.¹⁷ The transaction that occurs between a producer and an end-user with legal agreements provisions in the exchange of non-corporeal goods is referred to as trade in services.

13 KE Maskus 'Globalisation and the economics of intellectual property rights: Dancing the dual distortion' Institute of International Economics (2000), https://www.piiie.com/publications/chapters_preview/99/3iie2822.pdf (accessed 23 September 2022).

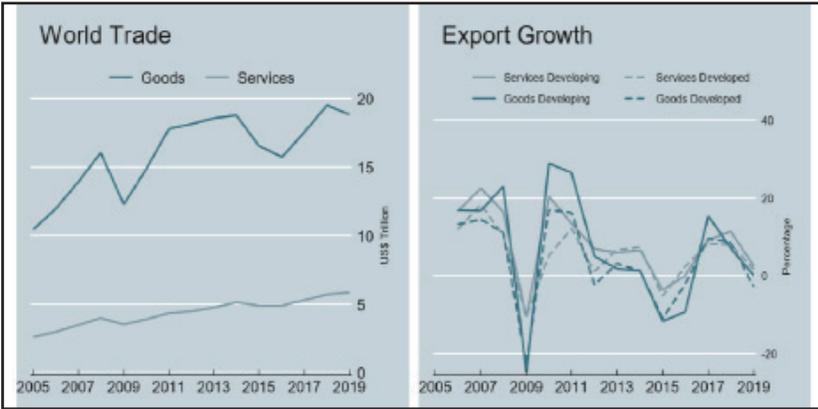
14 World Bank (n 4)

15 United Nations Conference on Trade and Development (UNCTAD) (n 8)

16 United Nations Conference on Trade and Development (UNCTAD) (n 8)

17 P Madden 'The figures of the week: International trade in services (2019) *Africa in Focus*, <https://www.brookings.edu/blog/africa-in-focus/2019/06/06/figures-of-the-week-international-trade-in-services/> (accessed 16 May 2021).

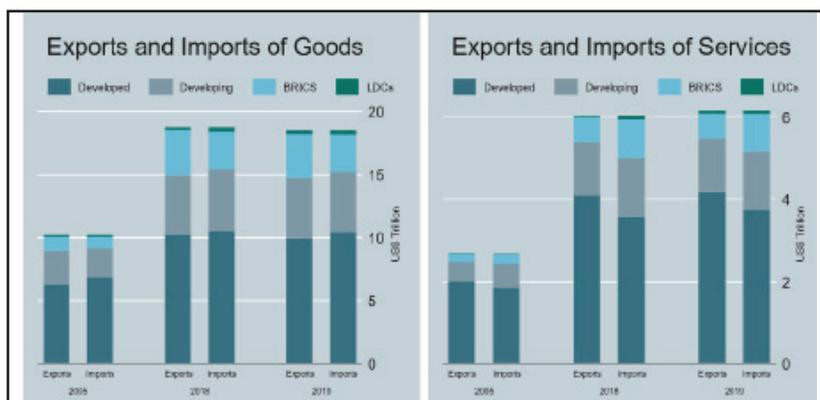
Figure 1: Values and growth rates of world trade in goods and services



Source: UNCTAD Secretariat calculations based on COMTRADE and UNCTAD stat data

From Figure 1 it can be deduced that a clear difference is evident between trade in goods and trade in services. A greater proportion of trade, however, is accounted for from tangible goods, whereas service trade accounts for a lesser portion. Global trade in tangible goods rose radically over the past ten years, a rise from about US \$10 trillion in 2005 to over US \$18.5 trillion in 2014. Though there was a decline in 2016, it further increased to US \$18.8 trillion in 2019. However, for trade in services, there has been a consistent increase between 2005 and 2019. There was a rise from about US \$2.5 trillion to US \$6 trillion.¹⁸

18 United Nations Conference on Trade and Development (UNCTAD) (n 8)

Figure 2: Value of trade in goods and services by region

Source: UNCTAD Secretariat calculations based on COMTRADE and UNCTADstat data

The developed economies over the years, as major producers in international markets, have had relative increases in trade volumes; they explain more than 50 per cent of total exports of goods and about 67 per cent of service exports. As illustrated in Figure 2a above, in 2019 developed economies' goods exports was about US \$10.5 trillion, while Figure 2b reveals that service export amounted to about US \$4.1 trillion. Also, goods exported for developing economies amounted to about US \$8.5 trillion, while service export amounted to about US \$2 trillion. Hence, it is evident that the contribution of developing economies to global service trade still remains minimal in spite of the relative increases in exports and imports for the countries over the past ten years.¹⁹

3 Level of trade in services in West Africa

Intra-regional trade in West Africa is considerably low, enormously informal and inadequately reported.²⁰ The introduction of the AfCFTA in 2019 was a notable head start for African countries to enhance service trade prospects, hence creating avenues to best maximise available potential and market to their advantage. This prospect through the authorised market entry was established basically for five major service sectors in 2020, namely, business advisory, communication, financial services, tourism and transportation.²¹ The continental free trade area promises an increase in regional trade, a reduction of trade costs and a restructuring of border

19 United Nations Conference on Trade and Development (UNCTAD) (n 8)

20 P Karkare and others (n 9)

21 P Madden (n 17)

processes. If fully implemented, AfCFTA would assist African countries in boosting their opportunities in spite of projected economic volatility, which would assist in ushering in various types of ardent restructuring that are required for sustainable growth.²² However, the concerns of land border barriers and road blocks in West Africa and Africa as a whole make these expectations of the free trade zone a fallacy. The rationale of the Economic Community of West African States (ECOWAS) trade liberalisation scheme is to ensure trade facilitation within this Regional Economic Community (REC). However, quite a number of barriers still disrupt the free flow of intra-REC trade. These obstacles comprise incessant road blocks, unlawful mandatory payments, persistent provocation of traders as well as transporters, and inconsistent adjustment measures.²³

In spite of the objectives of the AfCFTA to enhance service trade in the region and to boost intra-African trade by at least 53.2 per cent, the current situation depicts that quite a number of African countries are disturbingly not ready to execute their AfCFTA obligations. This is evidenced by several actions taken by the said countries. For instance, the Nigerian ban on the trade of every commodity from the countries that it is sharing land borders with, namely, Benin, Cameroon and Niger, effectually prohibits all import and export trade with its neighbouring countries.^{24 25}

The shutdown of the Nigerian border does not agree with the resolve of the free trade expectations, which aspires to build a domestic market with access to the flexible movement of people, investment, goods and services.²⁶ This also conflicts with the over 44 year-long commitment to the ECOWAS, which was initiated by Nigeria in 1975, a very potent initiative for the free trade agenda. The aim of establishing the domestic market and removal of tariffs, quotas, quantity restrictions, duties, and taxes imposed on trade among countries in the West African region is still far-fetched, and the free trade area remains a mirage.^{27 28}

22 World Bank (2020). African Continental Free Trade Area <https://www.worldbank.org/en/topic/trade/publication/the-african-continental-free-trade-area> (accessed 16 May 2022)

23 V Willemien (2019). 'The intra-Africa non-tariff barrier dilemma –The challenges facing AfCFTA approach' *Tralac Annual Conference* <https://www.tralac.org/documents/events/tralac/2739-tralac-brief-the-intra-africa-ntb-dilemma-thechallenges-facing-the-afcfta-approach> (accessed 24 June 2021)

24 World Bank (n 22)

25 Madden (n 17)

26 World Bank (n 22)

27 Madden (n 17)

28 World Bank (n 22)

The current condition of West Africa, as regards the facilitation of trade processes, poses a dilemma of a paradox of heterogeneity.²⁹ The countries in the regions are neither set for the engagement of the free trade obligations, nor are they remaining committed to the signed responsibility of the REC. These have even been aggravated by the required border closures at the occurrence of the pandemic in the region early in 2020 in order to contain the spread of the virus. Services sectors globally, West Africa not excluded, have been severely impacted by the COVID-19 pandemic. Service sectors, such as distribution, tourism and transportation, for example, have been affected due to the restrictions placed on mobility and social distancing rules enforced for the safety of public health. However, not only has service trade suffered from this impact, but also inputs for other trade mobility, which includes the connection of value chains and trade facilitation in goods, have also been adversely affected in the region hence, creating an extensive trade and economic effect.³⁰

4 Trends of trade in services by sector

The developed economies are majorly service-oriented economies. This is due to the fact that the service sectors are the main producers of employment and income for these countries. The picture is rather different for developing economies as, even though there is relatively increasing engagement in service trade, the level of engagement for these countries is minimal compared to their developed counterparts. This is evidently revealed by the huge surpluses of invisible trade accounts of developed countries, in contrast to the enormous deficits for developing economies.

29 The paradox of heterogeneity as it concerns West African countries is as a result of their unpreparedness to follow through with the free trade requirements. Their lack of commitments evidenced by increased barriers created for free trade rather complicates the trade facilitations endeavour immensely, thereby creating the dilemma of more problems instead of solutions in the region as regards service trade.

30 World Trade Organisation 'Trade in services in the context of COVID-19' (2020), https://www.wto.org/english/tratop_e/covid19_e/services_report_e.pdf (accessed 25 July 2022)

Figure 3: Market share of trade in services of developing and developed countries by sector



Source: UNCTAD Secretariat calculations based on UNCTADstat data

Transportation service trade is a major service export of Africa. In reference to services, trade-in travel is at about US \$1.5 trillion, representing the leading sector. This is closely followed by the transport sector, with US \$1 trillion in 2019. There are other prominent sectors, namely, financial, professional, telecommunications and IT services, in no particular order. There has been a constant rise in the volume of trade across sectors.³¹ Also, Figure 3b presents the market share of exports of various service sectors in country classifications of developed and developing economies between 2008 and 2019. It is obvious, though, that developed countries have a bigger share of service exports; the share of the export market is gradually moving to the benefit of developing countries across sectors.³²

In the sub-Saharan Africa region, transport and travel explain for over 50 per cent of the entire region’s service trade.³³ For the African region, transport and travel service provides the required support for export-oriented growth in the region, hence, enabling access within the region as well as enhancing value chains globally. Since it has been highlighted that transport service drives overall trade service, a fall in this sector would as well amount to an overall decline in trade services.³⁴ The trend of transportation and travel service for West Africa has shown a tremendous

31 United Nations Conference on Trade and Development (UNCTAD). (2019). Trade and Development Report: Financing a Global Green Deal https://unctad.org/system/files/official-document/tdr2019_en.pdf (accessed 25 July 2022)

32 United Nations Conference on Trade and Development (UNCTAD) (n 31)

33 World Bank (n 22)

34 M Ayoki ‘Recent trends in Africa’s service trade’ Institute of Policy Research and Analysis Munich Personal RePEc Archive Paper 86430 (2018), <https://mpra.ub.uni-muenchen.de/86430/> (accessed 14 May 2021)

increase over the years. In Nigeria, the transport and logistics supply chain sector is about the most impressive with regard to growth, despite the fact that it is still evolving. An impressive infrastructural facelift and better improvement of government policies in the business environment would improve its full potential, thereby boosting the performance of the sector.³⁵

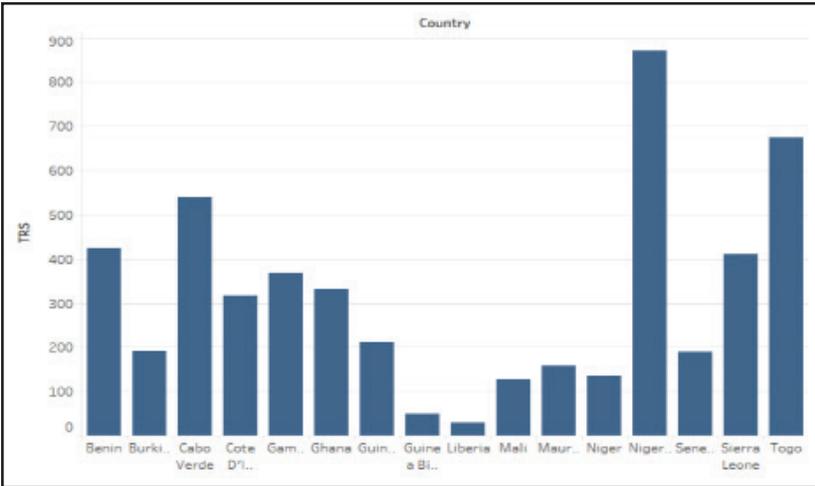
There have been initiatives, even from the private sector, to facilitate the free movement of goods and services in West Africa.³⁶ A case in point is the initiative of the Borderless Alliance, which strives to remove trade and transport barriers within countries in West Africa, hence boosting the movement of goods and services, thereby facilitating regional trade.³⁷ The activities of the organisation have impressive success stories, such as the reduction or removal of police checkpoints in countries such as Benin, Côte d'Ivoire, Niger, Togo and Ghana. This will no doubt encourage service trade, improve efficiency, as well as reduce costs.³⁸

35 International Trade Centre (2020). African Market Trends in Technology Services: Country Profiles https://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/African%20IT%20and%20BPO%20Marke%20%20Report_2020109_02.pdf (accessed 25 June 2021).

36 Madden (n 17).

37 USAID Borderless Alliance (2021), <https://www.usaid.gov/news-information/factsheets/borderless-alliance> (accessed 14 July 2022).

38 S Quainoo (2017). World Customs Organisation News <https://mag.wcoomd.org/magazine/wco-news-84/mobilisingtrade-and-transport-operators-in-west-africa-to-break-down-non-tariff-barriers/> (accessed 13 May 2021).

Figure 4: Transport service per country in West Africa

Source: Author's computation

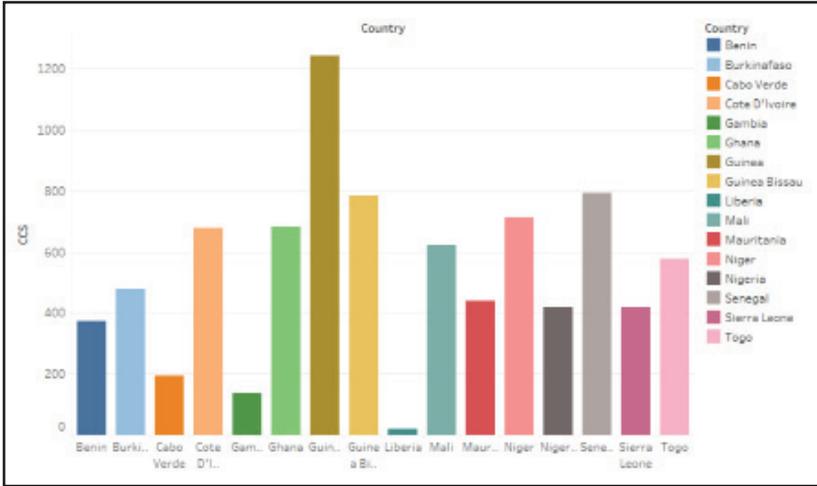
Note: This chart gives the account of transport service per country in West Africa. Nigeria, as can be seen, has the highest sum, followed by Togo and then Cabo Verde, the country in the region with the least transport service volume is Liberia.

The telecommunication and IT service trade sector is another promising segment of service for the West African region. The National Bureau of Statistics provides information regarding the ICT sector growth in Nigeria of more than 10 per cent between 2015 and 2019. The engagement of the sector amounted to a 24 per cent contribution to Gross Domestic Product (GDP), making it the second highest after agriculture. The persistent increasing use of technology also shows in its value addition and the immense way it complements other sectors of service trade. The story is similar for Côte d'Ivoire as the sector contributes a whopping 13 per cent to GDP, as well as being a major driver of economic growth. This is evidenced by the income generated by the sector of US \$585 million in 2018.³⁹ The World Bank data provided that Côte d'Ivoire had a US \$100 million export of ICT services in 2017, and this accounted for about 10 per cent of service exports. For the country, the ICT service exports annually had increased beyond 10 per cent above what was obtained in the past four years, which is an indication of the budding prominence of these services economically, especially for a country with over two per cent growth rate annually.⁴⁰

39 International Trade Centre (n 35).

40 International Trade Centre (n 35).

Figure 5: Computer communication and other services per West African countries



Source: Author's computation

Note: The chart gives an account of computer communication and other services per country in West Africa. Guinea, as can be seen, has the highest sum, followed by Senegal and closely by Guinea Bissau and Niger. The country in the region with the least telecommunications volume again in Liberia.

For Benin, data provided by the World Bank revealed ICT export service was US \$29 million in 2016, a decline from US \$77 million in 2013. The economic achievement of Benin depends heavily on Nigeria, as a huge chunk of over 50 per cent of the country's exports goes to Nigeria. Interestingly to note, however, is the fact that the decline in service exports generally, and ICT service exports, in particular, can be traced to the downturn and poor performance of the Nigerian economy. The country has great potential as it has the highest wireless penetration rate for the West African region, at a 99 per cent rate, much above the regional average of only 71 per cent.⁴¹

In Mali, internet penetration presumably was 13 per cent in 2017. Also, in spite of the fact that mobile phone usage was about 90 per cent of the population size, giving the country one of the largest mobile penetration, only about 27 per cent of mobile users accessed the internet. Mali is currently striving towards becoming an epicentre for ICT service development and outsourcing. The service sector market size for the country as of 2017 stood at US \$934 147, evidencing the landlocked

41 International Trade Centre (n 35).

incapacitation of the country. This is explained by the reality that Mali only has the opportunity to use undersea fibre-optic cables by relating with other neighbouring countries, hence making wireless penetration rather low. Burkina Faso's service sector contribution to GDP composition stands at 38 per cent. The World Bank data provides total ICT service export as US \$48 million. The ICT landscape for the country is still at the foundational level, as the development of the sector is still lagging behind in comparison to other budding sectors such as the agricultural and mining industry.⁴²

The health service sector is another interesting sector viewed in the global picture. Telemedicine or remote medicine is not a new concept, but the recent global pandemic has proffered a significant impression on the possibilities for boosting the market of internet-based health services, which has potential consequences for trade. The COVID-19 pandemic motivated a rise in the use of telemedicine services. The rise can be quantified across countries; in China, for instance, an experience of three-digit growth rates was discovered between December 2019 and January 2020.⁴³ The number of remote medicine users was noted to have increased across regions; countries such as Australia, Indonesia, Singapore and also African countries recorded tangible increases.⁴⁴ This is one sector, unlike many others, that has encountered a positive impact from the global pandemic. Service providers, in order to cope, have to expand their processes to facilitate the benefits of their patients. Nigeria is expected to have a double-digit growth by 2026; other countries such as Benin, Burkina Faso, Cabo Verde and Ghana also documented a considerable increase in the use of telemedicine, mostly during the pandemic. Evidence of an increase in this service trade is an indication of an incessant increase in start-ups in the remote medicine landscape.⁴⁵

The financial service industry also encountered substantial shifts due to the global pandemic and its impact on the global economy. The major responsibility of the financial service industry was clearly highlighted, particularly more during the pandemic, in order to support all other economic activities by creating stability in the markets and facilitating payment and creating money through the act of lending. Electronic

42 International Trade Centre (n 35).

43 World Trade Organisation (n 30).

44 World Trade Organisation (n 30).

45 Global System for Mobile Communications Association (2021). Health Systems, Digital Health, and COVID-19: Insights from Bangladesh, Myanmar, Pakistan, Benin, Nigeria, and Rwanda <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2021/01/Health-Systems-DigitalHealthandCOVID-19.pdf> (accessed 22 September 2022).

banking and e-payment platforms have also been the major financial service sector development and engagement during the pandemic and even becoming the new normal for the West African regions and also globally. The electronic aspect of financial services such as telemedicine has encountered a positive impact, increasing these service trade sectors and contributing to the resultant improvement of economic activities at large.⁴⁶

5 The pandemic and Nigeria's event industry: The story as culled from *Guardian TV*

Nigerians like their parties popularly known as *owanbe*, but the current pandemic has affected the way we live, work and play, including the way we party in Nigeria. The industry is estimated to be worth over US \$20 billion, with Lagos taking the hugest share, about 80 per cent of the market. However, it has suffered the worst hit since the COVID-19 lockdowns and bans on large gatherings. The players of the industry have felt the hit much since the industry thrives on gatherings of people for concerts, weddings, shows, annual general meetings, and so forth. In spite of the shut-downs in business, which meant no creative content, and income, most importantly, for quite a number of the players, what mattered first was the safety of their clients and themselves. The pandemic has caused the event industry to suffer a practical shutdown, a near-comatose situation with no end in sight. The alarming conditions were such that even after the lockdowns were eased, those that tried to cash in during the festive seasons had their shows cancelled by the government. The question players are asking is that, if people can go to school, religious houses, and the market, why can they not come for events? Many people have been thrown out of jobs as a result of this dragging issue in the industry. Even where events have gone virtual, with lesser manpower, interestingly, the events indeed are still no cheaper. From planners to decorators, food caterers to drink vendors, confectioners, security outfits to ushers, photographers, videographers, disc jockeys to music bands, masters of ceremony to comedians and to other support staff, the events and entertainment industry's long value chain in Nigeria now is in danger. The industry has been estimated to have lost about ₦1 trillion in 2020 which, if nothing decisive is done, would even be worse by the end of 2021. The 'no market, no job' syndrome really is dire for Nigeria because this invariably results in an increase in the level of poverty, particularly worsening living standards due to the ripple multiplier effect in the industry and, by extension, other related sectors. Despite all these discouraging barriers, the players that are innovative try avenues to open their market without flouting the COVID protocols. They

46 Global System for Mobile Communications Association (n 45).

create, for instance, outdoor events to desist from cramming crowds in an enclosed area. They also even go to the extent of having multiple room events to assist them in staying within the requirements of not more than a hundred people in a room. The only concern is how profitable these could be, considering the associated costs regarding survival remodelling. To make the condition worse, the Central Bank bailout fund for participants in the sector, which quite a number of participants eagerly desired to have, never saw the light of day. This could have brought about a facelift in the industry and recovery for many, but that again is another Nigerian syndrome: corruption that has eaten deep into the system, a strong deterrent to economic freedom for the painstaking entrepreneur and player in the industry. Conclusively, if the Nigerian event and entertainment industry, in the context of a trade service sample sector in Nigeria, is left in the struggle, then economic freedom is a mirage, and the sector, a weapon to facilitate trade, can only produce inefficiently. This will hamper improved economic activity, growth and development.

6 Fluid spaces

Structurally, fluidity could be referred to as the circumstances where marginal barriers exist. Though barriers are required and possibly unavoidable to a certain extent, barriers, in themselves, are essential as communication avenues primarily for the reduction of risk.^{47 48} The engagement of entrepreneurs, hence, in service trade is premised on the conversations that are risk-averting, basically expressed by guiding rules that provide controlled processes. In clear consideration of economic fluidity, barriers usually are expected to pose hindrances to economic advancement.⁴⁹ These said hindrances usually pursue minimal outcomes of risk, which usually have an adverse impact on the dynamism of growth-motivated entrepreneurship. As much as rules and frameworks are unavoidable, they are required in order to assist in the propagation of novel concepts and innovations.⁵⁰

47 Global Economic Prospect (GEP) Transport Services: Reducing Barriers to Trade (2002), <https://www.worldbank.org/content/dam/Worldbank/GEP/GEParchives/GEP2002/GEP2002Chap4.pdf> (accessed 22 May 2021).

48 C Torres & J van Seters 'Overview to trade and barriers to trade in West Africa: Insight in political economy dynamics, with particular focus on agricultural and food trade' ECDPM Discussion Paper 195 (2016), <https://www.tralac.org/images/docs/10274/overview-of-trade-and-barriers-to-trade-in-west-africa-insights-in-politicaconomy-dynamics-agricultural-trade> (accessed 22 May 2022).

49 CJ Schramm 'Entrepreneurial capitalism and the end of bureaucracy: Reforming the mutual dialog of risk aversion Paper presented at annual meeting of the American Economics Association, 6 January 2006, https://www.aeaweb.org/annual_mtg_papers/2006/0107_1015_0304.pdf (accessed 22 May 2022).

50 CJ Schramm (n 49).

Over the span of time, economic fluidity now seems even more alarming than the pathological kind. Though the spread of COVID-19 has not been entirely as devastating in Africa compared to other parts of the world, its impact on service trade, like other parts of the world, has brought about a downturn in volumes of trade.⁵¹ The persistent incidences of lockdowns and border closures have generated setbacks in trading activities with regard to gainful productive engagements and trading within borders and among the countries.⁵² Close to two years of the pandemic and its spread, lesser emphasis is being placed on location. The continuous spread of the disease globally has brought the world economy to its most intense and most integrated downturn to date.

Quite a number of service trade sectors, such as fast food and eateries, film and entertainment industries, health spas, recreation centres, transport, and travelling and other forms of services inclusive have all been worst hit. The lockdowns have evidently affected the movement of goods, but even more, it has restricted the cross-border movement of people; even the Davos 2021 World Economic Forum was rescheduled.⁵³ However, the need for a continuous decline in the restriction of movements cannot be overemphasised. Freedom of trade, constitutional rule of law, and property rights are essential requirements for economic freedom and growth in order to attain economic fluidity. It is worthy of mention, hence, that freedom of trade is a key element to economic fluidity.

These are the thoughts of⁵⁴ as he clearly posits in discussions on freedom of entrepreneurship as well as labour, revealing an emerging perception that micro-scale learning growth is primarily essential to economic fluidity. Entrepreneurship is a major driver of a free-market structure, as described by Schumpeter's Gales of Creative Destruction that entrepreneurs are accountable for promoting both advancement in technology as well as innovation.^{55 56} The expression, a fundamental impulse described by Schumpeter regarding the concept of the free-market structure of an economy, will be immobile if there is no tangible mobility

51 World Trade Organisation (n 30).

52 United Nations Conference on Trade and Development (UNCTAD) (n 10).

53 The Economist (2020), 'How has trade survived COVID-19: Better than during the global financial crisis?' <https://www.economist.com/finance-and-economics/2020/09/12/how-has-trade-survived-covid-19> (accessed 12 June 2022).

54 Schramm C.J. (2008). Economic Fluidity: A Crucial Dimension of Economic Freedom. *Index of Economic Freedom* https://thf_media.s3.amazonaws.com/index/pdf/2008/Index2008_Chapter1.pdf (accessed 14 May 2021).

55 JA Schumpeter *Capitalism, socialism and democracy* (1975) 83.

56 WJ Baumol 'Entrepreneurship: Productive, unproductive, and destructive' (1990) *Journal of Political Economy* 98, 893, 894.

of labour. Mobility of labour, according to him, is essential for effective entrepreneurial business freedom, hence economic fluidity.⁵⁷

There exists dynamism in the context of service trade, and classical theory describes the outcome of movement from a closed economy to free trade as tangible economic gains. This is posited from the background of both specialisation and the allocation of resources effectively to produce economic gains.⁵⁸ Focused primarily on the key motivating advantage of trade. The dynamism of trade, according to him, is that export markets broaden the aggregate market for a country's entrepreneurs.⁵⁹ The concept of production is subject to increasing returns; the aggregate benefits from trade would likely surpass the fixed benefits if resources are efficiently utilised.⁶⁰

Developing economies, like countries of the West African region, have low income and domestic capital.⁶¹ If trade is not engaged in these economies, the required increase in returns for amassing domestic investment would be forfeited. This is because a close-knit relationship exists between increasing returns and capital accumulation.⁶² However, if developing economies characterised by low income can trade, there is an opportunity for improving domestic investment and developing indigenous industries by fully engaging entrepreneurship freedom, as well as innovation beyond just the traditional production techniques.⁶³ Developing countries, essentially those in the West African region, can access protection of service brands for emerging entrepreneurs to assist them in gradual growth to the level they can sufficiently engage services on a large scale, develop resilience and compete in the global market.⁶⁴

Driving service trade to accumulate economic gains requires a simplification of the barrier framework in order to facilitate trade, domestic investment and stimulate economic gains.⁶⁵ The economic fluidity theory as regards service trade and how it relates to an economy, essentially a

57 Schramm (n 54).

58 AP Thirlwall *Growth and development with special reference to developing economies* (2006).

59 Baumol (n 56).

60 Thirlwall (n 58).

61 FB Adegboye 'Foreign direct investment and economic development: Evidence from selected African countries' PhD thesis, Covenant University, Ota, Nigeria, 2014.

62 Adegboye (n 61).

63 Baumol (n 56).

64 Thirlwall (n 58).

65 SL Parente & EC Prescott 'Barriers to technology adoption and development' (1994) 102 *Journal of Political Economy* 298-318.

developing one, is the ability to reduce barriers and create an adjustment of their framework in a manner to determine economic growth.⁶⁶ Basically, whether from the level of an individual to an entrepreneur, corporate organisation, down to the government, economic fluidity simply is the capability of all concerned economic players to freely make decisions regarding business, entrepreneurship, or trade and critically begin creating service trade delivery in an innovative manner.⁶⁷

7 Intellectual property rights

Intellectual property rights, as described by the World Trade Organisation, are the rights provided to people over the innovations created by deep thinking with baselines of originality.⁶⁸ These generally give the inventor an absolute right over the use of his or her innovation for a specified time frame. In their definition, a customary subdivision of intellectual property rights basically is in two forms: first, copyrights with regard to authors of scholarly artwork.⁶⁹ These works have the protection of copyright, minimally for 50 years subsequent to the death of the author. Second, industrial property could be with the characteristics of safeguarding unique signs, especially trademarks.⁷⁰ The safeguarding of such outstanding signs usually is motivated to encourage and guarantee reasonable competition as well as ensure customer protection. Hence, it is the protection that principally inspires innovation, design and technological creation with regard to the protection of patents, designs of industry, and trade secrets.⁷¹ Also worthy of note is the fact that the development of economies relies mostly on the use of new knowledge and innovation to create value essentially in developing climes. The protection of these innovations and ideas hence is imperative for sustainability.⁷²

66 DC North, JJ Wallis & BR Weingast 'A conceptual framework for interpreting recorded human history' National Bureau of Economic Research Working Paper 12795 (2006).

67 J Munkhammar 'The urgent need for labour freedom in Europe – and the world' *Index of Economic Freedom* Washington DC: The Heritage Foundation and Dow Jones & Company, Inc. (2007) 27–36.

68 World Trade Organisation 'What are intellectual property rights? TRIPS: Trade Topics' (2021), https://www.wto.org/english/tratop_e/trips_e/intel1_e.htm (accessed 13 August 2022).

69 GD Graff & PG Pardey 'Inventions and patenting in Africa: Empirical trends from 1970-2010' (2020) 23 *Journal of World Intellectual Property* 40-64

70 World Trade Organisation (n 68).

71 World Trade Organisation (n 68).

72 Graff & Pardey (n 69).

8 Patents, trademarks and copyrights: Differences and similarities in the African concept

Essentially, entrepreneurs should recognise that the majority of their products, wares, brands, innovations, and inventive works have protection by one of the three forms of intellectual property rights: copyright, patent or trademark. It is, however, imperative to be informed of the rights available for intellectual property before legal steps can then be taken to secure the rights.^{73 74}

8.1 Trademark

A trademark, also known as a service mark, is typically registered on an appellation, badge, catchphrase or slogan, which usually could be utilised in the differentiating of products of services for an entrepreneur from its rivals in the market.⁷⁵ These registered trademarks have protection provisions under the Trademarks Act 194 of 1993. Registration of trademarks would be done only for products as well as services without prior similar registration. The registration of the trademark ensures the record in the register and also necessitates a renewal every ten years and consistently forever.⁷⁶ Also, infringements on the trademark can be allayed by an application for a prohibition order to ensure they desist from doing so. Additionally, the trademark owner could claim damages for its use to recover any financial detriment suffered.⁷⁷

8.2 Copyright

Copyrights, on the other hand, are sets of absolute rights accessible by the inventor of an innovative work.⁷⁸ The rights include the right to replicate, distribute, publicise, adapt, or import the work. The kind of work that may be covered with copyright are scholarly works, music, broadcasts,

73 A Truter 'Trademark, copyright, and patents – Basic differences and how to protect your intellectual property rights (2019), <https://www.linkedin.com/pulse/trade-mark-copyright-patents-basic-differences-how-protect-truter/> (accessed 13 September 2021).

74 Graff & Pardey (n 69).

75 Copyright Alliance 'What is the difference between copyright, patent and trademarks?' (2021), <https://copyrightalliance.org/faqs/difference-copyright-patent-trademark/> (accessed 14 May 2022).

76 A Webb 'The difference between copyrights, trademarks, and patents' *The New York Times* (2020), <https://www.nytimes.com/article/copyrights-trademarks-patents.html> (accessed 22 July 2022).

77 Truter (n 73).

78 Copyright Alliance (n 75).

soundtracks, artworks, and computer software packages. Copyright is not renewable and is ceded over a 50-year period, specifically depending on the nature of the work. However, copyrights are different from other kinds of intellectual property rights as they do not require physical registration because the copyrights exist automatically.⁷⁹ They are rather rights that are automatic, which the inventor of a work acquires the moment the prerequisites provided by the Copyright Act are attained; hence they are inexpensive on the whole, unlike trademarks.⁸⁰ A point worthy of note is that an entrepreneur who is an inventor cannot have a copyright on ideas; hence, no idea can be protected by copyright. In order to access copyright, the ideas need to be conveyed in a physical structure such as a book or an artwork before they can be protected.⁸¹

8.3 Patents

A patent is an absolute intellectual property right accorded to a creator of a new product, an innovative procedure or an invention in the form of a technological answer to a challenge. A patent could be given for an innovation that is an invention that is novel in its process indeed, which is not just an idea but essentially an innovation.⁸² Also, the invention must be such that it is applicable in trade, agriculture, or in industry. A patent is similar in its operation to a trademark, as they require physical registration, which is not required in copyright. Hence, it is essential to register patents, as it precludes other entrepreneurs from replicating the innovation of the trader, or utilising, disseminating, importing or trading the product without the express consent of the patent owner, and, unlike trademarks and copyrights, it operates on the system of acknowledging the first inventor to process filling.⁸³ The registration process is done at a fee and a costlier procedure than the registration of a trademark.⁸⁴ Additionally, the period covered by the patent registration is lower than both the trademark and the copyright. It covers for only 20 years before elapsing, and it also is not renewable like the copyright. As in the case of trademarks, the unauthorised usage of a patented innovation could attract an order to claim damages.⁸⁵

79 Webb (n 76).

80 Webb (n 76).

81 Truter (n 73).

82 Webb (n 76).

83 Webb (n 76).

84 Copyright Alliance (n 75).

85 Truter (n 73).

9 The African concept

The concept of intellectual property is inextricably associated with trade, competitiveness, and economic and industrial development.⁸⁶ The origin of the World Trade Organisation (WTO) in 1995 and the subsequent establishment of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) have created new concerns for African countries, especially regarding IP safety for the countries.⁸⁷ The TRIPS deal is the most all-embracing legal agreement regarding the guideline and safety of the various kinds of intellectual property. The agreement sets basic requirements for all countries that are WTO members, to which they are to abide.⁸⁸ The basic challenges with which African economies are faced, unlike their developed counterparts, are adhering to the requirements of the guidelines since they have to model their individual IP laws along with the requirements of TRIPS.⁸⁹

The tactical initiation of technology has transformed the level of awareness and its usage. Usually, quite a number of these technological ideas are solely owned in sectors that affect vital human requirements, essentially in the health service sector.⁹⁰ The extension of property rights to these sectors would result in a hike in the costs of using such technologies and subsequently worsen the already huge technology gap between developed and developing countries.⁹¹ Also worthy of note is the concept of indigenous knowledge, which has immense prospects for developing economies rather than their developed counterparts. Indigenous knowledge is an essential component in the innovation process in developing countries. This hence is a gain for developing countries, and the extent to which they explore these potentials would determine their

86 GM Sikoyo, E Nyukuri & HW Wakhunga 'Intellectual property right protection in Africa: Status laws, research and policy analysis in Ghana, Kenya, Nigeria, South Africa, and Uganda' Africa Centre of Technology Studies (ACTS) Ecopolicy Series 16 (2006), https://media.africaportal.org/documents/ecopolicy16_1.pdf (accessed 12 August 2021).

87 World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights (unamended) (2021), https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm (accessed 22 September 2022).

88 BA Lundvall and others 'National systems of production, innovation and competence building' (2002) 31 *Research Policy* 213-231, <https://www.sciencedirect.com/science/article/abs/pii/S0048733301001378> (accessed 15 August 2022).

89 World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights (n 87).

90 Sikoyo, Nyukuri & Wakhunga (n 86).

91 Lundvall and others (n 88).

industrial and economic development.⁹² However, the exercise of IP rights has no protection for indigenous knowledge, thereby exasperating the well-being of developing countries in the context of West Africa.⁹³

10 The West African example

Ghana had its patent structure initiated by the colonial regime, the Patents Ordinance 1 of 1899, which made the UK patent law valid to the colony. Successively, patents could only be certified in the UK and further approved in Ghana.⁹⁴ All through this period until the early 1990s, the Ghanaian re-approval system was enforced, however, excluding pharmaceutical products, as earlier patents on the health service sector were cancelled. Since 1992, however, for Ghana, the process of getting certification on patent first from the UK and a re-registration in Ghana was annulled by the enactment of the Patent Law, 1992, PNDCL.305A. Patents at the moment are directly obtainable in Ghana through the Patent Cooperation Treaty (PCT) provided by the World Intellectual Property Organisation (WIPO) and were also obtainable through the African Regional Intellectual Property Organisation (ARIPO).⁹⁵ The cumbersome nature of the re-registration process was such that in spite of the independence of the country, the indigenous innovation process, research and development was not stimulating, hence defeating the real motive of intellectual property rights safety.^{96 97}

The Nigerian story is even worse, as patent laws on IP remained virtually the same right through amalgamation in 1914, through its independence in 1960, and until the early 1970s.⁹⁸ The initiation *ab initio* of the executive patent institution for Nigeria was not structured to protect indigenous knowledge, innovation, or research and development. Rather, it was contrived for the safety of property rights in foreign investment

92 World Trade Organisation Part II – Standards concerning the availability, scope and use of intellectual property right (2021), https://www.wto.org/english/docs_e/legal_e/27-trips_04c_e.htm (accessed 15 September 2022).

93 Sikoyo, Nyukuri & Wakhunga (n 86).

94 Sikoyo, Nyukuri & Wakhunga (n 86).

95 Sikoyo, Nyukuri & Wakhunga (n 86).

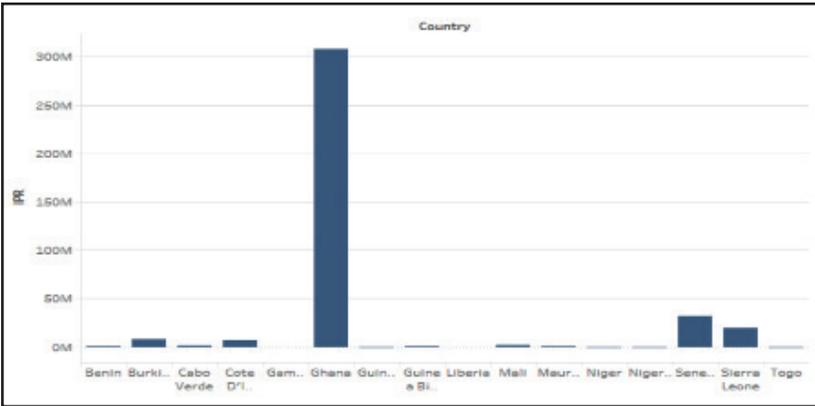
96 K Nnadozie 'Intellectual property protection in Africa: An assessment of the status of laws, research and policy analysis on intellectual property rights in Nigeria and Ghana' (2004) 8-9.

97 B Mould-Iddrisu 'Copyright protection and the journalist' in K Karikari & K Kumando (eds) *The law and the media in Ghana* (2000) p 220.

98 F Olubanwo & O Oguntuase 'Strengthening intellectual property rights and protection in Nigeria' (2019), <https://www.mondaq.com/nigeria/trademark/788714/strengthening-intellectual-property-rights-and-protection-in-nigeria> (accessed 12 May 2021).

and technology pertinent to the exploration of both mineral and human resources in the colony.⁹⁹ Even the repeal provision in 1970 was only a model to nationalise registration of patents in the country, with no tangible policy justification for research, industrial or economic development. This is evidence hence that countries in West Africa and Africa alike are not sufficiently equipped and prepared to maximise the provision of IP rights, which indeed is a dilemma for developing economies.¹⁰⁰

Figure 6: Sum of IPR per West African country



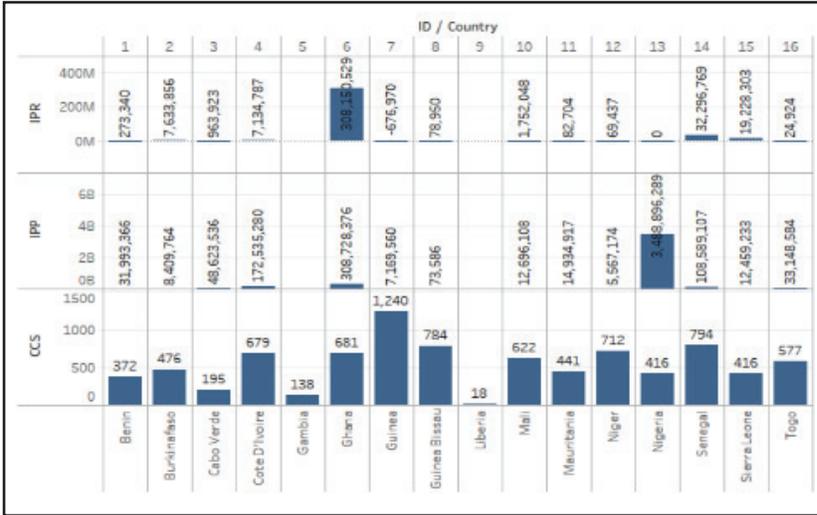
Source: Author's computation

Note: This chart gives the account of intellectual property rights receipt per country in West Africa. Ghana, as can be seen, is the sole outlier in the pack, with the highest and most intimidating sum, followed far behind by Senegal and then Sierra Leone, the countries in the region with the least IPR receipt volume are Benin, Guinea, Guinea Bissau, Mauritania, Niger, Nigeria, and Togo.

99 Olubanwo & Oguntuase (n 98).

100 Sikoyo, Nyukuri & Wakhunga (n 86).

Figure 7: Sums of IPRs receipt, telecommunications, and IPRs payments per country in West Africa



Source: Author's computation

Note: This chart gives the account of Intellectual Property Rights receipts per country in West Africa. Ghana, as can be seen, is the sole outlier in the pack. For the IPRs payment, Nigeria is the outlier of the pack. In the case of telecommunication service, Guinea led the pack, closely followed by Senegal.

11 Infringement of intellectual property rights: The challenges of non-corporeal goods

In spite of the several feats towards the reinforcement of IP laws and safety in Nigeria, threats are still imminent. The prevalent forms of infringement are counterfeiting; piracy; illegal use and insensitive competition.^{101 102} These conducts disrupt the sole rights of IP owners to earn the gains of their innovations, as a result, hampering the progress and growth of intellectualism, invention and entrepreneurial creativity.^{103 104} The persistent violation of IP rights has adverse effects on the whole economy also because it hinders effective domestic as well as foreign investments

101 D Harrington 'Intellectual property rights can be Nigeria's new oil discovery' The Alvin Report (2021), <https://thealvinreport.com/intellectual-property-rights-can-be-nigerias-new-oil-discovery/> (accessed 14 July 2022)

102 IA Olubiya 'A comparative analysis of copyright enforcement provisions in Nigeria: Maximizing the current legal regime' (2014) 5 *African Journal Online*89-104.

103 Harrington (n 101).

104 Olubiya (n 102).

and obstructs the creation of jobs, hence resulting in the fall of tax income to the government, as well as giving the country a bad image.¹⁰⁵

Infringement on copyright is the main concern to IP rights and development in Nigeria. This violation is mostly manifested in the following forms: piracy of published books; Information and Communications Technology (ICT); and entertainment and film. Nigeria is classified among the countries with the highest incidences of piracy, with rates ranging from 82 per cent to 83 per cent over a period of five years between 2007 and 2012.¹⁰⁶ The situation has not improved much over the years, with implications that have a dire impact on indigenous entrepreneurs as well as foreign investors. Furthermore, due to the fragile condition of IP laws in Nigeria, piracy in the entertainment sector, has been at a dismal cost for the country.¹⁰⁷ Data provided by the National Bureau of Statistics (NBS) shows that the Nigerian film industry, Nollywood, which is accountable for about 1.5 per cent of the country's GDP, is the country's second biggest sector regarding job creation, following closely after agriculture. The film sector is not operating maximally, and in spite of volumes of piracy infringement, Nollywood alone churns in about US \$600 million yearly. How impactful could the sector be if the concerns of infringement on copyrights are addressed? It would indeed position the service trade sector at a vantage point to station itself as a crucial agitator in the non-oil sector, which is strongly required for economic diversification in Nigeria.¹⁰⁸

12 Decided cases on intellectual property rights in West Africa

It is expedient that entrepreneurs know the rights available for them to protect their creativity in service trade and their innovations too. Decided cases in West Africa are evidence of this, and a number of these are provided in this part. The first case worth mentioning is the case of an entrepreneur with the idea of creating an educational television quiz programme to be contested by Nigerian university students. He approached the National Universities Commission (NUC) to endorse the show tagged 'University Challenge' (the 'UC Show'). However, rather than endorsing the programme, the NUC approved a similar show, 'Zain Africa Challenge' (the 'ZAC Show') which was sponsored by Zain, a telecommunications network operator. The entrepreneur claimed that the ZAC Show was an infringement of its intellectual property in the UC Show and relied on

105 Olubanwo & Oguntuase (n 98).

106 Harrington (n 101).

107 Olubanwo & Oguntuase (n 98).

108 Olubanwo & Oguntuase (n 98).

its registration of the proposal document for the UC Show ('UC Show Proposal') with the Nigerian Copyright Commission (NCC) as evidence of its exclusive copyright ownership.

It indeed was found that there were factual similarities between both shows, which infringed the entrepreneur's copyright. Consequently, both the NUC and Zain were held liable for infringement of the entrepreneur's copyright in the UC Show, particularly the right of reproduction and adaptation, and on 6 May 2020 significant damages were awarded to the entrepreneur in the sum of ₦703000000. This judgment is significant, not just because of the quantum of damages awarded, but its communication of the strong message that intellectual property rights are recognised in Nigeria, and the courts are willing to support their enforcement.

Another case, also in 2020, was the case of copyright infringement dispute between Onyeka Onwenu and digital music distribution company iRoking. The Nigerian musician and actress have sued the online music distribution platform over alleged copyright infringement following an expired contract. According to Onwenu, the online platform blatantly disregarded the lapse of their two-year contract and continued to profit from sales of her music. It was ruled that by continuing to display her music, the music company was liable for copyright infringement and had awarded damages to the musician.

In a different case, punitive damages were awarded to the collective management organisation Musical Copyright Society Nigeria (MCSN) against Nigeria's largest cable TV provider Multichoice. The latter sued MCSN, arguing that the collective management organisation was not licensed by a National Certified Counsellor (NCC) and, therefore, Multichoice was not obliged to pay royalties for copyright-protected material used in TV programming. It was decided that an NCC licence was not prejudicial to the protection of copyright, with the ruling upheld. Finally, the Copyright Society of Nigeria was prohibited from distributing royalties to its members as a 'general distribution' and considered that such practice was deemed to be contrary to the provisions of the management organisation's memorandum and articles of association. It was decided that the distribution of a fixed amount to each member as royalties, irrespective of whether such members' works earned any royalties, was illegal.

13 Entertainment in Nigeria: A case study of sampling, cover and republishing of creators' work on YouTube and TikTok

In the US landmark case on copyright infringement between Grand Upright Music and Warner Bros Records, the ruling began with the biblical quote of 'thou shall not steal'. The decision forever changed the attitude of hip-hop artistes to sampling.

Music sampling basically is integrating a part from a previous recording in a song into an entirely new song. Sampling could include 'taking a portion of the drums or guitar riff and could range to using an entire chorus or an entire verse from a song'.¹⁰⁹ It might involve repeating a sampled section repeatedly to form a twist or even innovative manipulations where the tempo or pitch of the original sample is altered.¹¹⁰ There are many legal restraints against sampling. The legal dispute in this regard is that it does not encourage inventions. However, it has been argued that there are no entirely new songs, and the potential of sampling is its ability to popularise an already existing song.¹¹¹

Social media platforms supply channels of interconnection for several purposes, but music fans have reconsidered it as a medium of accessing their favourite influencers as well as their contemporaries. What is noteworthy is that even music authors consider it as a means of increasing the influence of their songs, basically generating a market position on these applications.

The striking hit of Lil Nas X's 2019 single 'Old town road' was one of the largest impacts of social media recognition with profitable productivity as the trap-country song, hence, becoming the most enduring 'Billboard Top 100 number 1 song' in the index profile after propelling up on TikTok. The absolute variety that the app possesses and its connection to music enable it to unmask new music to the world and, literarily, innovate cool

109 K Cornell 'Music sampling: Breaking down the basics' (2016), <https://www.tunecore.com/blog/2016/08/musicsampling-breaking-down-the-basics.html> (accessed 25 October 2021).

110 Cornell (n 109).

111 'Untangling the knotty world of hip-hop copyright' *FACT Magazine* (2016), <https://www.factmag.com/2016/06/25/sampling-hip-hop-copyright/> (accessed 12 May 2021).

stuff.¹¹² TikTok has had a vivid impact on the art of music in Nigeria. However, in Nigeria there is insufficient infrastructure to precisely monitor, calculate trades and quantify profitable achievement in West Africa. Hence, authors are left to depend on the popularity of tracks in the public space as the standard of their success.¹¹³

In 2020, TikTok remained unrelentingly daring in the race that has prompted the extent of its coverage. This made it the emerging forum of the year and, by extension, a negotiator for determining what is trendy. Amazingly, people of all ages make use of the application to create videos that propel conversations centred around culture.¹¹⁴ Severally, TikTok has emerged as an influencer for song breaks in Nigeria by making it boom, as well as improving popularity. A very good example is the Mavin rapper, Ladipoe, emerging as one of the most talented artistes in Nigeria in 2020; essentially, his collaboration with pop star Simi thrust him to prominence and recognition.¹¹⁵

The song 'Know you', with its remarkable chorus, coupled with the duet piece on TikTok, amplified its charm, particularly for the video makers. The artist Ladipoe noted that the prominent discussion regarding the song, especially the duet, stuck out the most on TikTok, with it clocking 10 million views. Also, Simi cashed into the influence of TikTok to earn another blockbuster in her first solo track released in 2020.¹¹⁶ The natural context of the song appeased the likes of her audience, making the video circulating in a meteoric fashion. The song 'Duduke' came with a challenge that emerged with over 46 million views. Also, Kizz Daniel, in his song 'Ada', started a challenge requiring participants to present an easy but creative dance. The challenge had over 11 million views in less than two months since it started, making it one of the most-liked songs. This is an indication that social media culture can vividly transect with the popularity of music, virtually determining how widespread the reach of songs can be.¹¹⁷

YouTube has even made sampling much easier by introducing the YouTube Shorts in Nigeria on 14 July 2021. YouTube Shorts is the

112 'How TikTok is helping to break Nigerian hit songs in 2020' *Vanguard* (2020), <https://www.vanguardngr.com/2020/08/how-tiktok-is-helping-to-break-nigerian-hit-songs-in-2020/> (accessed 12 May 2021).

113 *Vanguard* (n 112).

114 *Vanguard* (n 112).

115 *Vanguard* (n 112).

116 *Vanguard* (n 112).

117 *Vanguard* (n 112).

company's new short-form video experience that lets users create short, fun videos with their mobile phones. This is rather similar to what is already obtained on Instagram reels and TikTok. There is so much competition on these social media platforms to increase the volume of users and activity. YouTube Shorts provides creation tools, such as a multi-segment camera to string multiple video clips together and the ability to record with music, control speed settings, and more. In addition, one can add text to specific points in one's video, automatically add captions to your Short, record up to 60 seconds with the Shorts camera, add clips from your phone's gallery to add to your recordings made with the Shorts camera, and add basic filters to colour correct your Shorts.¹¹⁸

Also, there is an audio sampling feature in the YouTube Shorts. The creators will also have the option to sample audio not only from other Shorts but also from videos all across YouTube; that is billions of videos, if you can imagine. This means that you can take your favourite influencer's music video and recreate it or put your own swirl on it with no concern about copyright. However, original authors definitely could decide to opt out if they do not want their work remixed. For instance, from a sound bite of Burna's latest hit on a Shorts video you heard, you can easily find the full song, watch the music video, or learn more about the African Giant, all on YouTube. The cherry-on-top feature that will encourage usage is the reward system monetisation for content creators, to the tune of US \$100 million in the YouTube Shorts Fund.¹¹⁹

13.1 Sampling and copyright infringement and the paradox of antifragility

Sampling without permission can infringe copyright. The procedure for procuring authorisation for a sample is regarded as *clearance*. However, this could be complicated and costly. There are two basic components provided in the rights of a song; the first is a composition which includes the lyrics and the melody.¹²⁰ Second, is the sound recording, which is the audio recording. The copyrights of sound recordings are held by the recording artists and their record labels, whereas the compositions are held by the composers and the publishers. Since sampling is costly, artists

118 C Egwuogu 'Move over TikTok, YouTube shorts is in Nigeria' Techcabal (2021), <https://techcabal.com/2021/07/13/move-over-tiktok-youtube-shorts-is-in-nigeria/> (accessed 15 October 2022).

119 Egwuogu (n 118).

120 S Gibson & D Walters 'Recreating samples' (2003), <http://www.soundonsound.com/> (accessed 12 June 2021).

would opt for intricate recordings. Producers, hence, would prefer creating a recording instead of sampling in order to avoid legal issues.¹²¹

The Nigerian story regarding sampling is replete with insistent rise essentially in the music industry. For instance, the 'Nwa Baby' release of Flavour, a Nigerian music artist, was a sample of 'Ashawo'. Also, Flavour sampled another song, 'Sawale', released in the 1960s by Rex Lawson. Similarly, Davido, another Nigerian music artist, sampled Lagbaja's '*Gra Gra*', and he also sampled 'Abra Cadabra's '*Dun Talking*' in his song '**Fall**'. Likewise, Wizkid, another Nigerian music artist, sampled 'Johnny' by Yemi Alade in his song '*Caro*'. The Nigerian music artist with the highest sampling of his songs is Fela Anikulapo Kuti, as quite a number of upcoming artists got their inspiration from the Afrobeat star. Music artists in Nigeria and abroad have sampled Fela's songs. Wizkid sampled his 'Lady' song in his own song '*Jaiye Jaiye*'. Also, Oritsefemi sampled Fela's 'Confusion break bones' in his own song '*Double Wahala*'. Likewise, Burna Boy sampled Fela's 'Sorrow, tears and blood' in his song 'Ye'. Wizkid similarly sampled the legend's 'Shakara' in his song '*Sweet Love*'.¹²²

However, the surprising thing about sampling in the Nigerian music industry is that in spite of its predominance, no report of one single sampling with regard to suits on copyright infringement has been heard in the country. The absence of cases in spite of the vivid occurrence hence sends a signal about the level of cognisance for Nigerian music artists. It seems that the obvious medium for addressing infringements is somewhat limited to social media platforms.¹²³ A good example is the sampling issue between Tekno in this song 'Jogodo' and the sampled song, 'Pologo' by Mad Melon and Mountain Black. The indictment regarding copyright infringement was practically done via Instagram. Likewise, Ciara's song 'Freak me' sampled Tiwa Savage's 'Before Nko' without permission, and the issue was also sorted on Twitter by the artist appreciating the original owner, thanking her for being an inspiration.

Sound recording is the initial attraction of a progression of sound that can be audibly observed as well as *produced*.¹²⁴ With regard to a musical

121 Gibson & Walters (n 120).

122 S Machunga '10 famous artistes who sampled the music of Nigerian icon, Fela Kuti' (2016) <https://lifestyle.thecable.ng/fela-anikulapo-kuti-music-sample/> (accessed 12 June 2021).

123 UrbanCentralMag '*Sampling in the Nigerian music industry* (2017).

124 Copyright Act, Laws of the Federation of Nigeria (2010) <https://lawsofnigeria.placng.org/laws/copyright.pdf> (accessed 15 July 2022).

work, an author is an artist whose name the recording bears¹²⁵ the sound recording copyright has existed for 50 years.¹²⁶ The copyright in a sound recording is the absolute right to curtail the '*imitation of the entire or a sizeable part of the recording either in its initial format or in any other format clearly imitative of the initial sound*'. *The sampling of music basically* involves the imitation, hence, of a sizeable portion of an earlier recording. Simply put, if a portion of a song is familiar sufficiently to be imitative of another, then it is an 'imitation', and the author has absolute copyright, as well as the record label.¹²⁷

Finally, '*a musical work shall not be ineligible for copyright by reason only that the making of the work or the doing of any act in relation to the work involves an infringement of copyright in some other work*'.¹²⁸ This means that unlicensed sampling does not deny the defaulting song of copyright. For instance, if artiste A samples artiste B's hit and artiste A is further sampled by artiste C, artiste A can initiate a suit for infringement as he is protected.

If the Nigerian copyright law expressly states that *any modification of the work is tantamount to an infringement on the copyright of the artist, hence, an adaptation of a previous work from one field of work to the other that involves the modification of work in the same field to make it apposite for another condition that is distinct could also be termed as a copyright infringement, likewise musical sampling*. Also, valuable to note is the fact that even if sampling is on an unlicensed work, it remains an infringement on the copyright of the original work. The most implausible instance is this paradox of Antifragility:

Burna Boy, a Nigerian music artist, is now Africa's leading legend. His hit release 'African Giant' earned him a worldwide fan base, including the United States' past president, Barack Obama. Burna Boy has been able to put these together through his universal panache of Afrobeat which is a huge combination of excitement, originality, and a mixture of music which has continuously amused music fans.

However, it is puzzling that the singer owes his hits to his exceptional mode of sample collection and his universal mode of music selections that cuts across several musical styles. For instance, his song 'Kilometre' has a total of ten songs as inspiration. The same goes for his song 'Ye'; it was inspired by '*Sorrow tears and blood*' by Fela Kuti. 'Giddem', another of

125 Copyright Act, Laws (n 124).

126 Copyright Act, Laws (n 124).

127 Copyright Act, Laws (n 124).

128 Copyright Act, Laws (n 124).

Burna Boy's songs, is sampled from 'Fabulous' and Tamia's 'Into you'. His song 'Wombolomo' liberally sampled Angélique Kidjo's 'Wombo Lombo'. His 'Ph City Vibration' sampled 'Spanish Town Rockin' by Chronixx. Also, 'Anybody' sampled the tenacious 'Little money' by another Nigerian music artist, '9ice'. Likewise, in 'Pull up', he sampled the Roland Corporation's '169 Aaaaah!', a covered voice loop from Nelly and Kelly's 'Dilemma'. This was also applied in his song 'Boom Boom Boom' which sampled 'Lady' by Fela Kuti.

Indeed, Burna Boy has worked, so to say, depending much on sampling. 'Plenty song' is a sampling mixture of Michael Jackson's 'Human Nature', created in the African context. The song 'Fa So LaTi Do' samples the 'Poison' by Bell Biv DeVoe with impeccable amazement. Also, he sampled the Jackson 5's 'I want you back' in his song 'Gum body'. In spite of the enormous sense of sampling used by Burna Boy, ranging from music, content and style, the artist has seemed to hit stardom faster than many of the other artists that were sampled. Evidenced by his fandom, followers on his social media handles, and level of streams, sometimes amassing as much as about a hundred million streams on YouTube for some of his songs. The infringement is ordinarily supposed to record eras of distress, but rather for the artist, he has experienced huge benefits; this seems like a paradox of antifragility. According to the context exposition by,¹²⁹ some things just benefit in the face of seeming disorder. The musical artist simply increased in capability and output and thrived in spite of the seeming shocks, laws, mistakes, faults, and failures. Could one term him 'The black swan'?

However, the efficacy of these cases is mind-boggling from the Nigerian perspective as well as what obtains in other countries in West Africa. This is because the legal way out is scarcely pursued to concerns of unlicensed musical sampling. The farthest any author has gone regarding a sampling issue is a bare Instagram post, which is where it fizzles out. Conversely, the concern is whether this is an issue with the obliviousness of the copyright laws or rather the disheartening disposition to court procedures. Or could it be that from the Nigerian viewpoint, music sampling is not harmful? Could it be that imposing incorporeal rights is viewed as pointlessly obstructive?

We could possibly reflect on the favourite saying of Jim Jarmusch, an American film director, in his words: 'Nothing is original; steal from anywhere that resonates with inspiration or fuels your imagination. Originality is non-existent.'

129 NN Taleb *Antifragile: Things that gain from disorder* (2012).

14 Trade facilitation

Trade facilitation amendments usually enhance the effectiveness of trade in a country and the efficiency of border task forces. Furthermore, they could explicitly assist in advancing development objectives that would strengthen regulation, as well as formalise the non-formal sector. Trade liberalisation through lesser excise duties and quotas, excellent transportation connections, the soundness of logistics services and the efficiency of border coordination all determine developing functions that define the flow of international trade within economies.¹³⁰

The Agreement on Trade Facilitation can only provide wholesome well-being if the developing countries are in a situation to truly apply the provisions in the Agreement.¹³¹ The irony, however, is that the developing economies need more practical support than their developed counterparts. They also seem to be characterised most times with limited proportions of trade; this also is an indication that investment returns for the facilitation amendments may hence be lesser than for countries with higher trade.¹³² A common feature also with developing economies is that they often have a lower rate of capacity to absorb an all-inclusive technical assistance structure, such as the institutional policies which require an implementation to enhance the facilitation of trade.¹³³

The discussion regarding whether trade facilitation is enhanced through the engagement and performances of small and medium-sized enterprises as grassroots entrepreneurs, as an integral part of the global value chain, is germane.¹³⁴ The grassroots engagement is more profound to the enhancement in the performance of logistics for goods and services. The link between service trade, regulations and guidelines that enhance trade provides a nexus for better performance for economies, essentially developing ones.¹³⁵ Surprisingly, entrepreneurs account for over 95 per cent of traders and service providers, yet they cover only a small proportion of international trade.¹³⁶ In spite of all these limitations, entrepreneurs are still encumbered with greater regulatory challenges to international trade.

130 United Nations Conference on Trade and Development (UNCTAD) (n 11).

131 United Nations (n 12).

132 United Nations Conference on Trade and Development (UNCTAD) (n 10).

133 United Nations Conference on Trade and Development (UNCTAD) (n 11).

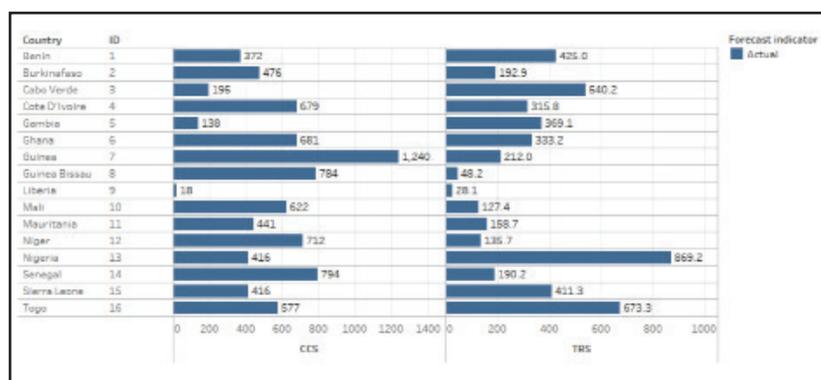
134 United Nations (n 12).

135 BM Hoekman & B Shepherd (2012) 'Who profits from trade facilitation initiatives?' European University Institute Working Paper 2013/49 (2012).

136 World Trade Organisation (n 3).

These concerns must be overcome in order to enhance their performance and, hence, improve trade facilitation and sustainable growth in the economy.¹³⁷

Figure 8: Telecommunication service and trade facilitation for West African countries



Source: Author's computation

Note: This chart gives an account of telecommunication service and transport services per country in West Africa. Guinea, as can be seen, has the highest in the pack for telecommunications, while the country in the region with the least volume is Liberia. In the case of transport services, Nigeria is the obvious outlier, while Liberia again has the least volume in the region.

15 World trade facilitation agreement: The West African context

There are immense opportunities available to economies as they engage in trading activities. Provisions have been put in place in the world trade facilitation agreement to boost trading activities within countries. The expectation for countries, hence, is that in planning for the implementation of their agreement provisions, sufficient input is required with a particular focus on development strategies.¹³⁸ Developing countries have immense prospects to promote precise trade facilitation measures across the provision of several categories for implementation. Provisions range from financial assistance establishment of national committees on trade facilitation, all in the bid to ensure the efficient implementation of all of the provisions through improved collaboration among stakeholders.¹³⁹

137 Hoekman & Shepherd (n 135).

138 World Trade Organisation (n 68).

139 United Nations Conference on Trade and Development (UNCTAD) (n 11).

The Economic Community of West African States (ECOWAS) was instituted 46 years ago to promote economic trade, cooperation and self-reliance among member states. Ever since, international trade has had a considerable influence on economic development and well-being globally.¹⁴⁰ The prospect of international trade needs to be employed for economic development in West Africa.¹⁴¹ The region's trade prospects can be portrayed by its young and growing population and its abundance of natural resources. Also, the required political structure is often found lagging or inefficiently executed. Hence, the opportunities available in trade, essentially for intra-regional trade, cannot be completely employed. The reason for these is not far-fetched, as trade in the region has been typified by huge operation costs, custom levies, non-harmonised trade regulations, and non-tariff restrictions to trade the likes of measurable barriers.^{142 143} Even traders within the region are faced with coinciding and repeated reporting requirements, which are time inefficient, uncreative and difficult to comprehend. These have made trade both within and outside of the region considerably low in spite of the obvious resource endowment in the region.¹⁴⁴ A well-organised trade facilitation plan could lessen these associated costs and, thereby, help boost the trade volume in West Africa.¹⁴⁵

A number of programmes and collaborations have been harnessed to improve the level of trade facilitation in the West African region.¹⁴⁶ The Trade Facilitation West Africa Programme (TFWA), a collaboration programme financed by the European Union (EU) and the German Federal Ministry for Economic Cooperation and Development, aims to improve the level of trade facilitation in the region.¹⁴⁷ The programme works together with the ECOWAS Commission to establish trade-improving procedures. It supports the progress of the efficient establishment of regional guidelines and mechanisms of trade facilitation in order to

140 World Bank (n 22).

141 M Meyn 'Trade facilitation in West Africa: Promoting trade in West Africa II (WATIP II)' (GIZ) GmbH (2019) <https://www.giz.de/en/worldwide/80051.html> (accessed 12 August 2022)

142 United Nations (n 12).

143 Meyn (n 141).

144 World Trade Organisation (n 87).

145 Meyn (n 141).

146 B Rippel 'Why trade facilitation is important for Africa?' (2011), <http://documents.worldbank.org/curated/en/2011/11/15757410/trade-facilitation-important-africa> (accessed 12 August 2022).

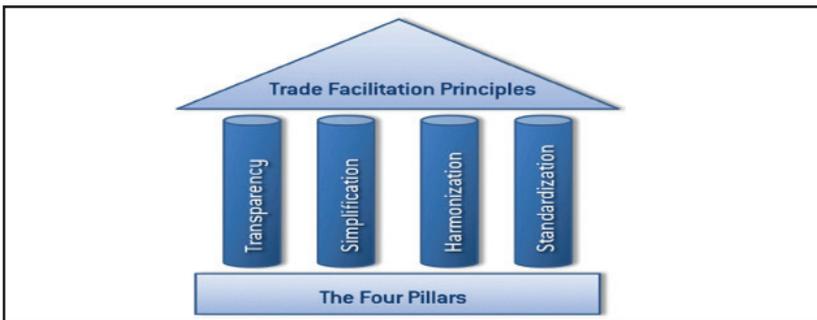
147 Meyn (n 141).

eliminate barriers and improve trade.¹⁴⁸ Also, it promotes efficient transport and automated data transmission to improve required capacity and, hence, improve trade. Furthermore, the programme gives support to the regional community to enter into dynamic discourse with the private sector in order to tackle trade-discrete challenges and enhance the capacity of private players in the trade facilitation process.¹⁴⁹

16 Trade facilitation principles and pillars

Trade facilitation is a critical element for international trade effectiveness and the economic development of countries.¹⁵⁰ This is a result of its influence on competitiveness and integration of the market. Over the years, it has attained visibility in the international political plan, which climaxed in the summation of the Agreement on Trade Facilitation at the WTO and the extensive international technical assistance programmes for developing as well as transition economies.¹⁵¹ Both the government and the private sector stand to derive benefits from trade facilitation. The government derives trade tax and duties, while traders will benefit in terms of certainty, efficiency in operation, and lesser operational costs. Trade facilitation mechanisms could essentially assist developing economies with delayed and inefficient trade processes to improve their mechanisms and processes.¹⁵²

Figure 9: *The four pillars of trade facilitation*



Source: National Board of Trade, Sweden

148 D Sakyi, I Bonuedi & EE Osei Opoku 'Trade facilitation and social welfare in Africa' (2018) 5 *Journal of African Trade* 35-53.

149 Meyn (n 141).

150 World Trade Organisation (n 68).

151 World Trade Organisation (n 92).

152 United Nations (n 12).

The principles of trade facilitation can be described within the context of the four pillars highlighted above. Transparency within the government enhances clarity and accountability of a government's and administration's actions. It entails the disclosure of information in a way that the public can readily access and use it. Information provided here is in the context of rules, guidelines and executive resolutions of general application, financial plans, acquisition choices and seminars.¹⁵³ There is a need to ensure that all forms of information are well communicated, with sufficient timing and inclusiveness for all stakeholders in the law-making process.¹⁵⁴ Simplification, on the other hand, is necessary for eliminating all excessive components and repetitions in trade regulations, procedures and techniques. Harmonisation is a pillar that is much required, as it assists in aligning domestic processes, procedures and documentation in line with universal resolutions, principles and standards.¹⁵⁵ For the West African region that requires the easy flow of the regional integration process, harmonisation is much required. Standardisation, which is the fourth pillar, depicts the process of creating set-ups for procedures and techniques, documentation and information in forms globally decided by several stakeholders. Standards are thereby utilised for aligning, consequently, harmonising the procedures and techniques.¹⁵⁶

17 The nexus

17.1 Importance of intellectual property rights on service trade enhancement

Intellectual property is heterogeneously related to trade, competitive market, industrial advancement and economic growth. The establishment of the WTO in 1995 and the subsequent creation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) have engendered new issues for developing economies, especially with regard to IP protection in these countries.¹⁵⁷ The agreement is the most inclusive in the form of protection as well as regulation, providing the required guidelines for every country's conformity. This conformity concern,

153 United Nations (n 12).

154 Ayoki (n 34).

155 United Nations Conference on Trade and Development (UNCTAD) (n 10).

156 United Nations (n 12).

157 World Trade Organisation Intellectual Property: Protection and Enforcement (2021), https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm (accessed 25 November 2022).

therefore, applies to all West African countries, as they are required to formulate their IP laws in accordance with TRIPS provisions.¹⁵⁸

It has been said that indigenous knowledge is more productive in developing economies than it is in developed climes. The particular knowledge tagged indigenous is related to creativity and invention, which are an output of the engagement of entrepreneurs in service sector trade. Since developing economies in West Africa, for one, require creativity and the sale of the same innovations in the form of services to evolve from low-income to middle and high-income economies, IP rights are much required for the safekeeping of their creativity in order to maximally reap best output returns.¹⁵⁹ ¹⁶⁰ IPRs, in their present context, do not protect indigenous knowledge because it is not suitable for the originality benchmarks. However, under the TRIPS agreement, there is more elasticity to empower developing economies to establish unique structures of IP protection beneficial for maximising their reserve of indigenous knowledge to prevent loss of profits in the course of exploiting their trade in services as it relates to their creativity.¹⁶¹

Intellectual property rights empower private contributions through the entrepreneurship of resourcefully beneficial knowledge, thereby providing entrepreneurs with the required output for participation in service trade from their reserves of indigenous knowledge.¹⁶² The protection of innovative works of authorship and ideas helps entrepreneurs gainfully benefit from service trade. When gains are aggregated, it yields development in the service industry, which is a grassroots requirement for sustainable economic development in the West African region.¹⁶³ Also, the right to reproduce the same work, display and present the original work resides with the author, and these will assist consumers in being convinced about their choice service, hence dedicated to their selected brand.¹⁶⁴ For countries in West Africa to thoroughly utilise IPRs, alongside technological changes and economic growth characterising the IP regimes, it is essential that every country in the region endorse IP laws and guidelines that connect property protection to other requirements of

158 World Trade Organisation (n 87).

159 United Nations Conference on Trade and Development (UNCTAD) (n 11).

160 World Trade Organisation (n 87).

161 World Trade Organisation (n 157).

162 United Nations Conference on Trade and Development (UNCTAD) (n 11).

163 United Nations Conference on Trade and Development (UNCTAD) (n 10).

164 World Trade Organisation (n 157).

the country ranging from trade, domestic sector growth, and economic development.¹⁶⁵

17.2 Essence of facilitation of service trade

Trade across borders is now personified by the current trend of the international economy, as it guarantees the flow of goods and services from one country to the other. However, we deduced from the literature that the efficiency of this flow is strongly determined by the level of trade facilitation within the countries involved.^{166 167 168 169 170 171} Especially for developing economies, such as those in West Africa, trade facilitation is a vital trade policy due to the structural market and interaction failures arising from information asymmetry, and thus, the essential need to resolve them.^{172 173} This market failure is more likely to affect trade in developing economies unfavourably; therefore, without trade facilitation by governments, even the diverse market prospects created through trade agreements would not be attainable. The likely possibilities would be unutilised opportunities because trade agreements that are intricately specified would make trade engagements dismal.¹⁷⁴

Generally, trade facilitation consists of all provisions focused on eliminating the barriers to trade through transport effectiveness and lower transaction costs related to trade movements. Other efforts regarding

165 United Nations Conference on Trade and Development (UNCTAD) (n 11).

166 JS Wilson, CL Mann, & T Otsuki, 'Trade facilitation and economic development: A new approach to quantifying the impact' (2003) 17 *World Bank Economic Review* 367-389.

167 A Portugal-Perez & JS Wilson 'Trade facilitation in Africa: Why reform matters' (2009)8 *World Trade Review* 379 416.

168 KK Mbekeani 'Infrastructure, trade expansion and regional integration: Global experience and lessons for Africa' (2010) 19 *Journal of African Economies* i88-i113.

169 A Portugal-Perez & JS Wilson 'Export performance and trade facilitation reform: Hard and soft infrastructure' (2012) 40 *World Development* 1295-1307.

170 B Hoekman, LW Senbet & W Simbanegavi 'Integrating African markets: The way forward' (2017) 26 *Journal of African Economies* ii3-ii11.

171 D Sakyi & SK Afesorgbor 'The effect of trade facilitation on trade performance in Africa' (2019) 6 *Journal of African Trade* 1-15.

172 M Yakop & PAG van Bergeijk 'Economic diplomacy, trade and developing countries' (2011) 4 *Cambridge Journal of Regions, Economy and Society* 253-267.

173 G Filson & B Adekunle 'Understanding Halal food market: Resolving asymmetric information' (2020) 5 *Food Ethics* 1-2.

174 SK Afesorgbor 'Economic diplomacy in Africa: The impact of regional integration versus bilateral diplomacy on bilateral trade' in PAG van Bergeijk and SJV Moons (eds) *Research handbook on economic diplomacy: Bilateral relations in a context of geopolitical change* (2018) 326-346.

barrier mitigation include proficiency of customs officials, transparency, financial services, business principles, internet, telecommunications and compliance with regional as well as international guidelines.^{175 176 177 178 179 180 181 182}

Hence, trade facilitation basically proffers pathways to assuage the limitation created by barriers to service trade, as well as improve transport effectiveness, proficient custom services, seamless services regarding payments and insurance from financial services, telecommunications, and so forth.^{183 184}

What is worthy of note is that trade facilitation from prior studies is attainable through service trade. Service trade is a medium of facilitating trade; hence for trade facilitation to be maximally attained for diverse economies, service trade has to be engaged in the best possible way. This will improve trading activities, domestic industrial growth, economic development, and improved livelihood for the citizens in the West African region.¹⁸⁵

17.3 Economic freedom, growth, and fluidity

Economic freedom can be described in the context of rules and regulations in terms of requirements, the likes as trade freedom, tax obligations, legal acceptability, and more. These issues may be evaluated in accordance with their impact on economic freedom and accumulated into a distinct point that permits an evaluation.¹⁸⁶ Trade freedom, which is of particular focus,

175 C Buyonge & I Kireeva 'Trade facilitation in Africa: Challenges and possible solutions' (2008) 2 *World Customs Journal* 41-54.

176 C Freund & N Rocha 'What constrains Africa's exports?' (2011) 25 *World Bank Economic Review* 361-386.

177 E Moisé, T Orliac & P Minor 'Trade facilitation indicators: The impact on trade costs' OECD Publishing, Château de la Muette, Paris, OECD Trade Policy Working Paper 118 (2011).

178 B Narayanan, S Sharma & M Razzaque 'Trade facilitation in the Commonwealth: An economic analysis' (2016) 10 *Margin: The Journal of Applied Economic Research* 305-336.

179 Sakyi & Afesorgbor (n 171).

180 Rippel, B 'Why trade facilitation is important for Africa?' (2011), <http://documents.worldbank.org/curated/en/2011/11/15757410/trade-facilitation-important-africa>.

181 Portugal-Perez & Wilson (n 167).

182 Sakyi, Bonuedi & Osei Opoku (n 148).

183 Narayanan, Sharma & Razzaque (n 178).

184 Sakyi, Bonuedi & Osei Opoku (n 148).

185 Sakyi & Afesorgbor (n 171).

186 W Kenton Index of Economic Freedom (2021), <https://www.investopedia.com/>

can be categorised under the market openness domain, and it has the greatest weight in determining economic freedom alongside other factors such as government size, regulatory efficiency, and the rule of law.¹⁸⁷ This infers that trade freedom has a great impact on determining economic freedom; therefore, the extent of engagement in trade determines the extent of economic freedom attainable.¹⁸⁸

Following also from the precision of ¹⁸⁹, his thoughts on freedom of entrepreneurship as well as labour with regards to trade in services have exposed an evolving opinion that domestic grassroots inclined growth are largely critical to economic fluidity. Entrepreneurs who are also huge participants in service trade are the main promoters of a free-market structure, as described by Schumpeter's Gale of Creative Destruction; entrepreneurs are accountable for promoting both advancement in technology as well as innovation.¹⁹⁰ ¹⁹¹ The said innovations are also referred to as indigenous knowledge, which are ingenious creations from the entrepreneurs as they create services to be traded.¹⁹²

IP rights, which are forms of regulatory efficiency, are much required for the safekeeping of the creativity of the indigenous knowledge of entrepreneurs in order to maximally reap the best output returns.¹⁹³ Hence, developing countries of West Africa are required to tailor IPRs in line with the TRIPs regulation in such ways that would best protect indigenous knowledge in order to attain effective entrepreneurial business freedom, hence economic fluidity. The principal focus of the dynamism in the context of service trade, as it assists entrepreneurship resource allocation, is directed towards attaining tangible economic gains. The West African story is pertinent as the region is resource full, with grassroots engagements through entrepreneurship activities in service trade, empowered by focus-driven IPRs, which in itself is a trade facilitator alongside economic growth, hence economic fluidity.

terms/i/index-of-economic-freedom.asp (accessed 12 November 2022).

187 I Dialga & T Vallee 'The index of economic freedom: Methodological matter' HAL Archives; al-01178202 (2015), <https://www.researchgate.net/deref/https%3A%2F%2Fhal.archives-ouvertes.fr%2Fhal-01178202> (accessed 12 November 2022).

188 Dialga & Vallee (n 187).

189 Schramm (n 54).

190 Schumpeter (n 55).

191 Baumol (n 56).

192 World Trade Organisation (n 92).

193 United Nations Conference on Trade and Development (UNCTAD) (n 11).

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