

Key Messages and Policy Recommendations

Chapter 1 The Status of Regional Integration in Africa

Key messages

- **The historic signing of the African Continental Free Trade Agreement (AfCFTA) on 21 March 2018 marked a momentous milestone for regional integration in Africa.** The signing indicated the strong commitment of African policy makers and leaders to regional integration.
- **Regional integration continues to face challenges.** They include limited energy and infrastructure development, security and conflicts, multiple and overlapping membership of regional economic communities (RECs), poor sequencing of the regional integration arrangements and limited financial resources.
- **Monetary integration continues to be actively pursued by five of the eight regional economic communities.** These RECs have adopted macroeconomic convergence criteria, but their member countries have had mixed success in meeting these criteria.
- **Integration in services remains important, given their contribution to African GDP growth.** In 2017, more than 53 per cent of the continent's GDP came from services.
- **Gradual progress towards the free movement of people is being made.** The Common Electronic Biometric African Passport was launched in July 2016, and the African Union Protocol on Free Movement of Persons, Right of Residence and Right of Establishment was adopted in January 2018. The protocol, however, has struggled to gather country ratifications.
- **A mismatch between available skills and the needs of Africa's labour markets slows economic integration and overall development.** Deepening regional cooperation in education, including Africa's Higher Education Harmonization Strategy, can help.
- **Africa's large infrastructure deficit remains a major hindrance to intra-regional trade.** But infrastructure financing can be supported through maximizing the use of public-private partnerships, tapping into national resources, using regional and global infrastructure development funds and implementing innovative financing tools.
- **Regional energy integration through power pools can help attract considerable investment in energy.**
- **Africa's governance, peace and security challenges are inextricably linked.** Meeting them all is prerequisite to establishing a continental-wide economic space.

Policy recommendations

- **More needs to be done in the economic and physical integration of the continent, including through important infrastructure projects, though much is being achieved.** Progress will require major resources, including leveraging public–private partnerships and innovative financing tools.
- **Cross-border collaboration in energy trade should be strengthened.** Mechanisms include regional energy policy frameworks, gas and power pools and integrated regional energy markets.
- **African countries need to strengthen the instruments promoting good governance, peace and security states through both the regional economic communities and the African Union.** These will create the right environment for pursuing regional integration.
- **The implementation of regional integration must be monitored.** The development of the African Regional Integration Index by the Economic Commission for Africa in collaboration with the African Union Commission and the African Development Bank is a powerful tool for this.
- **African countries must address the “crisis of implementation” and translate promises at both the continental and regional levels into action.** These promises include ratifying and implementing the African Continental Free Trade Agreement, the Single African Air Transport Market, peace and security instruments, monetary integration commitments and the African Union protocol on the free movement of persons.

Chapter 2 The State of Play and Next Steps for the African Continental Free Trade Agreement

Key messages

- **The AfCFTA has proceeded remarkably.** Fifty-two of 55 African Union (AU) member states have now signed it. As of June 2019, 24 had ratified and deposited ratification instruments with the African Union Commission. Negotiators have concluded all three of the phase I protocols to the agreement and 10 of the 12 annexes (the other two are to be concluded by July 2019), showing commendable progress since negotiations were launched in June 2015.
- **Implementing the AfCFTA is about more than trade.** It is also about dispelling the crisis of implementation of African Union decisions and initiatives and validating the AU and its Agenda 2063. It is a litmus test of African countries’ commitment to economic integration.
- **The AfCFTA aspires to deepening the integration of the continent beyond merely a free trade area.** Among its objectives are to “create a liberalized market [...] through successive rounds of negotiations,” “lay the ground for the

establishment of a Continental Customs Union” and “contribute to the movement of capital and natural persons.”

- **African countries must take care that the AfCFTA does not just add another strand in the African spaghetti bowl of preferential trade regimes.** Instead, it should give coherence to Africa’s internal and external trade policy landscape.

Policy recommendations

- **The remaining African countries should ratify the AfCFTA without delay.** Securing many more ratifications than the minimum of 22 required for the agreement to enter into force is necessary to validate the continent’s integration agenda.
- **Critical technical components needed before the agreement can be operationalized must urgently be finalized.** These include schedules of concessions for trade in goods, rules of origin and schedules of specific commitments for trade in services. They must be followed with the phase II negotiations on investment, competition policy and intellectual property rights.
- **Ratification must be followed by effective implementation.** The AfCFTA institutions must be founded, mechanisms established that were envisaged in the AfCFTA’s operative provisions and AfCFTA obligations incorporated into the laws and regulations of each participating state. Countries must strategically take advantage of the AfCFTA to achieve economic development and poverty alleviation.
- **The effectiveness of AfCFTA committees will require a considerable number of prompt decisions.** To facilitate this, certain perfunctory decisions could be delegated to the secretariat and decision-making authority delegated to regional economic community representatives in the absence of state representation, or permanent representatives could be accredited to the Committee of Senior Trade Officials, as at the World Trade Organization in Geneva.
- **Implementation will be more effective if national AfCFTA committees are created by country trade ministries.** The committees, made of persons tasked with satisfying AfCFTA commitments and interests, can harmonize their country’s approach to implementation. They should ideally be structured within a national AfCFTA strategy.
- **The deeper integration called for by African heads of state and government requires progressively deepening liberalization under the AfCFTA.** Ultimately, a single, fully liberalized, African trade area can subsume the existing REC free trade areas.
- **Unilateral trading schemes undertaken by Africa’s trading partners can reinforce African regional value chains if they are designed appropriately.** African countries should accordingly deploy their diplomatic capabilities to influence trading partners to promote regionalism as they design their trading schemes, including their generalized systems of preferences.

Chapter 3 Taking Full Advantage of the AfCFTA

Key messages

- **To take full advantage of the AfCFTA, countries must buttress its implementation with complementary measures.** Areas include investment, production, trade facilitation, trade-related infrastructure and import defence.

Policy recommendations

- **Investment in the AfCFTA can be supported.** Mechanisms include national investment plans, investment promotion agencies, partnerships with other African countries to learn from their experiences and partnerships with UNCTAD and the Economic Commission for Africa (ECA) for support with UNCTAD Investment Policy Reviews and UNCTAD/ECA Online Investor Guides.
- **A productive capacity development agenda can help countries to produce the goods demanded by the AfCFTA market.** This can involve using industrial policy for an overarching enabling environment, sector-specific strategies that take a regional approach to value chain development and the African Union Commission Service Sector Development Programme, which provides a blueprint for developing competitive services sectors.
- **Trade facilitation measures can support realizing AfCFTA trade opportunities.** Measures include an effectively designed AfCFTA non-tariff barrier mechanism, a continental simplified trade regime for small and informal traders and standards infrastructure and strategically harmonized standards in sectors with high AfCFTA potential.
- **Trade-related infrastructure can support the opportunities of the AfCFTA.** The Programme for Infrastructure Development in Africa should be implemented, and infrastructure development can be aligned with trade facilitation by strategic logistics management.
- **Countries can take measures to help manage import competition due to the AfCFTA.** Countries can pool resources to establish trade remedy institutions at the regional economic community level, establish competition institutions at the regional or continental levels and ensure that trade ministries have staff proactively assessing the likely import implications of the AfCFTA, monitoring customs data for changing import patterns and hosting private sector stakeholder platforms to flag import stress.
- **National AfCFTA strategies can provide a coherent and strategic approach to measures to complement the AfCFTA.** They should incorporate gender mainstreaming to ensure that the gains from the AfCFTA support gender equality.

Chapter 4 Intellectual Property Protocol

Key messages

- **Intellectual property (IP) rights, as private rights in an industrial and commercial context, promote entrepreneurship, investment, competition and innovation.** However, they must be counterbalanced against maintaining public policy objectives related to the dissemination of knowledge and indigenous learning. The AfCFTA provides an opportunity for a continental approach to a balanced IP rights system that responds to the aspirations under Agenda 2063.
- **The WTO membership of 44 African Union member states will shape the design of an AfCFTA protocol on intellectual property rights.** The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) does not provide exceptions for regional preferential agreements, so the benefits of any AfCFTA IP protocol must extend to all WTO member states. African countries also differ considerably in their use of TRIPS flexibilities.
- **Beyond the WTO, African countries have different obligations in IP treaties.** Some participate in multilateral IP treaties and commitments arising from bilateral trade agreements.
- **African countries have extensively reformed their IP laws and regulations.** Nevertheless, African countries' use of IP rights, as demonstrated by patent and trademark registrations, are very limited compared with other regions, and most registrations in Africa are actually filed by non-residents. The considerable innovation taking place in Africa is not receiving IP rights protection.
- **Three approaches have been demonstrated for IP rights integration in Africa.** (1) Regional cooperation and sharing of experiences on IP rights in general; (2) Regional filing systems, usually just for patents, but also for trademarks and industrial designs as well; (3) Development of one substantial law or unification of laws for the members of a regional organization. Different parts of Africa have experience with all three models.
- **Developing one substantive IP regime for 55 African Union member states would be challenging.** Negotiations might prove overly ambitious, and countries might lose the flexibilities they enjoy in existing multilateral and bilateral commitments or face conflicts with obligations under international and bilateral agreements.
- **An AfCFTA protocol involving only a cooperative framework for IP rights would miss many opportunities.** Such a limited protocol would not develop tools for promoting regional integration, address non-discrimination between countries with different international treaty memberships or advance industrial diversification and value chain integration.

Policy recommendations

- **A viable AfCFTA protocol on intellectual property rights could:**
 - a) Provide guiding principles for national IP law and policy and engage African countries in international IP treaties.
 - b) Provide for non-discrimination among state parties on matters of IP rights.
 - c) Develop norms to safeguard African interests, including non-discrimination among African countries on matters of IP rights.
 - d) Establish region-wide IP exhaustion to prevent fragmentation of the AfCFTA market and encourage regional value chain development.
 - e) Set minimum requirements for protecting traditional knowledge, genetic resources, and cultural expression but with sufficient flexibility for domestic law and multilateral negotiations on these issues.
 - f) Require the ratification of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, with an additional commitment to adhere to any other multilateral agreement that promotes access for persons with disabilities.
 - g) Require the ratification of the 2005 protocol amending the TRIPS agreement in order to benefit from the facilitated production and exportation of pharmaceuticals for a regional trade agreement in which 50 per cent of the members are least-developed countries.
 - h) Require the protection of geographic indicators through either a unique system or certification and collection marks.
 - i) Develop minimum standards on plant variety protection, including availability, scope of protection and exceptions to plant breeders' rights and the protection of traditional and new farmers' varieties.
 - j) Develop guidelines on procedures for enforcing IP rights.
- **African regional organizations specializing in IP already exist (African Regional Intellectual Property Organization and African Intellectual Property Organization).** The protocol on IP rights should accord observer status to these organizations in its institutional arrangements.
- **Phase 2 of the Tripartite Free Trade Area negotiations is intended to include IP.** But given the imminent AfCFTA IP protocol negotiations, it would be prudent to consolidate the AfCFTA and Tripartite negotiations to avoid duplication and approach the protocols as a single undertaking.
- **Since IP rights are highly controversial, negotiations about them should be open, transparent and inclusive.** They should involve broad public consultations and

debates and iterative capacity building for key stakeholders, as well as training to ensure that negotiators are deeply engaged with subject matter and knowledgeable about available policy options.

Chapter 5 Competition Policy Protocol

Key messages

- **Africa's competition regime remains patchy.** Only 23 countries have both competition laws in force and competition authorities to enforce them, a further 10 have laws but no authority, 4 have competition legislation in an advanced stage of preparation and 17 have no competition law.
- **Competition policy is a key driver of the growth of competitive markets in Africa.** Cross-border anti-competitive practices prevalent in Africa—such as cartels and abuse of dominance—constrain the growth of competitive markets and harm consumers. National, regional and continental enforcement of competition law will boost the fight against them.
- **The proliferation of competition regimes in Africa calls for a harmonization.** To consolidate the efforts of regional economic communities—such as the East African Community, the Economic Community of West African States, the Common Market for Eastern and Southern Africa, the Economic and Monetary Community of Central Africa and the West African Economic and Monetary Union—a continent-wide competition regime would be a timely and necessary next step, and countries not belonging to these communities could be included under the AfCFTA framework.
- **The African Competition Forum is a springboard for cooperation on competition matters at continental level.** The forum is an informal network established in 2011, comprised of 31 members and five regional competition agencies, promoting the adoption of competition principles in African countries to alleviate poverty and enhance inclusive economic growth, development and consumer welfare, by fostering competition in markets.
- **Consumer protection can be addressed in the AfCFTA protocol on competition.** Consumer protection is related to competition, and the protocol can ensure that the advantages of an integrated African market extend to consumer welfare.

Policy recommendations

- **The AfCFTA protocol on competition must cover the main substantive competition issues.** These include cartels, merger control, abuse of dominance and anti-competitive agreements.
- **The protocol should embrace consumer protection in a dedicated chapter.**
- **The protocol can be enforced through three arrangements.** (1) a supranational AfCFTA competition authority, (2) a competition cooperation framework or

(3) a sequential approach in which a supranational authority follows a competition network.

- **A continental procurement policy can complement the competition protocol.** This would ensure predictability, transparency and harmony in procurement policies and produce competitively tendered government procurement, while preserving policy space for legitimate public policy objectives.
- **The AfCFTA may be used to provide a framework for rules and guidelines on buyer power.** Excessive buyer power in corporate conduct has emerged as an important issue that could affect many industries in Africa.
- **The advancing digital economy raises competition challenges.** The capacity of competition authorities will require investment so they can better identify new developments in digital markets, players and business models.

Chapter 6 Investment Protocol

Key messages

- **To channel investment for sustainable development, the investment protocol should foster flexible and robust regulatory frameworks supporting an attractive investment environment.** Capital formation can promote sustainable development, regional integration, and faster socioeconomic advancement for African countries by enabling trade diversification and the emergence of regional and global value chains, but investments can also threaten human rights and entail social, environmental and economic costs.
- **The African investment policy landscape is fragmented, marked by 854 bilateral investment treaties (512 in force), of which 169 are intra-African (44 in force).** Binding regional treaties add further complexity to this entangled and overlapping investment regime.
- **Traditional investment treaties predominate on the continent, with major repercussions for the policy and regulatory space available to policy makers, but the AfCFTA investment protocol represents an unparalleled opportunity for AU member states to revamp the investment policy landscape.** Up to now, vaguely defined (and therefore potentially far-reaching) standards of treatment, inconsistent jurisprudence and vulnerability to treaty shopping have fuelled uncertainty since investors may challenge legitimate state action in international arbitration.
- **The AfCFTA protocol on investment should be informed by the Pan-African Investment Code (PAIC).** Although the PAIC guides investment treaty negotiations, the 5th Meeting of the AfCFTA Negotiating Forum in March 2017 declined to annex the PAIC to the AfCFTA since it was “not a binding agreement but a framework of cooperation”; however, the protocol should build on the PAIC’s innovations in a binding investment treaty.

Policy recommendations

- **The investment protocol should feature new-generation investment treaty innovations for predictable, forward-looking and transparent rules to pave the way for further economic integration.** Among the features would be substantive obligations and dispute settlement provisions, development-oriented investor obligations and mutual commitments among African countries to an equilibrium between business activity and sustainable development.
- **The investment protocol can be built on four pillars: investment promotion and facilitation, investment protection, investor obligations and state commitments.** However, investment promotion and facilitation ought to remain separate from investment protection so as not to create additional obligations towards investors or lower regulatory standards, while investor obligations and state commitments represent novel features intended to harness investment for sustainable development.
- **A cross-thematic dialogue among specialists and negotiators needs to be established to align the investment protocol with the other AfCFTA protocols.** Parallel negotiations of the phase II protocols provide a unique opportunity for complementarities and minimizing undesirable overlaps.
- **Policy makers can use the protocol on investment as a reference point for future negotiations and renegotiations of treaties with external partners.** Adopting a common African approach in future negotiations can ensure coherence and provide greater negotiating leverage than bilateral negotiations.

Chapter 7 E-Commerce and Integration in a Digitizing Africa

Key messages

- **E-commerce is likely to be a significant driver and outcome of intra-African trade.** The public and private sectors are increasingly adopting e-commerce platforms—governments deliver services through them, electronic marketplaces aggregate consumer and producer demand as well as trade-related services and traditional businesses have incorporated e-commerce into their business models and operations.
- **Opportunities and challenges of e-commerce in Africa interplay with other policy issues.** These include the Boosting Intra-African Trade Action Plan and other AfCFTA phase II issues such as data, gender, inclusion, cybercrime, investment, taxation, informal trade, the digital divide, digital identity, e-transaction laws, intellectual property, consumer protection, and competition policy.
- **The e-commerce policy landscape is evolving with policies and strategies at regional and national levels.** Cooperation between African countries can prevent barriers in digital space from being erected through varied regulatory approaches and can inhibit the fracturing of African countries by technology giants.

- **Consistent rules across the African continent create an environment where firms (whether digital or not) can compete fairly and can simplify cross-border and national e-commerce.**
- **A gap in digital infrastructure and literacy and disparities in access to technologies and the cost of using them determine of the extent to which e-commerce will be adopted and, by extension, enable intra-African trade.**
- **An important first step for e-commerce development in Africa is the African Digital Trade and Digital Economy Strategy mandated by the AU Executive Council in January 2019.** This strategy seeks to enable AU member states to fully benefit from the fourth industrial revolution and facilitates the implementation of the African Continental Free Trade Area; it will be presented to the AU Assembly for adoption in February 2020.

Policy recommendations

- **Three policy options are identified for e-commerce in the AfCFTA:**
 - An African Digital Economy Strategy covering the governance of cross-border e-commerce and related issues.
 - E-commerce perspectives to be integrated into existing AU instruments.
 - An e-commerce protocol as an instrument within the AfCFTA.

Regardless of the approach the AfCFTA takes, African countries can support e-commerce development by seeking technical assistance and investing in digital policy capacities, e-readiness evaluations and research agendas for academics and researchers.