



PANACEAS: DUMPING AND TRADE REMEDIES IN NIGERIA

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The global integration of economies, technology, trades and services has become an increasing reality. International trade allows for the exchange of goods amongst countries and a substantial part of the world's gross domestic product (GDP) is derived from it. The complexity attached to international trade, particularly between developed and developing states has occasioned the inevitability of trade hazards, in turn resulting in trade remedies to protect countries and abate trade hazards.



LEAD STORY

TRADE REMEDIES ARE POLICIES THAT ALLOW GOVERNMENTS TO TAKE CORRECTIVE ACTIONS AGAINST IMPORTED PRODUCTS THAT CAUSES MATERIAL INJURY TO A DOMESTIC INDUSTRY

Trade remedies are policies that allow governments to take corrective actions against imported products that causes material injury to a domestic industry. The World Trade Organization (WTO)¹ deals with the global rules of trade between nations. Its core function is to ensure that trade flows as smoothly and freely as possible. The WTO's agreements regulating trade activities are the **WTO Anti-Dumping Agreement (ADA)**, the **WTO Agreement on Subsidies and Countervailing Measures (ASCM)**, and the **WTO Agreement on Safeguards (ASG)**.

The **ADA** defines 'dumping' as when a product is "introduced into the market of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the

¹ The WTO was formerly under the auspices of the *General Agreement on Tariffs and Trade (GATT)* 1947.

ordinary course of trade, for the like product when destined for consumption in the exporting country.”²

‘Countervailing’ occurs when there seems to be unfair trade practice of proven subsidised imports from foreign competitors by a state government of the recipient state that cause material injury to a domestic producer³ while ‘safeguard measures’ are applied where a “product, is being imported its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.”⁴

This article focuses on the issue and effects of dumping in Nigeria, and how Nigeria can reduce its trade deficit leveraging trade remedy options.

Dumping and Nigeria's Historic Trade Imbalance

Nigeria is an import dependent country, with the importation

financed mostly by its crude oil exports.⁵ This has positioned Nigeria as a victim of dumping of goods from developed countries; an interesting aspect is dumping of toxic waste such as the infamous Koko incident of 1988.⁶ Ever since, dumping has become a topic for national debate because of its multifarious negative impact.

Nigeria's textile industry is one of the worst hit by the hydra headed problem. In the 1970s and 1980s, Nigeria had Africa's largest textile industry, with over 180 textile mills, employing about 450,000⁷ people. Years down the line, the Nigerian textile industry is teetering on the brink as a result of unregulated dumping of mostly sub-standard textile materials. Although, there are plans to revive Nigeria's cotton and textile industry, those plans may be threatened if dumping is not properly addressed.⁸

The Nigerian steel sector is also grappling under the unfavourable effect of dumping; cheap steel products imports into the country is thwarting the efforts of indigenous companies from growing.⁹ As commonly

demonstrated elsewhere, a functional steel industry is a *sine qua non* for national and industrial development of a country. That was part of the rationale for President Shagari's administration starting the Ajaokuta Steel Complex, Aladja Steel Complex (Company), rolling mills like Jos, Oshogbo, etc especially given Nigeria's rich iron ore deposits.¹⁰

The automotive industry is not exempt from the negative effects of dumping. Many local manufacturers and assemblers of vehicles such as Volkswagen of Nigeria Limited (VON), Peugeot Automobile Nigeria Limited (PAN), Innoson Vehicle Manufacturing Company (IVM) and others¹¹ have had to either shut down at some point or struggle for survival because of the uncontrolled importation of new and used vehicles.¹²

In a bid to revive the moribund auto industry, the Federal Government (FG) launched the **National Automotive Industry Policy Development Plan 2013 – 2023 (NAIDP)** in 2013. The NAIDP

² Article 2(2.1) 'Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994': https://www.wto.org/english/docs_e/legal_e/19-adp.pdf (accessed 30.04.2019).

³ Article 1(1.1) 'Agreement on Subsidies and Countervailing Measures': https://www.wto.org/english/docs_e/legal_e/24-scm.pdf (accessed 30.04.2019).

⁴ Article 2(1) 'Agreement on Safeguards', https://www.wto.org/english/docs_e/legal_e/25-safeg.pdf (accessed 30.04.2019).

⁵ According to the Nigeria Economic Summit Group (NESG), as at March 2019, Crude oil still accounts for 82% of the Country's exports. See NESG, 'Foreign Trade Alert', March 2019: <https://nesgroup.org/docs/foreign-trade-alert-march-2019/> (accessed 24.04.2019).

⁶ Stephanie Buck, 'Toxic Colonialism at its Worst' Timeline, 26.5.2017: <https://timeline.com/koko-nigeria-italy-toxic-waste-159a6487b5aa> (accessed 15.4.2019). The dumping of electrical and electronic equipment waste is on the increase. An estimated 500 containers, each carrying about 500,000 used computers, fridges, air conditions and other electronic equipment, reportedly enter Nigeria's ports every month. These dumped products cause health and environmental hazards as most of them are no longer in serviceable conditions. See Shola Lawal, 'Nigeria has become an E-waste Dumpsite for Europe, US and Asia', TRT World 15.02.2019: <https://www.trtworld.com/magazine/nigeria-has-become-an-e-waste-dumpsite-for-europe-us-and-asia-24197> (accessed 02.05.2019).

⁷ Mark Itsibor, 'CBN's Efforts to Revive the Textile Industry', Leadership, 23.4.2019: _ (accessed 24.04.2019).

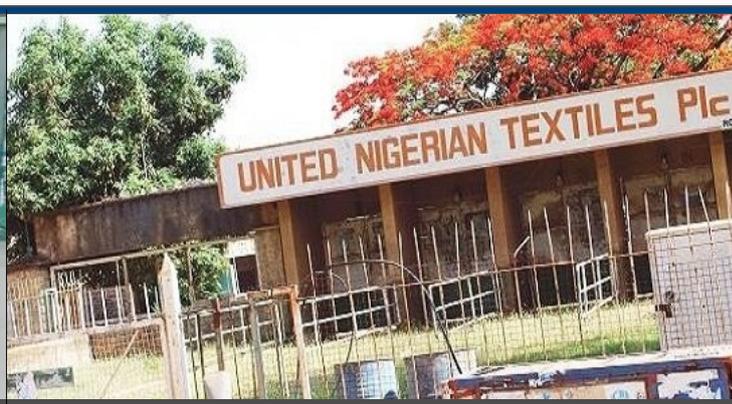
⁸ Textile materials was on the Central Bank of Nigeria (CBN)'s import ban list of 41 items and thereby disqualified from accessing the official foreign exchange market to finance their importation. CBN (TED/FEM/FPC/GEN/01/010), 'Inclusion of Some Imported Goods and Service on the List of Items not Valid for Foreign Exchange in the Nigerian Foreign Exchange Markets', 23.06.2015: <https://www.cbn.gov.ng/Out/2015/TED/TED.FEM.FPC.GEN.01.01.pdf> (accessed 15.05.2019), 'Reviving Nigeria's Textile Industry', Leadership (editorial), 07.03.2019: <https://leadership.ng/2019/03/07/reviving-nigerias-textile-industry/> (accessed 05.02.2019).

⁹ As of March 2019, Nigeria produced 0.11% of global steel and imports 5m tonnes annually. See, 'Nigeria Produces 0.11% of Global Steel and Imports 5m Tonnes Annually', Proshare Nigeria, 19.03.2019: (accessed 29.04.2019).

¹⁰ Upon completion the Ajaokuta steel complex, it is expected to create employment for millions of Nigerians, stimulate the local automobile industry, achieve self-sufficiency in steel and make Nigeria a regional hub for mining and allied industries. 'Ajaokuta: Last Chance for Targeted Sale', Ministry of Mines and Steel Development, 15.08.2016: <https://www.minesandsteel.gov.ng/2016/08/15/ajaokuta-last-chance-targeted-sale/> (accessed 21.05.2019). See Ocheri C, et al, 'The Steel Industry: A Stimulus to National Development', Journal of Powder Metallurgy & Mining, vol. 6, issue 1, 2017, p. 5.

¹¹ Examples of shut down plants include: Anambra Motor Manufacturing Limited (ANAMMCO), Steyr Nigeria Limited (SNL), National Truck Manufacturing (NTM) Leyland Nigeria Limited (LNL).

¹² Cornelius O. A. Agbo, 'A Critical Evaluation of Motor Vehicle Manufacturing in Nigeria', Nigerian Journal of Technology, Vol. 30, No. 1, March 2011, p. 1-2.



imposed tariffs on imported fully built vehicles and allowed high tariff rebate for Semi Knocked Down vehicles (SKDs) meant for assemblage of vehicles in the country.¹³ The objective of the automotive policy is to restore assembly and develop local content, create employment, acquire technology and reduce pressure on the country's balance of payment. Regrettably, not so much has been achieved because the **NAIDP Bill 2017** has not been assented to by the President.

The far reaching implications of dumping includes local unemployment, hampered local creativity and competitiveness leading to cessation of local manufacturing operations. All these in the long run, negatively affects the nation's economic growth. Indeed, the deleterious effects of the dumping of varied items into Nigeria are too

numerous to mention.¹⁴

Anti-Dumping Regime in Nigeria

The laws regulating importation and dumping in Nigeria is the **Customs and Excise Management Act (CEMA)**¹⁵ and **Customs Duties (Dumped and Subsidised Goods) Act (CDA)**.¹⁶ The SON was also set up with the mandate to maintain and enforce the quality and standard of locally made and imported products.¹⁷

Prior to the enactment of these laws, Nigeria had always engaged in trade protectionism majorly import bans¹⁸ to protect local industries. In the 1960s, import duties were placed on several items, and in some cases outright prohibition. For instance, commodities like textiles, beverages and tobacco then, had tariffs as high as 120 per cent.¹⁹

The post-war reconstruction after the civil war, as well as the oil boom in the 1970s gave room for a brief period of less restrictive trade policies. However, in the late 1970s, the government returned to heavily restrictive tariffs on imported goods and by 1978, the government had put heavy restrictions on 82 items.²⁰ In 1982, the government placed an outright ban on the import of "non-essential" items.²¹

With the advent of the civilian regime in 1999, President Obasanjo imposed more bans and this has continued till date.²² A current instance of protectionism by the government is the restriction of access to foreign exchange by importers of 41 items by the Central Bank of Nigeria (CBN) in 2015 and an additional list in 2018 to help reactivate local industries, create jobs and save the economy.²³

13 Samson Echenim, 'Nigeria Auto Policy: A timeline of inconsistency', *Ships&Ports*, 12.12.2016: <https://shipsandports.com.ng/nigeria-auto-policy-a-timeline-of-inconsistency/> (accessed 15.05.2019).

14 The Standards Organisation of Nigeria (SON) stated in 2016 that 40% of electrical and electronic appliances imported into Nigeria "are substandard and have caused disasters with destruction to lives and property. Vincent Ikuomola, 'Nigeria, China to Tackle Importation of Substandard Products to Nigeria', *The Nation*, 22.8.2017: <https://thenationonline.net/nigeria-china-tackle-importation-substandards-products-nigeria/> (accessed 15.04.2019).

15 *Cap. C45, Laws of the Federation of Nigeria (LFN), 2004.*

16 *Cap. C48, LFN, 2004.*

17 SON was established in 1971 vide - *The SON Act, Cap. 412, LFN 2004.* The *National Agency for Food and Drug Administration and Control (NAFDAC)* established under the aegis of the Federal Ministry of Health in 1993 vide - *The NAFDAC Act, Cap. N1, LFN, 2004* is another Federal Agency that is responsible for regulating and controlling the manufacture and importation of food, drugs, cosmetics, medical devices, chemicals and packaged water in Nigeria.

18 Trade Protectionism is an approach used by governments to reduce importation of products so as to encourage local industries, it is done by way of tariffs, subsidy, import quota and any other means of international trade restrictions.

19 Chete, L.N., & Adenikinju, A.F., 'Productivity Growth in Nigerian Manufacturing and its Correlation to Trade Policy Regimes/Indexes (1962-1985)', *African Economic Research Consortium (AERC) Research Paper 127, 2002, p. 17.*

20 Umoh, O. J., & Effiong, E. L., 'Trade Openness and Manufacturing Sector Performance in Nigeria', *Margin The Journal of Applied Economic Research*, Vol. 7, No. 2, May 2013, pp. 151-152.

21 *The Economic Stabilisation (Temporary Provisions) Act of 1982* enacted by the administration principally focused on the curtailment of imports.

22 In 2005, President Obasanjo imposed an outright importation ban on specific products he believed could be produced within the country. 'Ban on Imports: Impact on Manufacturing Sector', *Media Reports*, 10.05.2006: https://www.customs.gov.ng/Publications/publications_details.php?id=26 (accessed 07.05.2019).

23 Babajide Komolafe, '41 Items Policy: CBN Bans Fertiliser Imports from Forex Market', *Vanguard*, 11.12.2018: <https://www.vanguardngr.com/2018/12/41-items-policy-cbn-bans-fertiliser-imports-from-forex-market/> (accessed 06.05.2019).

All these extreme measures by the FG over the years despite some attributed benefits,²⁴ have not sufficiently controlled dumping or protected local producers *vis a vis* their foreign counterparts. Also, Nigeria's trade policies have been known to be incompatible with the WTO rules. The 2005 WTO review of Nigeria's trade policy regime reportedly noted that her trade regime has become more protective with “a 10-fold increase in products covered by import bans” and the 2011 report had the same review.²⁵ In 2017, the WTO also reportedly advised the government to avoid outright protectionist strategy.²⁶

In 2010, an **Anti-Dumping and Countervailing Bill** was considered by the National Assembly. However, the **Bill** was not passed for several reasons which include the non WTO compliant as there were identified definitional gaps, incoherence and inconsistencies.²⁷ Recently, the Nigerian government entered into an agreement with a multinational US law firm, King & Spalding (Spalding) in January 2018 to support the drafting of legislation, aimed at stopping dumping on the Nigerian market.²⁸ Also, protect local manufacturers within the framework of remedies provided

for by the WTO and other regional trade agreements.²⁹

Approaches to Anti-Dumping in other Jurisdictions: Lessons?

Between late 19th century and early 20th century (1880- 1914), dumping was identified by many in the trade debate as a significant factor that contributed to both the erosion of British cost competitiveness and the inadequate levels of British capital investment.³⁰

Pioneers of anti-dumping measures are the United States, the European Union, Canada and Australia. In 1904, Canada enacted the first anti-dumping law, passed to primarily protect the infant

Canadian steel industry from short-term predatory dumping from the cartelized U.S. steel companies.³¹

In 2009, a debate arose in Australia regarding the benefits of its anti-dumping laws and whether these laws should be retained. The Productivity Commission recommended that Australia retain an anti-dumping system for its role in maintaining support for free trade. Australia already advanced her laws with the application of the “*particular market situation*” method in anti-dumping investigations which is proving of interest to other WTO members.³²



24 For instance, the Okomu Oil Palm Company Plc, a local manufacturer of oil products have witnessed high positive trend since the forex restrictions; the volume of rice imported from Thailand alone from 1.23 million metric tonnes in 2014 to about 23,193 metric tonnes in November 2017 as a result of the restriction.

25 Olu Fasan, 'The Many Phases of Nigeria's Relationship with the WTO', *BusinessDay*, 14.08.2017: <https://businessday.ng/columnist/article/many-phases-nigerias-relationship-wto/> (accessed 29.04.2019).

26 Ifeanyi Onuba, 'WTO Advises Nigeria Against Protectionist Trade Policies' *Punch*, 09.02.2017: <https://punchng.com/wto-advises-nigeria-protectionist-trade-policies/> (accessed 03.05.2019).

27 See generally, Ikeagwuchi GA, 'Implementing Effective Trade Remedy Mechanisms: A Critical Analysis of Nigeria's Anti-Dumping and Countervailing Bill 2010', (unpublished LLM thesis) University of Pretoria, 2014.

28 Ben Rigby, 'Nigeria Looks to King & Spalding for Trade Law Advice', *African Law & Business*, 08.02.2018: <https://www.africanlawbusiness.com/news/7936-nigeria-looks-to-king-and-spalding-for-trade-law-advice> (accessed 23.04.2019).

29 Provisions of regional agreements that provides for trade remedies particularly dumping include Article 42(3) and (4) **Economic Community of West African States (ECOWAS)** and **Part V, African Continental Free Trade Area Agreement (AfCFTA)**. A major reason for Nigeria's refusal to support Morocco's entry into ECOWAS is because of the fear of dumping of European products in the country through Morocco's Free Trade Zones which will affect local manufacturers in Nigeria. See Anna Okon, 'Why Manufacturers Don't Want Morocco in ECOWAS', *Punch*, 19.09.2017: <https://punchng.com/why-manufacturers-dont-want-morocco-in-ecowas/> (accessed 03.05.2019).

30 Thomas R. Howell, Dewey Ballantine, 'Dumping: Still a Problem in International Trade', *International Friction and Cooperation in High Technology Development and Trade: Papers and Proceedings*, 1997, pp.334-336.

31 Ros Denton, 'Why Should Nations Utilize Antidumping Measures?', *Michigan Journal of International Law*, Volume 11 Issue 1, 1989, p.228.

32 'Australia's Anti-Dumping and Countervailing System', *Australian Productivity Commission Inquiry Report*, No. 48, 18 December 2009.

South Africa (SA), an African pioneer of anti-dumping measures, has helped put its local industries on a global scale; one focal case was Brazilian frozen chicken meat anti-dumping strategy to deal with the threat posed to the domestic industry by lowly priced chicken from Brazil. SA raised its tariffs on imported birds to stabilise the balance between poultry supply and demand, and give some protection to domestic producers.³³

The United States (US) anti-dumping laws began with the **Anti-Dumping Act of 1921**.³⁴ Recently, following an anti-dumping complaint filed by six US pipe manufacturers with the Commerce Department in January 2018, the US announced hefty preliminary anti-dumping duties on metal pipes imported from India, China and four other countries.³⁵ Several other countries have also adopted anti-dumping measures to prevent dumping within their territories.³⁶

Trade Remedies: Viable Alternative to Anti-Dumping Law in Nigeria?

Whilst the agreement between Nigeria and Spading is a laudable movement, the enactment of more anti-dumping laws is the not the final solution to dumping, it is only a means to an end. The pertinent question then is, *if a new*



anti-dumping law is not the answer, what are the alternatives to halt unfavourable dumping in Nigeria?

Certain operational issues should be considered to curtail dumping and protect the country's fledging industries. First, creation of awareness amongst local industries is as important as making of anti-dumping laws. Anti-dumping investigations are launched by the government of an importing country on the application by a domestic industry. Application by the local industries can only happen when the manufacturers are informed that there are laws in place to protect them from imported substandard materials that is causing a setback in their production.

Policy implementation is another issue that requires attention.³⁷ The **CDA** adopts the provisions of the **ADA** on what constitutes dumping. The **CDA** is thus a national law that should protect local industries from dumping and unfair competition. The implementation setbacks of the provisions of the **CDA** is insufficient capital and it will also be an impediment for the implementation of the proposed anti-dumping agreement if there is no sufficient financial plan ahead. The costs of pursuing anti-dumping cases is a heavy one, due to the technicalities involved.

The lack of a functional agency comprising of expertise at the national level to provide advisory services to the local manufacturers regarding the actions to take when dumping is suspected in a sector was another major problem. However, following the establishment of the Nigerian Office for Trade Negotiations (NOTN) under the Ministry of Industry, Trade and Investment in 2017, this would seem to have been covered.³⁸ In summary, there should be accessibility of institutional support to help complainants in their applications.

33 Omphemetse S. Sibanda, 'The Effects of the South African Anti-Dumping and Competition Measures upon Foreign Direct Investment', *Journal of Business and Retail Management Research (JBRMR)* Vol. 9 Issue 1, October 2014, pp. 130-131.

34 Douglas A. Irwin, 'The Rise of US Anti-Dumping Activity in Historical Perspective', (2005, Blackwell), p. 653.

35 'US Imposes Preliminary Anti-Dumping Duties over 50 Metal Pipes Made in India', *The Economic Times*, 22.09.2018: <https://economictimes.indiatimes.com/news/economy/foreign-trade/us-imposes-preliminary-anti-dumping-duties-of-over-50-on-metal-pipes-made-in-india/articleshow/65503117.cm> (accessed 05.05.2019).

36 The Trump's administration is currently increasing its trade wars especially against imported products from China since April 2018, about 2.6 million new jobs have been added to the U.S. economy since then including 204,000 jobs in manufacturing sector amongst other things. See 'Is Trump's Trade War Saving American Jobs – or Killing Them?', *The Conversation*, 15.05.2019: <https://theconversation.com/is-trumps-trade-war-saving-american-jobs-or-killing-them-117159> (accessed 17.05.2019).

37 The provisions of this Act may be invoked if there is a threat of material injury to potential or established industries in Nigeria, and if the imposition of a special duty does not conflict with Nigeria's international agreements. There is a need for the revision of the CDA to cover all requirements of anti-dumping measures as provided by the ADA in the aspect of injury, and causal link, establishment of an anti-dumping panel, limitation and conduct of an investigation, and imposition of measures.

38 NOTN was established to lead all of Nigeria's trade negotiations, prepare and update Nigeria's trade policy. Apart from championing Nigeria's significant input to the AfCFTA, it is believed that more of its positive impact will be seen subsequently through implementation of the proposed legal trade remedies agreement.

Trade remedies are highly technical in application; hence, there must be availability of resources needed to implement the national anti-dumping laws.

Effective legal representation is critical for the initiation or defence of a dumping case³⁹ starting from anti-dumping investigations and proceedings to understand the methodologies for determining dumping margins, injury and establishment of the necessary causal links before the regional courts and the WTO Dispute Settlement Committee.

Furthermore, problems of infrastructure needs to be addressed. For example, epileptic power supply discourages local manufacturers from producing products that can help compete with similar foreign goods.⁴⁰

Another way to curb dumping is through government's financial assistance to local producers of vital products to facilitate amongst others, quality improvements. Nigerians may not be willing to patronise substandard product which results in demand for imported

alternatives especially when they are within the same price range as their substandard local counterparts. Cultural issues, such as perception that foreign goods are better than local versions also needs to be addressed.

The government through the Consumer Protection Council should undertake mass awareness and orientation campaigns among consumers to encourage patronage of locally made goods. Import substitution measures such as Backward Integration Policy (BIP) is also a possible option to encourage locally made products. BIP allows for local sourcing of raw materials in the country so as to reduce dependence on foreign market. The cement sector for instance, has witnessed positive changes as a result of BIP since its inception in 2002.

There has been a capacity increase in the manufacture of cement from ₦2 million to ₦32 million metric tonnes and has so far attracted \$6 billion in investment, saving the country ₦40 billion per year.⁴¹ If this policy is applied in all other sectors such as agriculture,

textiles and the likes, local producers will be encouraged and there will be less reliance on imported raw materials and products.⁴²

Conclusion

Dumping is a common phenomenon in global trade and Nigeria is no exception to potential exposure to its harmful effects. However, the extent of negative impact it leaves on a country is predicated on actions taken by the government to savage the situation. Even though, there have been several anti-dumping measures by the FG and its agencies like the Nigeria Customs Service, SON and NAFDAC,⁴³ these measures are inadequate. There should be enforcement of stiff penalties for importers who bring in sub-standard goods including, punishment of conniving public officials.

Nigeria's current anti-dumping legislation laws needs review. It is also important to restructure all regulatory agencies involved with imported products,⁴⁴ to synchronise them with the present day realities 🇳🇮

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³⁹ Chad P. Bown, 'The World Trade Organization and Antidumping in Developing Countries', World Bank Policy Research Working Paper 4014, September 2006, pg. 6; 'Wto Negotiations on the Agreement on Anti-Dumping Practices', Technical Paper, June 2005, pg. 51.

⁴⁰ An example is the Dunlop Company that was forced to shut down in 2007 because of the unstable power supply. See Emele Onu, 'Dunlop Shuts Down Factory, Records ₦2b Loss', Proshare Markets: <https://www.proshareng.com/news/Investors-NewsBeat/Dunlop-Shuts-Down-Factory-Records-₦2b-Loss/5424> (accessed 09.05.2019). This has also caused an influx of harmful substandard tyres into the country.

⁴¹ Ogunmola Ogunlani, 'Real Sector and Success Story of Backward Integration', Leadership, 24.12.2017: <https://leadership.ng/2017/12/24/real-sector-success-story-backward-integration/> (accessed 05.5.2019).

⁴² Other sectors have also benefited from the BIP. The Manufacturers Association of Nigeria (MAN) disclosed in 2018 that investments in backward integration projects have boosted local content by 53.17 per cent, Jonathan Eze, 'Deepening the Economy with Backward Integration', This Day, 23.02.2018: <https://www.thisdaylive.com/index.php/2018/02/23/deepening-the-economy-with-backward-integration/> (accessed 03.05.2019); The Nigeria Breweries started consolidating its local sourcing of inputs for its operations and in 2017, its product packaging is 95 per cent locally sourced. 'Growing the Economy through Import Substitution', This Day, 16.04.2019: <https://www.thisdaylive.com/index.php/2017/04/16/growing-the-economy-through-import-substitution/> (accessed 03.05.2019).

⁴³ Such as seizure, destruction and forfeiture of dumped, smuggled and sub-standard goods as the case may be.

⁴⁴ The SON and NAFDAC should be restructured and empowered so they can carry out their duties accordingly and ensure that goods brought into the country meet the minimum requirement.