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# Governing the African Continental Free Trade Area—Regional Economic Communities Interface



Published By



United Nations  
Economic Commission for Africa

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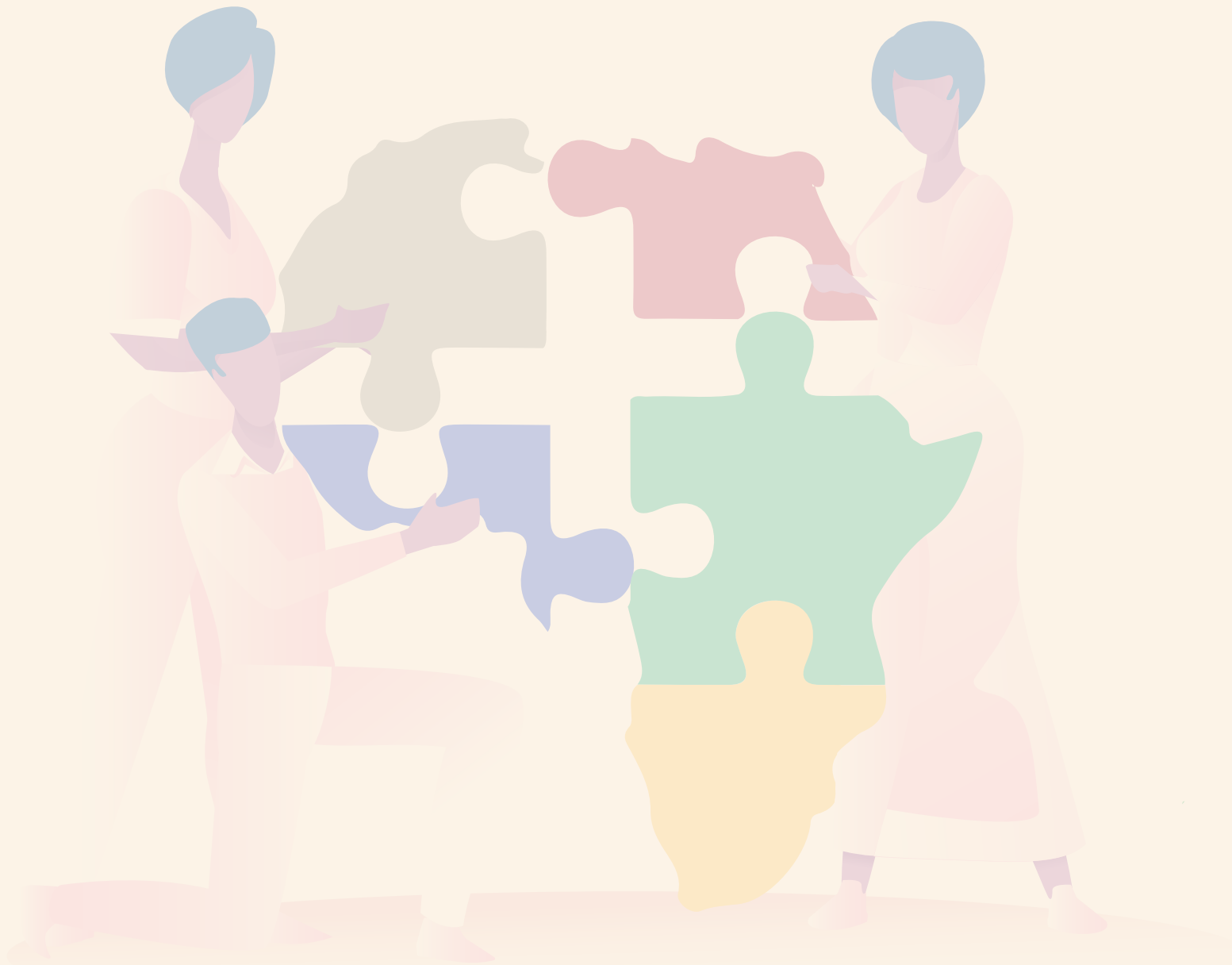
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# Abbreviations

<b>ADR</b>	Alternative dispute resolution
<b>AEC</b>	African Economic Community
<b>AfCFTA</b>	African Continental Free Trade Area
<b>AfDB</b>	African Development Bank
<b>AID</b>	African Infrastructure Database
<b>AIPF</b>	Automotive Industry Policy Framework
<b>AMOT</b>	African Minister of Trade
<b>ARIA</b>	Assessing Regional Integration in Africa
<b>ASEAN</b>	Association of Southeast Asian Nations
<b>AU</b>	African Union
<b>AUC</b>	African Union Commission
<b>AVE</b>	Ad-valorem equivalent
<b>BCEAO</b>	Central Bank of West African States
<b>BIAT</b>	Boosting Intra-African Trade
<b>BTA</b>	Bilateral Trade Agreements
<b>CAADP</b>	Comprehensive Africa Agriculture Development Programme
<b>CAR</b>	Central African Republic
<b>CBI</b>	Cross-Border Initiative
<b>CEMAC</b>	Central African Economic and Monetary Community
<b>CEN-SAD</b>	Community of Sahel-Saharan States
<b>CET</b>	Common external tariff
<b>CFTA</b>	Continental free trade area
<b>CIF</b>	Cost insurance and freight
<b>CMP</b>	Common Market Protocol
<b>COMESA</b>	Common Market for Eastern and Southern Africa
<b>COMPASS</b>	COMESA Payments and Settlement System
<b>CoO</b>	Certificates of origin
<b>COS</b>	Import–Export Correspondence Index

<b>CTN</b>	Common Tariff Nomenclature
<b>CU</b> s	Customs unions
<b>DRS</b>	Duty remission scheme
<b>DSM</b>	Dispute settlement mechanism
<b>DSB</b>	Dispute settlement body
<b>DSU</b>	Dispute settlement undertaking
<b>EAC</b>	East African Community
<b>ECA</b>	United Nations Economic Commission for Africa
<b>ECCAS</b>	Economic Community of Central African States
<b>ECCCP</b>	ECOWAS initiative of Coordinating Committee on Consumer Protection
<b>ECIM</b>	ECOWAS Common Investment Market
<b>ECOWAS</b>	Economic Community of West African States
<b>ECTN</b>	Electronic Cargo Tracking Note
<b>EIS</b>	Export-Import Similarity Index
<b>EPA</b>	Economic partnership agreements
<b>ETISA</b>	ECOWAS Trade in Services Agreement
<b>ETLS</b>	ECOWAS Trade Liberalization Scheme
<b>EU</b>	European Union
<b>FDI</b>	Foreign direct investment
<b>FEWAC</b>	Federation of West African Chambers of Commerce
<b>FTAs</b>	Free trade areas
<b>GATS</b>	General Agreement on Trade in Services
<b>GDP</b>	Gross domestic product
<b>GTLFP</b>	Great Lakes Trade Facilitation Programme
<b>GVC</b>	Global value chains
<b>IAT</b>	Import adjustment tax
<b>ICBT</b>	Informal cross-border trade
<b>IGAD</b>	Intergovernmental Authority on Development
<b>IGADD</b>	Intergovernmental Authority on Drought and Development
<b>IPL</b>	Import prohibition list
<b>ISRT</b>	Inter-State Road Transit Convention
<b>KII</b>	Key informant interview

<b>LDC</b>	Least developed countries
<b>LPA</b>	Lagos Plan of Action
<b>MCP</b>	Monetary Cooperation Programme
<b>MHP</b>	Monetary Harmonization Programme
<b>MDAs</b>	Ministries, departments and agencies
<b>MFN</b>	Most favoured nation
<b>MIP</b>	Minimum Integration Programme
<b>MRU</b>	Mano River Union
<b>NAC</b>	National Approvals Committee
<b>NAFDAC</b>	National Agency for Food and Drug Administration and Control
<b>NAFTA</b>	North American Free Trade Agreement
<b>NCC</b>	National Coordinating Committees
<b>NCMs</b>	Non-conforming measures
<b>NEPAD</b>	New Partnership for Africa's Development
<b>NFPs</b>	National focal points
<b>NMC</b>	National Monitoring Committee
<b>NMFP</b>	National Monitoring Focal Point
<b>NTBs</b>	Non-tariff barriers
<b>NTMs</b>	Non-tariff measures
<b>OAU</b>	Organization of African Unity
<b>OHADA</b>	Organization for the Harmonization of African Business Law
<b>OSBPs</b>	One-stop border posts
<b>PACCI</b>	Pan-African Chamber of Commerce and Industry
<b>PAPSS</b>	Pan African Payments and Settlements System
<b>PIDA</b>	Programme for Infrastructure Development in Africa
<b>PPD</b>	Public-private dialogue
<b>PPP</b>	Public-private partnership
<b>PTA</b>	Preferential trade area
<b>RCTG</b>	Regional Customs Transit Guarantee Scheme
<b>RECs</b>	Regional Economic Communities
<b>REPSS</b>	Regional Payments and Settlements System
<b>RETOSA</b>	Regional Tourism Organization of Southern Africa

<b>RIFF</b>	Regional Integration Facilitation Forum
<b>R-index</b>	Restrictiveness-index
<b>RISDP</b>	Regional Indicative Strategic Development Plan
<b>RoOs</b>	Rules of origin
<b>RVCs</b>	Regional value chains
<b>SAATM</b>	Single African air transport market
<b>SABF</b>	Southern African Business Forum
<b>SACU</b>	Southern African Customs Union
<b>SADC</b>	Southern African Development Community
<b>SCD</b>	Simplified Customs Document
<b>SCT</b>	Single Customs Territory
<b>SFM</b>	System or federal model
<b>SMEs</b>	Small and medium-sized enterprises
<b>SPMs</b>	Supplementary protection measures
<b>SPS</b>	Sanitary and phyto-sanitary standards
<b>STR</b>	Simplified trade regime
<b>TBTs</b>	Technical barriers to trade
<b>TC</b>	Trade creation
<b>TD</b>	Trade diversion
<b>TFTA</b>	Tripartite Free Trade Agreement
<b>TIDO</b>	Trade information desk officers
<b>TOAM</b>	Trade obstacle alert mechanism
<b>TREO</b>	Tax Remission for Exports Office
<b>UEMOA</b>	West African Economic and Monetary Union
<b>UMA</b>	Arab Maghreb Union
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>UNESCAP</b>	United Nations Economic and Social Commission for Asia and Pacific
<b>VCLT</b>	Vienna Convention Law of Treaties
<b>VPIC</b>	Virtual PIDA Information Centre
<b>WAMZ</b>	West African Monetary Zone
<b>WCO</b>	World Customs Organization
<b>WTO</b>	World Trade Organization

# Executive Summary




Africa's regional economic communities (RECs) advance the continent's integration, contributing to the implementation of such strategic frameworks as the African Continental Free Trade Area (AfCFTA). The RECs' progress and the challenges they have faced in trying to promote trade integration among their member States positions them for that role. Consolidating the multiple and overlapping trading regimes in the RECs' free trade areas (REC-FTAs) to accelerate regional and continental integration is a main objective of the AfCFTA. Doing so requires careful and thoughtful management and governance.

This report analyses key issues concerning the interface between the AfCFTA and REC-FTAs. It proffers actionable policy proposals that support a coherent, coordinated and fully responsive interface. The study also suggests how to leverage the RECs' trade integration achievements and successes and lessons from REC-FTA failures to improve AfCFTA implementation. Using a combination of research methods, the report analyses and interprets the role of RECs as building blocks of the African Economic Community (AEC); the relationships among REC-FTAs, the AfCFTA and the AEC; and mechanisms for building the interface and managing it to effectively implement the AfCFTA. It studies three options for the interface: RECs trade departments serving as sub-secretariats of the AfCFTA secretariat, RECs' relevant organs assigned specific roles to coordinate AfCFTA activities within a framework of a well-articulated division of labour, and REC-FTAs integrated into the AfCFTA.

## KEY MESSAGES

The AfCFTA is a flagship project of Agenda 2063, which aims to accelerate intra-African trade and use trade as an engine of growth and sustainable development. The central role of RECs in Africa's integration efforts, as well as their relationship with key integration processes, structures and frameworks such as the African Union (AU) and the AfCFTA derive from the historic Abuja Treaty. Most RECs' mandates and goals are aligned to that treaty's key aspiration: establishing the AEC. However, the pace of REC progress has varied. The protocol on the relations between African Union (AU), the AfCFTA secretariat and the RECs is crucial in the interface among Africa's multiple trade regimes, and more work is needed to bring about the consolidated continent-wide trade regime envisaged in the AfCFTA agreement.

Priorities differ from one REC to another—a majority of them going beyond the scope of the AfCFTA—but they could all contribute to the AfCFTA's goals. Key stakeholders in Africa's integration differ in their understanding and interpretation of key provisions of the Abuja Treaty and the place of the AEC in the continent's integration. Some RECs have not yet mainstreamed the Abuja Treaty into their work programmes and so do not consider its provisions legally binding on them. Given the key role of both the AfCFTA and REC-FTAs as critical steps in realizing the visions of the Abuja Treaty, building the interface between them is a key imperative. The diverse REC-FTAs have different provisions and implementation modalities. However, the RECs'



The role of RECs are central in Africa's integration efforts. The integration processes, structures, and frameworks of RECs, the AU, and the AfCFTA are derived from the historic Abuja Treaty.

contribution to the AfCFTA starts with their shared and aligned mandates of increasing intra-regional trade and providing enabling environments for enterprise development and the emergence of regional value chains (RVCs). Although the scale and scope of RECs' contributions to intra-African trade vary, they face common challenges, such as shortcomings in boosting domestic production and economic diversification and implementing complex free trade area provisions.

Regions lower trade costs by reducing tariffs, managing non-tariff barriers (or measures) and other supportive initiatives. Although import tariffs have gradually fallen in all RECs, non-tariff barriers related to trade costs tend to be more persistent. For trade promotion and development to be meaningful, RECs need to back their elimination of import tariffs by totally eliminating non-tariff barriers. Those steps would provide a basis for implementing the AfCFTA's provisions. Trade in services reform by the RECs is hampered by inconsistent member State commitments and the ineffective implementation of regional protocols and decisions. If all key stakeholders in the AfCFTA take ownership and make concrete commitment to its success, it can be a stage towards realizing the AEC.

The AfCFTA agreement's article 19 regulates its relationship with the RECs. A shared understanding and proper legal interpretation of the article can serve as a basis for the management of multiple trade regimes occasioned by the co-existence—even if transitional—of both the AfCFTA and the REC-FTAs. Yet the divergence of REC trade rules and the weakness of REC financing, human resources, enforcement mechanisms and institutional

capacities could constrain them from meaningfully contributing to the implementation of the AfCFTA through key interfaces between AfCFTA and the REC-FTAs. Consequent changes in the patterns and directions of trade effects could inadvertently create welfare losses in some RECs and so reduce competition between them. Managing the interface requires close coordination among national, regional and continental strategies for implementing the AfCFTA agreement's provisions.

**CHAPTER 1** lays out the foundation and the objectives of the report, explaining the AfCFTA and its significance in providing a common framework for intra-African trade, which has the potential to boost African GDP from about \$3 trillion in 2020 to \$8 trillion in 2040, and further to \$16 trillion by 2060. The AfCFTA would increase Africa's exports by 4.0 percent (\$25.3 billion) and increase real income for African countries by 0.2 percent (\$296 million) in 2022. It would increase intra-African trade by 52.3 percent (\$34.6 billion) by 2022, mainly in the services, industry and agriculture sectors, doubling the share of intra-African trade, and fostering the continent's broad-based development, aiming for a zero tariff for a large percentage of African products. Trading under the agreement was effectively launched on 1 January 2021. Despite its huge potential, the agreement faces three bottlenecks: financial interests of countries, institutional capacity and coordination, and structural integration challenges. The report aims to analyse and enhance the understanding of key issues in the interface between the AfCFTA and REC-FTAs and proposes recommendations as to how to better integrate REC-FTAs into the framework of the AfCFTA.

**CHAPTER 2** highlights the three major questions linking Africa's regional economic communities (RECs) and their free trade areas (REC-FTAs), the incipient African Continental Free Trade Area (AfCFTA) and the African Economic Community (AEC):

- Are the mandates of various RECs in line with aspirations for the AEC?
- Is it feasible to leverage the implementation mechanisms of various REC-FTAs in implementing the AfCFTA?
- Can the AfCFTA agreement create new opportunities for regional economic integration?

Chapter 2 addresses these questions by presenting an overview of the AfCFTA, the mandates of various RECs, REC treaties and their links to the AEC, the trade integration successes and failures of the RECs and areas of convergence and divergence of various REC-FTAs and the AfCFTA. To overcome some of the identified challenges, the AEC and AfCFTA's policy and institutions should give specific roles to the RECs and REC member States. The chapter also provides a review of REC treaties and their linkages to the African Economic Community and the aspirations for the establishment of the African Economic Community (AEC)—along different dimensions and at different speeds—as well as the extent to which they could support the implementation of some AfCFTA provisions. Building an interface among RECs, AfCFTA and AEC is critical, including through leveraging REC instruments, institutional arrangements and decision-making processes towards the implementation of the AfCFTA. Importantly also, on trade-related matters, the AU and RECs member States should be willing to allow the AfCFTA protocols precedence over some aspects of their national laws.

**CHAPTER 3** addresses the RECs trade services liberalization agenda and the AfCFTA, as the AfCFTA agenda for trade in services is more complex than the trade in goods agenda. While globally, Africa is a small player in the exchange of services—with only 2 per cent of the world's exports in 2018—it is recognised that the prevalence of informality in African economies greatly underestimates the role of services in international trade on the continent. The chapter includes a study of services trade liberalization at the REC-level and reveals the challenges in a regional approach to services trade integration. Given the challenges, the report identifies that the AfCFTA framework could be used to develop concrete steps to prioritize the services sector, its regulations and best practices in reforms. Most notable in moving towards promoting intra-African services trade is the AfCFTA Protocol on Trade in Services, as the scope is about as wide as GATS. The chapter proposes some approaches the AfCFTA can take, such as raising awareness about consumer protections in regional trade institutions and sector-specific modalities.

**CHAPTER 4** analyses the application of rules to resolve challenges of multiple trade regimes in the context of the AfCFTA, as Africa is home to at least 30 RTAs. Of 54 African countries, 48 belong to more than one REC. The multiple memberships make it difficult for countries to meet their financial contributions and honour their other obligations to all their RECs. Because the rules associated with each RTA are unique, the arrangements are costly and cumbersome. Overlapping membership hinders trade standardization and enforcement. The report refers to Article 19 of the AfCFTA agreement that is designed to guide the relationship between the AfCFTA and other intra-African trade instruments, including Africa's pre-existing FTAs. Article 19 provides that in case of incompatibilities or inconsistencies with pre-existing FTAs, the AfCFTA is to prevail, but with one crucial caveat: RECs that have achieved "among themselves higher levels of regional integration" are to persist or maintain such higher integration. The large gap in the understanding of the implications of Article 19 for the implementation of the AfCFTA and its coexistence with the REC-FTAs makes the analysis in Chapter 4 important.



**CHAPTER 5** documents how RECs' have addressed issues of non-tariff barriers, trade remedies and dispute settlement and how this could be leveraged in the implementation of the AfCFTA. Many RECs have mechanisms for managing NTBs, with attendant benefits and challenges. The report also recommends leveraging REC policy and institutional arrangements for trade dispute settlements and trade remedies in the AfCFTA. However, the legal framework for eliminating NTBs should be developed and prioritized in the AfCFTA agreement. RECs can have the leading role in vetting, monitoring and facilitating the removal of all NTBs in their regions. The relevant regional and national agencies require adequate human and financial resources to enable them effectively monitor and support member States in integrating and implementing/applying regional commitments in their domestic system of laws. The efficiency and effectiveness of AfCFTA's NTB tools and mechanisms and dispute settlement mechanisms (DSMs) would be boosted through partnerships and collaborative arrangements with the RECs. So, all existing REC-based NTB control instruments and mechanisms and DSMs need to be integrated into or/and synchronised with the AfCFTA for a mutually beneficial result. Effective management of the AfCFTA DSM and trade remedies requires harmonizing various REC mechanisms to avoid duplication of institutions and to deter forum shopping. The AU Trade Observatory should be used to integrate REC mechanisms into a continental arrangement for monitoring, reporting and eliminating trade deflection—a major source of trade disputes in Africa. This analysis has also shown that the role to be assigned to RECs regarding NTBs, trade remedies and trade dispute settlements should be based on existing capacity and the institutional architecture available at the regional level.

**CHAPTER 6** examines the role of RECs and the AfCFTA in implementing the AEC beyond the continental customs union. It attempts to characterise and document the content of the stages of integration in the Abuja Treaty and to draw useful lessons in terms of their complementarity to the AfCFTA provisions and the challenges of implementation. The economic integration approach adopted in the Abuja Treaty made the establishment of the AEC contingent on progress in RECs level integration. So far, implementation of customs union have been,

for the large part, limited to common external tariffs. The analysis of RECs economic integration in achieving the AEC shows four major implementation issues, especially regarding the establishment and operationalisation of REC-level Custom Unions. These are instrumental in determining the supportive roles that REC customs union could play in facilitating the implementing of the AfCFTA, as well as the prospects for the establishment of a continental customs union. They are:

- Structure and rate of the common external tariff.
- Implications of a partially or fully functioning customs union.
- Stakeholder involvement in the trade policy process.
- Mixed targets and timelines.

To achieve success in further economic integration and realizing the AEC, stakeholder ownership and participation are key. The basic lesson for African economic integration is the inherent challenge of implementing a customs union without first effectively implementing a free trade agreement. While RECs platforms can provide additional impetus, the AfCFTA must be implemented by member States without necessarily being constrained by the Abuja prescript of first achieving RECs-level customs Unions. The AfCFTA should be seen as a steppingstone towards the realisation of the AEC.

**CHAPTER 7** provides a political economy analysis of the relationship between the RECs and a continental system of integration. The analysis starts with the interpretation of the status of "RECs as building blocks of the African Economic Community (AEC)" and "REC-FTAs as building blocks for the AfCFTA". The study combines legal interpretation with economic analysis of the determinants of stakeholder interests and positions in integration arrangements. While there is some disagreement from survey respondents regarding the extent to which RECs do have the capacity and ability to effectively contribute to implementation of the AfCFTA and realizing the AEC, there is an understanding that RECs have a role to play nonetheless. The political analysis of the

relationship between the REC-FTAs and the AfCFTA has shown that articles 5 and 19 of the AfCFTA should not be given interpretations of convenience by REC stakeholders and by member States. To avoid this, the chapters calls for institutional building and mainstreaming of relevant legal provisions of the AfCFTA into RECs legal instruments. The implementation of the AfCFTA will require the efficient and effective management of regional institutions to overcome challenges of weak institutions, poor harmonisation and coordination of policies, and financial dependence.

**CHAPTER 8** analyses scenarios for the interface of the AfCFTA, RECs and REC-FTAs. Survey respondents stated that the interface of RECs, REC-FTAs and the AfCFTA should be built around functions and responsibilities. Their suggested options are:

- REC trade divisions or departments can become sub-secretariats of the AfCFTA Secretariat.
- REC trade divisions or departments can have their roles centred on coordinating AfCFTA activities among their respective member States.
- REC-FTAs can be integrated into the AfCFTA.

Building and managing the interface should address the issue of the REC–AU relationship as a variable approach and RECs as variable tools. This is necessary because most RECs developed independently of and prior to various continental instruments. However, to realise the objectives of the AfCFTA through building the interface with REC-FTAs, it will be essential to endow regional (RECs) and continental institutions (the AfCFTA Secretariat and the AU) with sufficient levels of supranational authority. All interface options should put RECs in positions that facilitate and expedite AfCFTA domestication in the member States. In the context of Vienna Convention Law of Treaties, there should be a mutual understanding of the content and objective of the interface to ensure beneficial coexistence. To address conflicting laws and treaties, a study is needed to determine how to create continental law out of fragmented regional legal agreements. Although RECs have made significant

progress, their challenges with fragmentation and incomplete implementation are well documented. Because of the number of member States involved and the diversity of legal systems, implementation issues should be anticipated. The AfCFTA can build on these lessons to pursue deeper integration. This may call for a separate legal entity to ensure cooperation of RECs and the AfCFTA.

**CHAPTER 9** deals with advocacy and familiarization strategies for a responsive interface. It proposes appropriate strategies for advocacy and sensitisation for implementing the AfCFTA, including strategies for a coordinated and responsive interface with REC-FTAs. One of the key stakeholders of the AfCFTA, the private sector, has a large role to play in implementing the agreement, particularly in supporting successful advocacy and sensitization. Initiatives like the AfroChampions Initiative are critical, as it enhances the private sector's involvement in the AfCFTA. Developing a responsive interface requires well thought out and crafted advocacy and sensitisation strategies. A proposed framework for stakeholder engagement has five steps for developing strategies for managing the interface: (i) stakeholder identification and mapping, (ii) planning and strategic overview, (iii) development of engaging strategies, (iv) implementation, and (v) institutionalism and monitoring. The advocacy and sensitisation strategies should account for the interests of all key stakeholders. Best practice principles dictate that the process be inclusive, transparent and enduring, with concrete input from stakeholders. Another criterion is the effective participation and commitment of key stakeholders in each phase of the AfCFTA implementation and the interface. For advocacy and sensitisation strategies to work, rules of procedure for key stakeholders must be in place. The criteria for these are:

- Mutual respect, tolerance, and understanding of roles, strengths and constraints.
- Constructive dialogue, positive thinking and goodwill in cooperation.
- Focus on common issues of interest.
- Collaborative work towards the common interest of Africans.

**CHAPTER 10** compiles findings, conclusions and policy recommendations. The key findings and policy recommendations are in four major areas:

- **Understanding and interpreting the role of RECs as building blocks of the AEC and the implications of this on the AfCFTA–REC FTA interface:** The REC treaties have huge gaps in their operational legal frameworks regarding RECs and REC-FTAs roles in the establishment of the AEC and in the operationalisation of the AfCFTA respectively. There is no common understanding of the AfCFTA treaty’s key provisions—“RECs as building blocks of AEC” and article 5(b) of the AfCFTA. This lack of a common understanding leaves room for different interpretations, resulting in a misalignment among RECs and the objectives of the AEC.
- **Understanding the relationships among REC-FTAs, the AfCFTA and the AEC:** REC-FTAs are not homogenous entities. They were designed and implemented according to the peculiarities of each region, and they have different provisions and implementation modalities. Their contribution to the objectives of AfCFTA starts with their shared and aligned mandates for increasing intra-African trade, and for providing enabling environments for enterprise development and regional value chains. Thus the RECs and the AfCFTA are steppingstones towards the formation and realisation of the AEC. This is feasible provided all key stakeholders take ownership of the process and make concrete commitments to promoting its success.
- **Building the interface of RECs, REC-FTAs and the AfCFTA:** AfCFTA Articles 5 and 19 should serve as the basic guiding rules for managing the multiple trade regimes arising from the co-existences of the AfCFTA and REC-FTAs. Adequate and appropriate legal interpretation of these articles is imperative in fostering cooperation and orderliness in the relationship and in ensuring the uniform application of laws.
- **Managing the interface of RECs, REC-FTAs and the AfCFTA:** Stakeholder participation and commitment is vital to managing the interface.

The interface should be built around functions and responsibilities. Suggested options are: (i) REC trade divisions or departments can become sub-secretariats of the AfCFTA Secretariat; (ii) RECs trade divisions or departments can be assigned the role of coordinating AfCFTA activities involving their respective member States; and (iii) REC-FTAs can be integrated into the AfCFTA.

Chapter 10 also makes the following recommendations:

## GENERAL RECOMMENDATIONS

The AfCFTA should operate at a supranational level within the framework of member State sovereignties and REC coordination and monitoring mechanisms. The management of the interface should build synergies among all the RECs-FTAs, and between them and the AfCFTA. The AfCFTA agreement should have mechanisms to foster the development of regional value chain projects and FTA-induced investment and so to boost production in all member States. Mechanisms should ensure standstill and rollback commitments on non-tariff barriers by member States, coordinate regional and national non-tariff barrier mechanisms, and promote transparency in notifications about them. Rules of origin should be designed so they work for REC member States at different levels of development. Customs procedures should be automated. A minimum one-year validity for certificates of origin would make it more business-friendly.

To manage the interface and AfCFTA implementation, campaigns targeted at relevant stakeholders should follow three main strategies: public-private dialogue, research and knowledge sharing and trade and investment promotion. For advocacy and promotion strategies, the AfCFTA secretariat and the REC secretariat trade departments, in collaboration with the private sector, should develop procedures for key stakeholders based on mutual respect, mutual tolerance and understanding, constructive dialogue and positive thinking, and on common issues of the AfCFTA and REC-FTAs that work towards the shared interests of the continent.

# Specific recommendations

## The African Union should:

### The Abuja Treaty

Assess and evaluate the Abuja Treaty to analyse its compatibility with REC/ REC-FTA operations and AfCFTA agreement provisions.



### Interpretive notes

Develop an interpretive note for such texts as the Lagos Plan of Action and the Final Act of Lagos (1980), the Abuja Treaty (1994) and the Protocol on Relations between the AEC and RECs clarifying how they relate to and ground the AfCFTA.

### Capacity Building

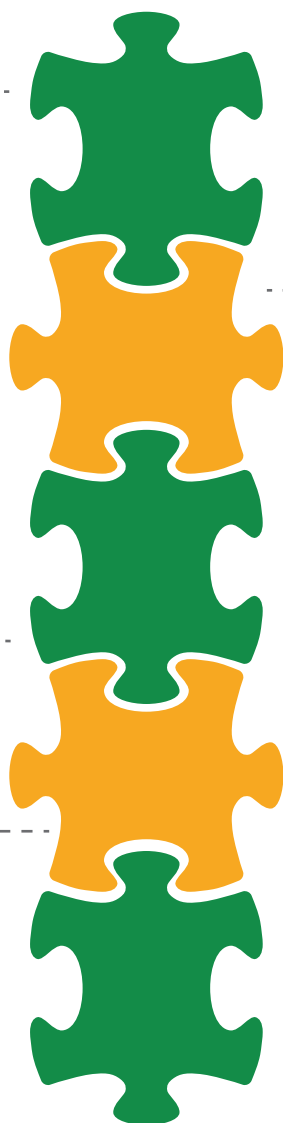
Help RECs fulfil their roles as building blocks through institution building, policy harmonization and coordination and financial independence; and provide RECs technical assistance to enhance their understanding and interpretation of the Abuja Treaty, the AEC and the Protocol on Relationship between AU and the RECs, as well as develop modalities for integrating them into their member States' developmental agendas.

### Trade defence investigations

Collaborate with the AfCFTA secretariat to develop the capacities and skills of key stakeholders in initiating and conducting trade defence investigations and to apply appropriate tools and institutional arrangements to facilitate their deployment.

### Cooperation framework

Collaborate with the AfCFTA, REC secretariats and other relevant stakeholders/partners to develop a cooperation framework and agree on a division of responsibilities in implementing the AfCFTA.



## The AfCFTA secretariat should:

Ensure that the AfCFTA implementation mechanism entails operationalizing the REC task force in supporting the AfCFTA and early warning systems. All RECs should be empowered financially and supported with regular capacity-building interventions.

Collaborate with RECs to develop a monitoring and evaluation system for AfCFTA implementation to measure compliance, monitor outcomes and evaluate impact.

Conduct a study of appropriate modalities and mechanisms for managing the interface through legal integration, continental value chains, trade facilitation strategies, the Pan-African Payment and Settlement System and the AU's Action Plan for Boosting Intra African Trade.

Collaborate with REC secretariats and the private sector to develop standard operating procedures for border agency cooperation throughout the continent.



Leverage RECs-FTAs to develop a roadmap for RECs as they define their activities, objectives and priorities for cooperating on implementing the AfCFTA.

Create a platform to identify and map stakeholders at national and regional levels. The platform should provide a useful mechanism for the private sector to coordinate and harmonize positions, engage in trade promotion activities, facilitate infrastructure development and ensure compliance with the provisions of the AfCFTA agreement.

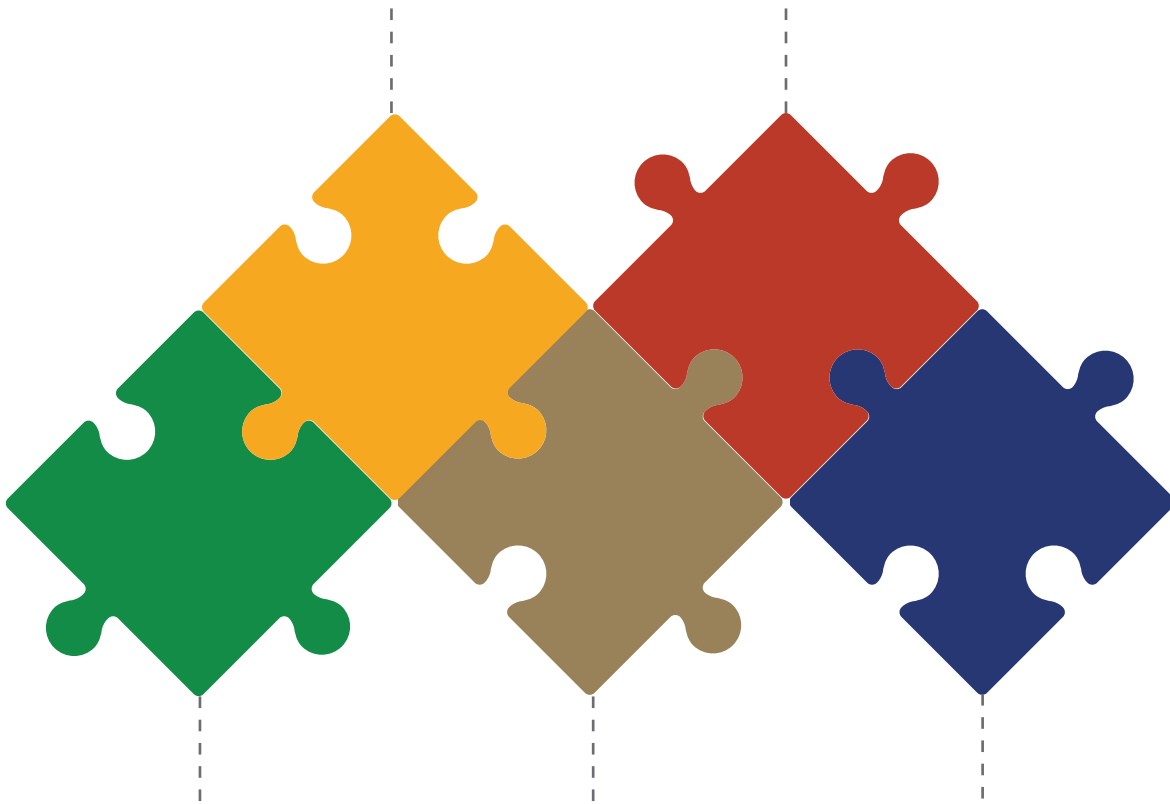
Coordinate the efforts of RECs and member States on liberalizing trade in services by harmonizing their schedules of commitments and establishing appropriate regulatory frameworks.

Collaborate with RECs to develop a stand-alone mechanism for AfCFTA strategies to eliminate non-tariff barriers in Africa. The roles assigned to RECs regarding non-tariff barriers, trade remedies and trade dispute settlement should be based on existing capacity and the institutional architecture available at the regional level.

## Regional Economic Communities should:

Recognize and properly integrate the Abuja Treaty into their legal instruments, mainstream its provisions into their work programmes, and consider integrating the legal provisions of the AfCFTA into their treaties and FTA instruments.

Use their platforms to facilitate and expedite member State domestication of AfCFTA provisions.



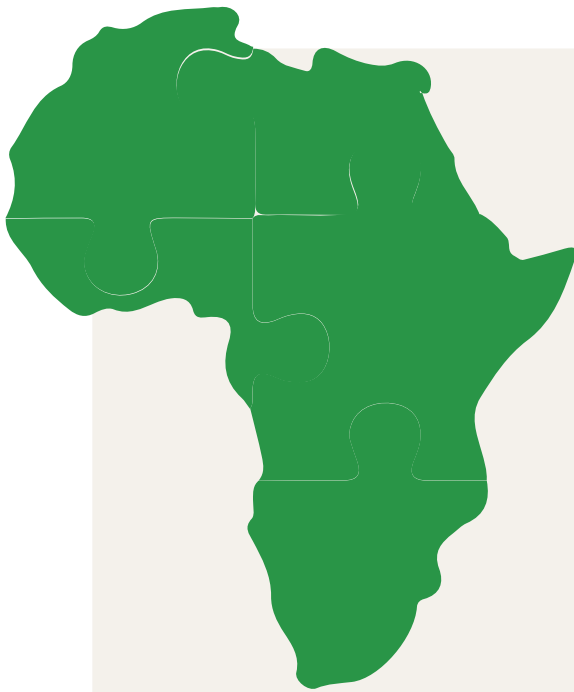
Develop regional implementation strategies by consolidating national AfCFTA implementation strategies with the technical support of the AfCFTA secretariat and partner institutions such as ECA, African Development Bank and United Nations Development Programme, and develop a regional AfCFTA monitoring and evaluation system.

Develop regional schedules of specific commitments for trade in services and regulatory frameworks.

Develop memoranda of understanding on rollback and standstill commitments on eliminating non-tariff barriers for member States, and monitor and oversee the AfCFTA mechanism for eliminating non-tariff barriers.

The AfCFTA's mechanism will make African countries competitive in international markets. The advent of COVID-19 offers an opportunity to use the AfCFTA agreement provisions for economic recovery by diversifying trade and promoting continental supply chains.

## member States should:



- Consider ceding some degree of sovereignty over trade to the AfCFTA secretariat to enable it to uphold provisions of the AfCFTA protocols and enhance the AfCFTA's overall effectiveness.
- Domesticating AfCFTA provisions, develop national AfCFTA implementation plans with the support of the AfCFTA secretariat and enact the plans.
- Abide by rollback and standstill commitments on eliminating non-tariff barriers, and develop and deploy national AfCFTA monitoring and evaluation systems.
- Collaborate with RECs to develop regional schedules of specific commitments for trade in services and regulatory frameworks.
- Collaborate with the private sector to implement the AfCFTA awareness and advocacy strategies.

The AfCFTA's mechanism will make Africa and African countries competitive in international markets. The advent of COVID-19 offers an opportunity to use the AfCFTA agreement provisions for economic recovery by diversifying trade and promoting continental supply chains. The interface of RECs-FTAs, RECs, and AfCFTA is important for implementing the agreement and achieving and sustaining its objectives. It must employ adequate knowledge of key stakeholder's rights and obligations governed by the principles of information sharing and subsidiarity. Its options should strengthen the RECs and allow the AfCFTA to converge easily with the

existing RECs-FTAs. The interface should support the RECs and make them concentrate on trade facilitation and support where they can. A framework and modalities for harmonizing all operational trade measures in the continent are needed. The AfCFTA secretariat, RECs and the private sector should address unsupportive trade policies and support the formation of continental value chains. Finally, the AfCFTA, RECs and RECs-FTAs need to reach a mutual understanding of their relationships and to synchronize their roles to ensure a favourable coexistence.

# Acknowledgements



The report on “Governing the African Continental Free Trade Area–Regional Economic Communities Interface” was prepared under the overall leadership of Vera Songwe, Under-Secretary General and Executive Secretary of the United Nations Economic Commission for Africa, with direct guidance from Stephen Karingi, Director of the Regional Integration and Trade Division.

The conceptualization and preparation of the report was led by Francis Ikome, Chief, Regional Integration Section, Regional Integration and Trade Division, ECA, working with a core team from the section comprising Emmanuel Chinyama, Jane Karonga, and Veerwin Su, as well as a consultant, Wumi K. Olayiwola, Principal Programme Officer, Directorate of Research and Statistics,, Department of Macroeconomic Policy and Economic Research, Economic Community of West African States Commission, who drafted the main background paper that informed much of the analysis in this report.

Consultations, technical meetings and workshops to prepare the report included an inception and methodology workshop (held on 9 December 2019)

and two virtual expert group review meetings (held on 16 September 2020 and 8 December 2020). UNECA thanks the following, who served as reviewers, panelists and participants at those technical meetings and workshops: Salamat Ali, Commonwealth Secretariat, United Kingdom; Inye Briggs, African Development Bank; Bruce Byiers, European Centre for Development Policy Management; Beatrice Chaytor, Department of Trade and Industry, African Union Commission; Oswald Chinyamakobvu, African Union Commission; Charles Chiumya, African Union; Nah Thomas Faushi, University of Dschang, Cameroon; Jean-Denis Gabikini, African Union Commission; Amandine Gnanguenon, European Council on Foreign Relations; Vusi Gumede, University of South Africa; Salamawit Haile, International Office on Migration; Trudi Hartzenberg, Trade Law Centre South Africa; Jacob Kotcho, Economic Community of Central African States; Josaphat Kweka, Talanta International; Francis Mangeni, African Continental Free Trade Area Secretariat; Magalie Masamba, Tanzania Public-Private Partnership Program; Roslyn Ng’eno, African Union Commission; Manasseh Ntaganda, African Union; Jerome Ouedraogo, United Nations; Christopher Onyango, Common Market for Eastern and Southern Africa; Geoffrey Osoro, East African Community;



Garth le Pere, University of Pretoria, South Africa; Amos Saurombe, University of Southern Africa; Willie Shumba, African Union Commission.

The draft report also benefited from inputs from colleagues within the Regional Integration and Trade Division (RITD) and the broader ECA in the form of comments, material and revisions to the conceptualization, preparation and review of the draft publication, as well as participating in the expert group meetings. We wish to recognize here, in particular: William Davis, former RITD staff; Melaku Desta, former staff; Komi Tsewou, African Trade Policy Centre/RITD staff; Clayton Vhumbunu (former RITD Fellow); Adeyinka Adeyemi; Robert Lisinge; Isatou Guy; Laura Paez; David Luke; Moctar Diouf and Batania Clemence Chikwene.

The team also wishes to recognize and appreciate the administrative and logistical support received from the following RITD staff: Zewdnesch Mesfin, Mamayenesh Teshome, Hanna Getachew, Meskerem Melaku and Mekdes Kassa, and the

information technology support during the virtual expert group meeting received from: Amanuel Belai, Marcel Bolboaca, Robel Wolde, Wondeson Abebe, Yemesratch Tawolde, Fisseha Fantu Golla, Teguest Berhanou Herouy, and Joy Cadogan.

A special thank you is also due to Bruce Ross-Larson and his team from Communications Development Incorporated for professional editing for the report, and to Carolina Rodriguez and her team from Dilucidar Pte Ltd for providing infographics. Appreciation is also given to the staff of the Publications and Conference Management Section, who provided crucial logistics and oversight support in the editing, translation, layout, design and printing of this publication.

RITD acknowledges the generous financial support of the Danish Government for its work program and particularly for the research and related activities leading to this publication.

# Foreword



**T**he African Continental Free Trade Area (AfCFTA), one of the biggest achievements in African integration of recent decades, could be a major game changer if successfully implemented. The agreement seeks to create a single African market of more than 1 billion consumers with a combined GDP of more than \$3 trillion, making it the largest free trade area in the world. Trading under the AfCFTA was officially launched on 1 January 2021. The full operationalization of the agreement will increase market efficiency and reduce the cost of doing business by offering opportunities for economies of scale. It can also facilitate trade and investment flows and shift the composition and direction of foreign direct investment flows into Africa.

For the AfCFTA to deliver on that potential and promote industrialization, diversification and inclusive development, such important players as the regional economic communities (RECs) need to deepen their understanding and appreciation of key provisions of the AfCFTA agreement and its protocols and how they relate to earlier REC-level intra-African trade instruments. The architects of the AfCFTA strategically chose to prioritize broadening integration through the establishment of a continent-wide free trade area, superseding

the Abuja Treaty's prescript of first deepening integration within RECs through consolidated REC-level free trade areas, customs unions, common markets and possibly monetary unions.

Many RECs have made significant progress towards promoting and deepening integration among their member States. Some have established functional customs unions (East African Community, Economic Community of West African States, Southern African Customs Union and Economic and Monetary Community of Central Africa) or free trade areas (Common Market for Eastern and Southern Africa and Southern African Development Community).

But the harmonization of REC programmes and instrument has not progressed as envisioned. Among other challenges RECs face are the multiple and overlapping REC memberships, with RECs varying considerably in their degree of integration and all of them having members at different stages of economic development. Moreover, each of the REC free trade areas and customs unions differs in its design and implementation in such critical areas as the application of common external tariffs (CETs) and the operational modalities of rules of origin (RoO).

Overall, the RECs' experiences and prevailing realities could be instructive for the AfCFTA's successful implementation. This is more so, given that one of the AfCFTA's main objectives is to accelerate regional and continental integration by consolidating Africa's multiple and overlapping trading regimes. The successful and effective consolidation of those trade regimes as envisioned by the AfCFTA arguably requires careful and thoughtful management and governance.

This study, *Governing the African Continental Free Trade Area–Regional Economic Communities Interface*, examines the underlying dynamics in AfCFTA–REC relationships. It looks towards enhancing a coordinated and coherent interface between the AfCFTA and the REC free trade areas and towards allaying fears and building confidence among RECs, member States, the African Union, the AfCFTA secretariat and other stakeholders in the AfCFTA's impact on their operations. It speaks to key issues for Africa's integration, both within and among RECs, which have implications for implementing the AfCFTA. Among other topics, the study analyses the relationship between the Abuja Treaty and the RECs' treaties and charters; the role, beyond the AfCFTA and a continental customs union, envisioned for RECs when the African Economic Community (AEC) was

established; and potential areas of convergence and divergence between REC trade/services liberalization agendas and the AfCFTA and how to steer towards convergence—not just enhancing the AfCFTA's successful implementation, but also facilitating the achievement of REC goals.

The study establishes that although various REC mandates and priorities differ, with some going beyond the scope of the AfCFTA, they all have the potential to contribute to implementing the AfCFTA. And although REC free trade areas have different provisions and implementation modalities, they are aligned to the AfCFTA's overall goal of increasing intra-regional trade and providing enabling environments for enterprise development and the emergence of regional value chains. While RECs make varying contributions to intra-African trade, they face common challenges, such as shortcomings in boosting domestic production and economic diversification, which could be eased by the larger AfCFTA market space and the associated economies of scale. The AfCFTA has the potential to help RECs address some of their inherent implementation challenges and accelerate the realization of the goals and objectives of the REC free trade areas and customs unions.

The study also establishes that although the AfCFTA agreement ultimately aims to harmonize Africa's multiple trade regimes, it must meanwhile coexist with the REC free trade areas. This will safeguard some of the RECs' major achievements, particularly higher levels of trade liberalization among some REC member States. The analyses show that although the aspiration to a continental Customs Union remains legitimate, it is realistically only a long-term goal, attainable by effectively implementing the AfCFTA while leveraging the RECs' trade integration achievements and successes and drawing lessons from the RECs' failures and challenges. The study makes a strong case for a shared understanding and proper legal interpretation of articles 19 and 5 of the AfCFTA agreement—which are intended to regulate and subsequently consolidate Africa's multiple trade regimes—as part of governing the AfCFTA–REC interface.

The study proffers important actionable policy proposals for a coherent, coordinated and responsive interface between the AfCFTA and REC free trade areas and customs unions. The proposals include ways to engage more closely with private sector operators. The study also contemplates scenarios for delineating functions and responsibilities among stakeholders—the AfCFTA secretariat, REC secretariats, the African Union Commission, member States of RECs and the AU and others. The study also proposes advocacy and familiarization strategies for a responsive interface.

The analyses, findings and recommendations of the study are timely and pertinent, especially in the implementation phases of the AfCFTA. The commencement of official trading on 1 January 2021 has already brought into sharp focus several

implementation challenges, not least those related to how REC customs unions and their State Parties should best engage the AfCFTA ratification process. In an emerging, though evolving, pattern in the ratification process, some REC customs union members have ratified the agreement but a few have not yet done so. Some RECs customs unions have made block tariff offers, whereas in others, individual Member States have made offers, creating practical implementation challenges. This report provides important answers to some of these operational challenges and should therefore serve as a useful reference document for various stakeholders in the AfCFTA and support Africa's broader integration agenda.



A handwritten signature in black ink, appearing to read 'V Songwe'.

**Vera Songwe, United Nations Under-Secretary-General and Executive Secretary of the Economic Commission for Africa**

# Chapter 1

## Introduction and Background


**T**he African Continental Free Trade Area (AfCFTA) agreement covers trade in goods and services, investment, intellectual property rights and competition. The main objectives of the agreement are to create a single continental market for goods and services, with free movement of businesspeople and investments; expand intra-Africa trade; and enhance competitiveness and support economic transformation in all African countries. The AfCFTA has five major operational instruments: the rules of origin, the negotiating forums, the monitoring and elimination of non-tariff barriers, a digital payments system and the African trade observatory and adjustment facility.

The agreed launch date for trading under the AfCFTA, 1 July 2020, was delayed because of COVID-19, which led to a temporary suspension of the negotiations over outstanding Phase I issues, such as schedules of tariff concessions, rules of origin and liberalization of trade in services. Even so, the pandemic's disruptions have provided opportunities to leverage the AfCFTA agreement for economic recovery, including diversifying the sources of supply chains and localizing production in Africa.

On 1 January 2021, trading was launched, and negotiations of outstanding issues were resumed using the digital platform. By 15 May 2021, 54 of the 55 African Union (AU) member States had signed the agreement, and 36 had ratified it. The agreement is effective in those 36 countries, meaning that its rights, provisions and obligations apply.

Although the pace of AfCFTA negotiations and ratifications has been remarkable, some important technical steps must be taken before the agreement is implemented. The AfCFTA (like other trade agreements) faces three bottlenecks.<sup>1</sup> The first is financial: any trade policy that would affect national capacities to mobilize resources confronts implementation challenges. The second is institutional capacity and coordination, since a regional trade policy is often negotiated in a situation of splintering trade policy processes, and its institutional infrastructure may not be clearly defined at the national or regional level. The third is structural due to the challenge of mainstreaming regional and continental trade policies into national development agendas.

The AfCFTA negotiations and implementation would address trade-related constraints in Africa by enhancing trade creation and preventing trade diversion or deflection. Before the COVID-19 pandemic, analyses by the AU and the United Nations Economic Commission for Africa (ECA)<sup>2</sup> projected that effective implementation of the agreement would boost African GDP from about \$3 trillion in 2020 to \$8 trillion in 2040, and further to \$16 trillion by 2060. The AfCFTA would increase Africa's exports by 4.0 percent (\$25.3 billion) and increase real income for African countries by 0.2 percent (\$296 million) in 2022. It would increase intra-African trade by 52.3 percent (\$34.6 billion) by 2022, mainly in the services, industry and agriculture sectors, doubling the share of intra-African trade, and fostering the continent's broad-based development, aiming for a zero tariff for a large percentage of African products.<sup>3</sup>



The AfCFTA negotiations and implementation would address trade-related constraints in Africa by enhancing trade creation and preventing trade diversion or deflection.

In addition, the agreement would seek to resolve the challenges posed by countries' multiple and overlapping memberships in regional economic organizations and to expedite continental integration. The AfCFTA's legal instruments establish rules-based governance, certainty and predictability for the business community when trading or investing across borders.

The AfCFTA agreement has many provisions addressing these challenges. Article 5 of the agreement states that the process will be "driven by member States of the AU, Regional Economic Communities (RECs) Free Trade Areas (FTAs) as building blocks; variable geometry; flexibility and special and differential treatment; transparency and disclosure of information; preservation of the acquis; Most Favoured Nation (MFN) Treatment; national treatment; reciprocity; substantial liberalisation; consensus in decision-making; and best practices in the RECs, in the state parties and international conventions binding AU". Based on these provisions, the negotiation of the AfCFTA was supposed to be a "member State, RECs and customs territories-driven" process,<sup>4</sup> but during the negotiations, the RECs and customs territories were given only observer status.<sup>5</sup> However, RECs were part of the AfCFTA negotiating institutions and the Continental Task Force on the AfCFTA, were able to participate in the preparation of negotiating instructions and text. In their respective regions, they coordinated members, where necessary, to develop regional positions on critical negotiation issues. However, AU member States were the negotiating parties, and the negotiation forums

witnessed the prevalence of expressions of national interest.<sup>6</sup> Also, article 19 of the agreement makes provision for the resolution of incompatibilities or inconsistencies between the AfCFTA agreement and other African trade instruments.

Such issues could challenge the negotiation and implementation of the AfCFTA because it may not fully consolidate the RECs-FTAs—at least in the short and medium term. So, how will REC-FTA members and other AfCFTA parties implement the agreement? Although the negotiation and signing of various trade agreements in Africa represent remarkable achievements, the key challenge has been in implementing various provisions of the agreements effectively. So, concrete policy actions and strategies are needed to ensure a coherent, coordinated and fully responsive interface between the AfCFTA and RECs-FTAs, including leveraging the RECs' integration achievements. To achieve this, the AfCFTA secretariat needs to work closely with RECs to show how member States stand to benefit from the agreement. The analysis of various regional trade agreements has shown that countries are willing to implement agreements if the gains outweigh losses.

Although the RECs are recognized as the building blocks of the African Economic Community (AEC), they are not homogeneous but were established independently of each other and differ in both structure and activity. The African Regional Integration Index (2019)<sup>7</sup> shows the diversity of RECs and the strengths and weaknesses of their member States. In the Southern African

Development Community (SADC), South Africa, the largest economy, was the highest performer in trade and macroeconomic integration and in productive and infrastructural development. The country was however, a low performer in the free movement of people. In the Economic Community of West African States (ECOWAS), Nigeria, the largest economy, with about 65 per cent of regional GDP, was an average performer in trade and infrastructural integration and free movement of people, a high performer in productive integration and the lowest performer in macroeconomic integration. In the East African Community (EAC), Kenya, the largest economy, was a high performer in trade and productive and infrastructural integration but an average performer in macroeconomic integration and the free movement of people. Patterns are similar for other AU-recognized RECs.

The need is paramount for a careful analysis of issues underlying the nature and workings of RECs and RECs-FTAs, their interface with the AfCFTA and their likely impact on the implementation of the agreement. To meet that need requires answering the following questions:

- Are the mandates of the RECs in line with the aspirations of the AEC, and do the RECs' trade liberalization mandates support implementing the AfCFTA?
- Are the REC-FTA implementation mechanisms and their trade in goods and services arrangements appropriate for implementing AfCFTA provisions? In what areas do the AfCFTA, the Tripartite Free Trade Area (TFTA) and other RECs-FTAs diverge and converge?
- Can the pre-existing RECs platforms be leveraged to address non-tariff barriers, trade facilitation and dispute settlement in the context of the AfCFTA?
- Does the AfCFTA resolve the issues around Africa's persistent multiple trade regimes? If not, what policies would do so?
- Can the RECs' experiences with customs unions indicate the best options for continental economic integration?
- What are the appropriate policy options to build and manage an interface among RECs, RECs-FTAs and the AfCFTA?
- How would a properly managed interface between the AfCFTA and RECs-FTAs or REC customs unions enhance private sector development in the continent?
- What advocacy and familiarization policies or strategies would promote a fully responsive interface among RECs-FTAs, RECs and the AfCFTA?

Although RECs are recognized by some as building blocks of the African Economic Community (AEC), they are not homogeneous - as they were established independently of each other and differ in structure and activity.

## OBJECTIVES

This study aims to analyse and enhance the understanding of key issues in the interface between the AfCFTA and RECs-FTAs. The analyses lead to actionable policy proposals that would support a coherent, coordinated and fully responsive interface. The study also suggests ways to enhance AfCFTA implementation by leveraging REC trade integration successes and deriving lessons from REC-FTA failures.

The study's specific objectives are to:

- Identify and map out convergent and divergent areas between the RECs' liberalization agendas for trade in goods and services and the AfCFTA.
- Articulate concrete policy actions for member States and other stakeholders to facilitate a coherent, coordinated and fully responsive interface among RECs and the AfCFTA trade agendas.
- Identify key REC achievements in trade liberalization and propose strategies for African countries to leverage REC trade integration achievements for enhancing AfCFTA implementation.
- Identify failures and challenges in implementing RECs-FTAs, and articulate proactive policy options for AU and REC member States so they can avoid such pitfalls in implementing the AfCFTA.
- Articulate the role of the RECs in the AEC beyond the AfCFTA and a continental customs union.
- Propose advocacy and familiarization policies and strategies for a coherent, coordinated and fully responsive interface between the AfCFTA and RECs-FTAs.

## GENERAL APPROACH/ METHODOLOGY

The report uses a combination of qualitative and quantitative research methods.

- It uses published literature on international trade and material produced by institutions such as ECA, the African Union Commission (AUC), the African Development Bank (AfDB), United Nations Conference on Trade and Development (UNCTAD) and the World Trade Organization (WTO). The desk research and analysis of administrative data aims at acquiring clearer understanding of requirements for the effective implementation of the AfCFTA, the workings and operations of the eight recognized RECs, the role of the private sector, policy and institutional arrangements for managing the agreement and pertinent areas of analysis for building stronger synergies between the AU and the RECs.
- It analyses the relationship between RECs-FTAs and the AfCFTA. It explores the legal interpretation and understanding of relevant AfCFTA and AEC articles. The report assesses REC intra-African trade performance using import-export similarity measures that study the degree of commodity correspondence between exports of one region and imports of another region.<sup>8</sup> The two forms are the Import-Export Correspondence Index (COS) and Export-Import Similarity Index (EIS) (see annex 1). In addition, gravity models are used to analyse potential trade patterns and directions in various RECs as result of the implementation of the AfCFTA (see annex 2).
- The analysis is supported by interviews of key informant through a semi-structured questionnaire administered remotely to key stakeholders in the negotiation and expected implementation of the AfCFTA at the national and regional levels (see annex 3).





## REPORT STRUCTURE

The report has 10 chapters. After this introduction (chapter 1), chapter 2 gives an overview of the AfCFTA and the RECs-FTAs. Chapter 3 addresses the REC trade in goods and services liberalization agenda and the AfCFTA. Chapter 4 analyses the application of rules to resolve challenges of multiple trade regimes in the context of the AfCFTA. Chapter 5 documents the RECs' role in addressing non-tariff barriers, trade remedies and dispute settlement in the AfCFTA. Chapter 6 presents the role of RECs and the AfCFTA in implementing the AEC beyond the continental customs union. Chapter 7 provides a political economy analysis of the relationship between the RECs and a continental system of integration. Chapter 8 analyses scenarios for the interface of the AfCFTA, RECs and RECs-FTAs. Chapter 9 deals with advocacy and familiarization strategies for a responsive interface. Chapter 10 compiles findings, conclusions and policy recommendations.

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# Chapter 2

## Overview of the African Continental Free Trade Area and the Regional Economic Communities' Free Trade Areas



Three major questions link Africa's regional economic communities (RECs) and their free trade areas (RECs-FTAs), the incipient African Continental Free Trade Area (AfCFTA) and the African Economic Community (AEC):

Are the mandates of various RECs in line with aspirations for the AEC? Is it feasible to leverage the implementation mechanisms of various RECs-FTAs in implementing the AfCFTA? Can the AfCFTA agreement create new opportunities for regional economic integration? This chapter addresses these questions by presenting an overview of the AfCFTA, the mandates of various RECs, REC treaties and their links to the AEC, the trade integration successes and failures of the RECs and areas of convergence and divergence of various RECs-FTAs and the AfCFTA.

### THE AFRICAN CONTINENTAL FREE TRADE AREA

The Assembly of African Heads of State and Government of the African Union (AU) at its 18<sup>th</sup> Ordinary Session in the capital of Addis Ababa, Ethiopia, in January 2012 adopted a resolution to form a continental free trade area (FTA) by 2017. The AfCFTA came into force on 30 May 2019, intended as a single market for goods and services that would allow the free movement of businesspeople and capital and culminate in a continental customs union.

The AfCFTA is the largest FTA created since the World Trade Organization (WTO) was formed. It has a potential market of 1.2 billion consumers and a

combined gross domestic product (GDP) of more than \$3.4 trillion.<sup>9</sup> It is a flagship project of the AU's Agenda 2063, which aims to accelerate growth in intra-African trade and make trade an engine for growth and sustainable development. The AfCFTA agreement is also expected to contribute positively to implementing other projects.<sup>10</sup>

Although the AfCFTA was not envisaged in the 1991 Abuja Treaty establishing the African Economic Community, its creation responded to a need for a mechanism promoting African production cooperation and trade complementarity in a dynamic global market. It is expected to increase competitiveness by raising incentives for adding value to African raw materials, promoting regional value chains and leading to African countries entering global value chains.<sup>11</sup>

At the 12th Extraordinary Summit on the AfCFTA (in Niamey, Niger, July 2019), AU member States agreed to operationalize the agreement. The conclusion of Phase I negotiations and the entry into force of the agreement on 1 January 2021 mean that its provisions supersede some national laws of State Parties to the agreement. So, an implementation framework is urgently needed. Critical technical components of the agreement need to be finalized before free circulation of African goods and services can be guaranteed, including schedules of tariff concessions, rules of origin, and schedules of specific commitments for trade in services. For effective implementation of the AfCFTA, it would be good if all AU member States should sign the agreement and the signatory countries should ratify it.

Hypothetically, any FTA should significantly affect the total trade, the trade of individual member States and the distribution of trade gains across members. In this context, the AfCFTA is expected to pose significant economic prospects, produce positive welfare effects, generate economic growth and reduce poverty in Africa. However, those overall positive expectations conceal differences between how individual countries and regions will fare under the arrangement. Countries' and regions' benefits and costs due to trade creation, trade diversion, and trade deflection are asymmetric.

Tariff removal is a vital channel for the AfCFTA's expected boost to intra-African trade. Tariffs divide domestic and imported prices, making domestically produced goods more attractive and keeping out competing imported goods. Tariffs can curb industrialization, domestic production and consumption. African countries impose high average tariffs by global standards, repressing intra-African trade since the tax on one country's imports is a tax on the other's exports. By one estimate, the total removal of tariff barriers among African countries due to the AfCFTA would increase intra-African trade by 52.3 per cent in 2022.<sup>12</sup> Nevertheless, the removal of tariff barriers is not sufficient to promote intra-African trade, which would only happen if complementary non-tariff measures were also adopted.

Continental and regional value chains are another significant channel for developing and strengthening intra-African trade. They would link operators in different regions through trade in the parts of a commodity. Regional value chains can combine the competitive advantages of contiguous countries, enhancing productivity and competitiveness, transforming products, expanding markets and increasing investment. Africa's small but growing participation in global value chains is dominated by forward integration to Europe and Asia, mostly from Southern and Northern Africa.<sup>13</sup> Low intra-African trade relative to Africa's trade with the rest of the world indicates inadequate regional value chains.

The AfCFTA is expected to lead to the elimination of tariffs and non-tariff measures among African countries. This is important, given trade protection disparity across African countries and the sensitivity of some products. For example, while the applied tariffs (and tariff dispersion) on cotton between African countries are low because of preferences granted under the RECs, those on tobacco and cereals (including rice) are high, and the protection of manufactured goods is high despite regional trade agreements.<sup>14</sup> The effect on trade creation, which depends on the competitiveness of the countries, can be supported by the way non-tariff measures are applied to goods. For example,

countries should exercise transparency in the notification and harmonization of sanitary and phyto-sanitary regulations and in the accreditation and mutual recognition procedures for technical barriers to trade.

Non-tariff measures applied on vegetables and fruits and on electric and electronic devices are widely dispersed (annex 4). The maximum ad valorem equivalents of non-tariff measures exceed 100 per cent for vegetables and fruits in Benin, and Guinea, and for electric and electronic devices in Senegal. In agricultural and food products, sanitary and phyto-sanitary regulation is the main component, constituting a 60 per cent ad-valorem equivalent. In manufactured goods, such as machinery and vehicles, and electronic devices, technical barriers to trade amount to around a 50 per cent ad valorem equivalent in Africa.<sup>15</sup>

The average tariff in Africa is 8.7 per cent.<sup>16</sup> Ethiopia imposes an average tariff of 13.3 per cent on its imports from other African countries and faces an average tariff of 19.5 per cent on its exports to the rest of Africa. Only 15 countries imposed and faced average tariffs lower than the continental average.<sup>17</sup> The others are, on average, more protectionist than the African average. Nine countries experience more trade barriers than the African average.<sup>18</sup> African

countries' exports faced average tariffs of 9.5 per cent with non-African partners and 12.4 per cent on African countries: African countries thus experience higher protection rates from one another than from non-African countries. For instance, Eswatini faces the highest average tariff when exporting its agricultural products to African countries—96.7 per cent—and Seychelles imposes the highest average tariff on agricultural products imported from Africa—53.6 per cent.

To overcome some of these challenges, the AEC and AfCFTA's policy and institutions should give specific roles to the RECs and REC member States. Although developing national strategies for implementing the AfCFTA is assigned to the member States, the need and modalities for developing regional strategies are bypassed in the AfCFTA agreement. Developing regional strategies requires examining the scope and mandates of RECs, their compatibility with the AfCFTA agreement and the content and implementation strategies of RECs-FTAs (including the Tripartite FTA<sup>19</sup>) for market access, rules of origin, non-tariff barriers and dispute settlement mechanisms. Assessing REC-FTA performance will contribute to that examination by identifying successes and challenges, policy options for the REC-FTAs' alignment to the agreement and lessons for implementing the AfCFTA.

► **Table 2.1**

## Stages towards implementing the Abuja Treaty

Stage	Duration	Focus
1	5 years	Strengthening of existing RECs and creation of new ones where needed
2	8 years	Stabilization of tariff and other barriers to regional trade and the strengthening of sectoral integration, particularly in trade, agriculture, finance, transport and communication, industry and energy, as well as coordination and harmonization of the activities of the RECs
3	10 years	Establishment of a free trade area and a customs union at the level of each REC
4	2 years	Coordination and harmonization of tariff and non-tariff systems among RECs, with a view to establishing a continental customs union
5	4 years	Establishment of an African common market and the adoption of common policies
6	5 years	Integration of all sectors, the establishment of an African central bank and a single African currency, setting up of an African economic and monetary union and creating and electing the first Pan-African parliament

Source: Abuja Treaty.

## REGIONAL ECONOMIC COMMUNITY TREATIES AND LINKAGES TO THE AFRICAN ECONOMIC COMMUNITY

A review of the original or revised treaties and mandates of the RECs shows how they have been building towards the AEC's continental customs union and how the AfCFTA pursues similar goals. The June 1991 Abuja Treaty establishing the AEC re-affirmed faith in an integrated continent by Heads of State of the Organisation of African Unity, precursor of the AU. It translated the commitments of the 1980 Lagos Plan of Action and Final Act of Lagos into concrete form. The Abuja Treaty outlines the future of Africa for 34 years (1994–2028) through six continuous stages of integration (table 2.1). It creates a gradual process of creating or strengthening RECs that would eventually lead to the establishment of an African single market and currency. The Treaty Establishing the African Economic Community came into force in May 1994 when the required number of ratifications was met.

Key provisions of stages 1 to 4 of the AEC set out in the Abuja Treaty are mirrored in the AfCFTA. The AEC integration agenda is more than a trading arrangement or a mechanism of promoting cooperation in production, based on the creation of a common market. The idea is to integrate national markets and ensure cooperation in production that would improve lives in Africa. The first objective in establishing the AEC is the strengthening of existing RECs, and the second is the liberalization of trade and the abolition of non-tariff barriers among member States.<sup>20</sup> These objectives go to the heart of the AfCFTA, which also drives towards the relaxation and eventual abolition of trade restrictions and the evolution towards a common trade policy. The Abuja Treaty clearly provides for the gradual removal of obstacles to the free movement of persons, goods, services and capital and the right of residence and establishment.

In the spirit of the Lagos Plan of Action and the AEC, the RECs emphasize the following in pursuing regional integration:

- Eliminating barriers to intra-regional trade.
- Creating common regional policies in trade and trade-related areas.
- Harmonizing various sectoral policies and regulatory framework
- Creating regional institutions for coordinating, implementing and monitoring integration.

The REC treaties clearly define these pillars and their corresponding mandates. This study focuses on the eight RECs recognized by the AU and their respective member States (table 2.2; see annex 5 for citations to the relevant articles of REC treaties).

The Arab Maghreb Union (UMA) was established under the Marrakech Treaty of 1989 with to strengthen ties among five member States.<sup>21</sup> The major areas of focus are: promoting prosperity; defending and safeguarding national rights and economic interests; fostering economic and cultural cooperation; intensifying mutual commercial exchanges and adopting common policies for the free movement of people, services, goods and capital within the region. Article 2 identifies the following objectives: strengthening the ties of brotherhood that link the member States and their peoples to one another, achieving progress and prosperity for their societies and defending their rights, contributing to the preservation of peace based on justice and equity, pursuing a common policy in different domains and working gradually towards the free movement of persons and transfers of goods, services and capital among them. A plan for economic union included establishing free trade, creating a customs union in 1995 and forming a common market in 2000, though little progress has been made in the UMA region.

► **Table 2.2**

## Membership of the eight African Union–recognized regional economic communities

REC	Year of establishment	Members	Number
Arab Maghreb Union (UMA)	1989	Algeria, <sup>a</sup> Libya, Mauritania, Morocco and Tunisia	5
Community of Sahel-Saharan States (CEN-SAD)	1998	Benin, Burkina Faso, Cabo Verde, Central African Republic, Chad, Comoros, Côte d'Ivoire, Djibouti, Egypt, Eritrea, the Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Liberia, Libya, Mali, Mauritania, Morocco, Niger, Nigeria, São Tomé and Príncipe, Senegal, Sierra Leone, Somalia, Sudan, Togo and Tunisia	29
Common Market for Eastern and Southern Africa (COMESA)	1981	Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Eswatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Uganda, Tunisia, Zambia and Zimbabwe	21
East African Community (EAC)	1999	Burundi, Kenya, Rwanda, South Sudan, Uganda, and United Republic of Tanzania	6
Economic Community of Central African States (ECCAS)	1981	Angola, Burundi, Cameroon, Central African Republic, Chad, Congo, Democratic Republic of Congo, Equatorial Guinea, <sup>a</sup> Gabon, <sup>a</sup> Rwanda, and São Tomé and Príncipe	11
Economic Community of West African States (ECOWAS)	1975	Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, the Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo	15
Intergovernmental Authority on Development (IGAD)	1996	Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan and Uganda	8
Southern African Development Community (SADC)	1992	Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, <sup>a</sup> Madagascar, Malawi, Mauritius, Mozambique, <sup>a</sup> Namibia, <sup>a</sup> Seychelles, South Africa, <sup>a</sup> United Republic of Tanzania, Zambia and Zimbabwe	16

a. Belong to only one regional economic community recognized by the African Union.

Source: ECA.

The Community of Sahel-Saharan States (CEN-SAD) was formed in 1998 to promote the economic, cultural, political and social integration of its member States. Article 1 of the treaty establishing the community set as objectives the establishment of a comprehensive economic union with a focus on the social, cultural, energy, industrial and agricultural fields and the adoption of measures promoting the free movement of individuals and capital; foreign trade, transportation and telecommunications; coordinated educational systems and cooperation in cultural, scientific and technical fields. In 2000, during the 36th ordinary session of the Conference of Heads of State and Government of the Organisation of African Unity, the CEN-SAD became a regional organization of 29 member States.

An attempt to restructure and revive the organization in 2013 led to the revision of the treaty. The revision emphasised two broad areas of deeper cooperation by member States: regional security and sustainable development. The CEN-SAD works with other African regional institutions to strengthen peace, security and stability and to achieve regional economic and social development through the free movement of people and goods, eventually establishing a free trade area. The community also proposed strengthening integration by implementing common development plans in various sectors to complement members' national development plans.

The Common Market for Eastern and Southern Africa (COMESA) was established in 1981 as the Preferential Trade Area for Eastern and Southern Africa within the framework of the Lagos Plan of Action and Final Act. It was transformed into COMESA in 1994, formed a free trade area in October 2000 and launched a customs union in June 2009. COMESA is a regional integration grouping of 19 African states. The treaty establishing it calls for it to contribute to realizing the AEC (article 3(f); article 178).

Article 4(a) of the treaty establishing COMESA promotes the achievement of a common market as set out in article 3. Article 4(6e) obliges member States to remove obstacles to the right of residence, the right of establishment for investors and the free movement of persons, labour and services. Article 4(2) also emphasizes the free movement of persons,

labour and services. Two primary legal instruments are the Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements, and the Protocol on Free Movement of Persons, Labour, Services, the Right of Establishment and Residence. The Regional Customs Transit Guarantee scheme facilitates the movement of goods in transit and the Yellow Card scheme governs COMESA-wide automobile insurance. The Council Regulations Governing the COMESA Customs Union and the Common Market Customs Management Regulations contain the principles and rules for operating the customs union.

The East African Community (EAC) was established in 2000 to strengthen economic, social, cultural, political, technological and other ties for the balanced and sustainable development of its member States. It is an intergovernmental organization of six East African countries.<sup>22</sup> The Treaty for East African Cooperation was an attempt to restore the East African Common Services Organization, which had aimed to create a common market, a common currency and a common appellate court and would eventually become the present-day EAC.

The EAC's treaty supports gradual regional integration (article 5) leading towards a customs union, then a common market and finally the establishment of an AEC political federation. In view of that, article 2 states that the REC will develop through transitional stages. Article 130(2) says that the partner states of EAC "reiterate their desire for a wider unity of Africa and regard the Community as a step towards the achievement of the objectives of the Treaty Establishing the AEC". The customs union and a common external tariff were established on 1 January 2005. On 1 July 2010, the Common Market Protocol came into force.

The Economic Community of Central African States (ECCAS) was established in December 1981. Its objective is to promote and strengthen harmonious cooperation and balanced and self-sustained development in all fields of economic and social activity.<sup>23</sup> Other objectives are the progressive abolition among member States of obstacles to the free movement of persons, goods, services and capital and to the right of establishment; and



Tariff removal and the establishment of continental and regional value chains are two vital channels for AfCFTA's expected boost to intra-African trade. Low intra-African trade relative to Africa's trade with the rest of the world indicates inadequate regional value chains.

the harmonization of national policies to promote community activities (chapter 2, article 4(2)). The ECCAS's aims as stated in article 4(1) are like those of the AEC stated in article 4(1c) of the Abuja Treaty: "to achieve collective self-reliance, raise the standard of living of its peoples, increase and maintain economic stability, foster close and peaceful relations between member States and contribute to the progress and development of the African continent".

ECCAS's membership overlaps with that of the six-member Central African Economic and Monetary Community (CEMAC).<sup>24</sup> CEMAC has two main pillars—the monetary union and the economic union—which guide a three-step plan to establish a common market and economic union. The process involves harmonizing national policies, elaborating common economic laws and establishing the free movement of goods, services, capital and persons. In a reform, the ECCAS Heads of State adopted a revised treaty and other instruments during their Extraordinary Summit of 18 December 2019 in Libreville. The treaty connects regional integration to continental integration and links the regional objectives to the AfCFTA.

The Economic Community of West African States (ECOWAS) was established in 1975 to promote economic cooperation and integration in all economic spheres among 15 member States. The goal of ECOWAS is to create a trade bloc and to subsequently establish an economic and monetary union, and even a political union. The driving force is the full realization of the regional integration objectives and ECOWAS Vision 2020, which aims at building a democratic and prosperous

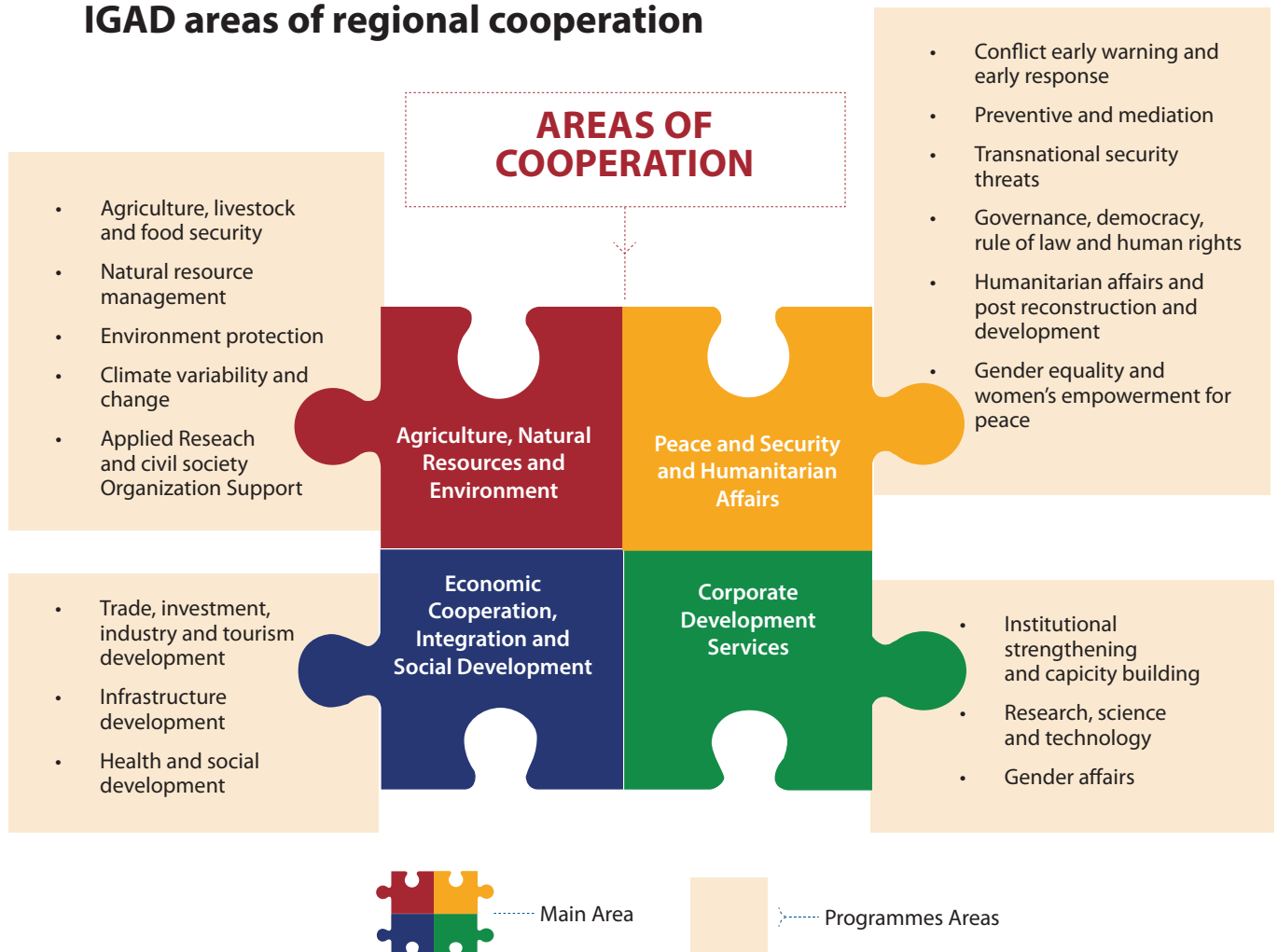
community to lead to an "ECOWAS of peoples". As the 1993 ECOWAS revised treaty says, "the aims of the community are to promote co-operation and integration, leading to the establishment of an economic union in West Africa in order to raise the living standards of its peoples, and to maintain and enhance economic stability, foster relations among member States and contribute to the progress and development of the African continent" (article 3).

ECOWAS's membership overlaps with those of two other integration institutions: the West African Economic and Monetary Union (WAEMU), and the Mano River Union (MRU). Eight states constitute WAEMU, which is also referred to as the CFA franc zone. WAEMU is more integrated, with a monetary union, a single currency, and a customs union with a common external tariff, following an earlier free trade area. The goal of MRU is to accelerate the economic growth, social progress and cultural advancement of its member countries.<sup>25</sup>

Section 2d of the ECOWAS revised treaty calls for the "establishment of a common market through the liberalisation of trade... and the adoption of a [common external tariff] and a common trade policy vis-à-vis third countries". It shows that the ultimate purpose of ECOWAS is to develop economic integration in the region as well as "the realisation of the objectives of the AEC" (article 2(1)). Also, article 78 states that "the integration of the region shall constitute an essential component of the integration of the African Continent. member States undertake to facilitate the co-ordination and harmonisation of the policies and programmes of the Community with those of the AEC."

► **Figure 2.1**

## IGAD areas of regional cooperation



Source: IGAD (2016).

The Intergovernmental Authority on Development (IGAD) was established in 1996 to represent the interests of states in Eastern Africa as the successor to the Intergovernmental Authority on Drought and Development (IGADD). Under article 7 of the agreement establishing it, IGAD aims to promote joint development strategies, harmonize member States' policies, achieve regional food security, initiate the sustainable development of natural resources, promote peace and stability in the subregion and mobilize resources for the implementation of programmes. The IGAD was recognized as a strong and viable REC in July 2006, followed by the signing of a protocol on the relationship between the AU and the IGAD.<sup>26</sup>

Also, the treaty establishing the IGAD says that "the development of economic cooperation and integration between the countries of the region will contribute to the achievement of the purpose set forth in the Charters of both the OAU and the United Nations". One of the objectives is to promote and realize the objectives of the COMESA and the AEC, reaffirming IGAD's role as a regional community that concentrates on areas with greater regional impact (article 7(i)). Article 13A outlines 20 areas of cooperation among the member States, which the IGAD (2016) categorized into four pillars (figure 2.1).

► **Figure 2.2**

## Priorities of the revised Regional Indicative Strategic Development Plan for 2015–2020, Southern African Development Community



### Priority A

Industrial Development and Market Integration including:

- I. Sustainable industrial development, productive competitiveness and supply side capacity;
- II. Free movement of goods and services;
- IV. Financial market integration and monetary cooperation;
- V. Intra regional investment and foreign direct investment; and
- VI. Deepened regional integration.



### Priority B

Infrastructure in support of regional integration, including:

- I. Energy;
- II. Transport (surface, air and intermodal);
- iii. Tourism;
- IV. ICT;
- V. Meteorology; and
- VI. Water.



### Priority C

Peace and security cooperation; (as a pre-requisite for achieving the Regional Integration Agenda)



### Priority D

Special programmes of regional dimension: Human development and special programmes including health, gender and labour.

Source: SADC (2017).

The treaty establishing the Southern African Development Community (SADC) was signed in 1992. The objectives include (article 5):

- Achieving development and economic growth, alleviating poverty, enhancing the standard and quality of life of the people of Southern Africa and supporting the socially disadvantaged through regional integration.
- Evolving common political values, systems and institutions.
- Promoting and defending peace and security.
- Promoting self-sustaining development based on collective self-reliance and the interdependence of member States.

- Achieving complementarity between national and regional strategies and programmes.
- Promoting and maximizing productive employment and the use of the region's resources.
- Achieving sustainable utilization of natural resources and effective protection of the environment.
- Strengthening and consolidating the long-standing historical, social and cultural affinities and links among the people of the region.

► **Table 2.3**

## Free trade areas of African Union–recognized RECs

REC	Year established	Status of integration	FTA Provisions
East African Community (EAC)	2000	Launched common market in 2010	Removal of internal tariffs and all nontariff barriers Agreement on a list of products classified as sensitive EAC rules of origin The single customs territory of 2014 EAC customs union EAC Common Market Protocol
Common Market for Eastern and Southern Africa (COMESA)	1994	Launched free trade area in 2000	Progressive trade liberalization The Great Lakes Trade Facilitation Programme Simplified trade regime Simplified certificate of origin Simplified customs document COMESA Common Tariff Nomenclature Regional Customs Transit Guarantee Scheme COMESA Digital Trade Solution
Economic Community of West African States (ECOWAS)	1975	Achieved free trade area status in 1990 Implementation of a common external tariff in January 2015	Variable-speed approach ECOWAS Trade Liberalization Scheme Elimination of non-tariff barriers Inter-State Road Transit Convention ECOWAS rules of origin Harmonized standards and conformance procedures ECOWAS Trade Liberalization Scheme task force ECOWAS common external tariff ECOWAS customs code Monetary Cooperation Programme
Southern African Development Community (SADC)	1992	Free trade area achieved in 2008	Regional Indicative Strategic Development Plan Elimination of barriers to intra-SADC trade Harmonization of customs procedures Trade laws and principles Trade defence instruments Competition policy Dispute settlement provisions
Economic Community of Central African States (ECCAS)	1983	Launched free trade area in 2004	Central Africa Economic and Monetary Community (CEMAC) trade policy Customs initiatives for automation and rapid clearance declarations Use of reference value for customs valuation Electronic cargo tracking note CEMAC common external tariff
Inter-Governmental Authority on Development (IGAD)	1996	No clear timeframe or plan to move towards a free trade area	Completion of one-stop border posts International alert Harmonization of regulatory regimes Transparency of custom procedures Harmonization of competition rules
Arab Maghreb Union (UMA)	1989	Draft agreement on establishing a free trade area signed in 2010	Liberal trade policy and a monopoly over trade Agadir Agreement Greater Arab Free Trade Area Gradual elimination of trade barriers Industrial and agricultural goods enjoy duty-free temporary exceptions from the liberalization schedules of the Agadir Agreement Pan-European rules of origin
Community of Sahel Saharan States (CENSAD)	1998	No clear timeframe or plan to move towards a free trade area	Emphasis on regional security and sustainable development Investment in the agricultural, industrial, social, cultural and energy creation of the African Bank for Development and Trade Special Programme for Food Security

Source: ECA.

The treaty establishing SADC also says that “SADC shall maintain good working relations and other forms of cooperation, and may enter into agreements with other states, regional and international organisations, whose objectives are compatible with the objectives of SADC” (article 24(1)). In the same vein, one of the objectives of AEC is compatibility with Article 5(1d) of the treaty establishing SADC, which aims to “promote self-sustaining development on the basis of collective self-reliance, and the interdependence of member States”. The SADC Regional Indicative Strategic Development Plan is a blueprint for regional trade and market integration. In 2012, the SADC Secretariat reviewed the last five-year phase of the plan, covering 2015–2020, to align its priorities with available resources to enhance industrialization in the region and to fast-track the socioeconomic goals. The revised plan has four priority areas (figure 2.2).

The Tripartite Free Trade Area (TFTA) of 2009 blended the member States of COMESA, the EAC and SADC into a single, inclusive arrangement. The process involved intergovernmental negotiations and the adoption of an agreement (with annexes) covering existing tariff regimes and other legal frameworks on standards, non-tariff barriers, rules of origin and so on. The TFTA is built on three pillars—market integration, infrastructure development and industrial development. A parallel agreement covers the movement of businesspeople. Negotiations, conducted through a committee established by the Tripartite Sectoral Ministerial Committee allowed input from both RECs and members, but only countries can be members of the TFTA. The negotiations were guided by such principles as consensus, reciprocity, variable geometry, substantial liberalization, most-favoured nation and national treatment, flexibility and special and differential treatment, a single undertaking for trade in goods, transparency (disclosure of information about tariff arrangements in each REC) and the accumulated law (*acquis*) of the existing RECs-FTAs.

The analysis of Treaties of various RECs and TFTA shows that the mandates of RECs are in line with the aspiration of AEC in different dimensions and at varying paces; and they also support the implementation modalities of some provisions of

the AfCFTA (see Annex In terms of implementation of mandates), it is also worthy to note that none of the RECs was able to strictly follow the linear progression of regional integration prescribed by the Abuja Treaty. Importantly also, there are marked differences in the aspirations and realities of RECs. The RECs’ mandates and objectives cover more issues than the AfCFTA, and their priorities have differed at various points in time. Also, RECs differ in terms of scope, process and level of economic integration.

As a result, the AfCFTA is expected to promote the coordination and harmonisation of the integration activities of RECs.

Although, the Treaties of COMESA, SADC, EAC, ECOWAS, ECCAS and TFTA contain the objectives of the AEC, they do not contain the operational legal relationship between them and the AEC. Other RECs do not specifically refer to the objectives of the AEC. The Treaties leave big gaps in the operational legal instruments in which they should operate, and whether they are in fact bound by the AEC policy decisions. Overall, the content and pace/scale of implementation of mandates of various RECs point to the fact that considerations of the role that RECs have to play in the implementation of the AfCFTA, including putting their achievements at the disposal of AfCFTA stakeholders, requires careful analysis and pragmatic policy approaches.

## **LESSONS FOR THE AfCFTA FROM THE EVALUATION OF RECs TRADE LIBERALIZATION AND ECONOMIC INTEGRATION**

### ***RECs free trade area provisions***

What lessons do the RECs-FTAs provide for the AfCFTA on tariff liberalization, non-tariff barrier reduction and elimination, rules of origin, trade architecture and sequencing reforms?

The main elements of EAC’s free trade area that are like AfCFTA provisions are the removal of internal tariffs



Together, the AfCFTA and RECs play a significant role in promoting and coordinating the achievement of regional integration goals in Africa.

and non-tariff barriers on intra-REC trade and the agreement on a list of products classified as sensitive and therefore requiring additional protection (table 2.3). The EAC listed products that required protection from competition from imported goods. The list was premised on the region's capacity to produce those products. Implementation followed a sequence in which Kenya removed tariffs on goods originating from member States, while Uganda and United Republic of Tanzania removed tariffs on some goods immediately and gradually phased out tariffs on other goods.

The EAC customs union goes deeper than the AfCFTA provisions. It has four major elements: a common external tariff, elimination of non-tariff barriers, rules of origin criteria (which include simplified certificates of origin) and the removal of tariffs on goods meeting the EAC rules of origin criteria. The single customs territory of 2014 was achieved by implementing bilateral system-to-system interconnectivity and data exchange protocols among member States, which enabled the exchange of electronic documents such as manifests, customs declarations, releases, exit notes and arrival notifications. Another wider and deeper integration arrangement is the EAC Common Market Protocol of May 2010, which focuses on freedom of movement of goods, labour, services, and capital and the integration of their corresponding markets. The rights of establishment, residence and free movement of persons play integral parts due to the EAC treaty's article 2(4). To this end, rights of establishment and residence are added to the fifth freedom under the Common Market Protocol. Article 24(1c) the EAC's Common Market Protocol (which became effective in July 2010) prohibits

member States from introducing new restrictions on the movement of capital and payments connected with such movement.

The COMESA free trade area of 2000 had a 16-year period of progressive trade liberalization through the reduction of intra-REC tariffs in a sequential approach somewhat like the AfCFTA provisions. Eighteen member States aligned their tariff nomenclature to the COMESA Common Tariff Nomenclature at an average of 69 per cent in 2015. Of the COMESA member States, 14 are members of the WTO, and 10 ratified the WTO Trade Facilitation Agreement by January 2019. All COMESA member States use automated customs clearance, and 16 of them (all but Egypt, Kenya and Mauritius) use similar systems for customs (Automated System for Customs Data, or ASYCUDA, World). The Regional Customs Transit Guarantee Scheme—a deeper integration arrangement than the AfCFTA provisions—has been signed and ratified by 13 member States, and also by some non-member States that were party to the scheme.<sup>27</sup> The scheme is in full operation in the Northern and Central Corridor countries, computerized and integrated with the national customs systems of all member States except South Sudan. COMESA member States have eight operational one-stop border posts—six completed initiatives and others at different stages of development.<sup>28</sup>

The COMESA rules of origin have five independent criteria, with goods considered as originating if they meet any of them.<sup>29</sup> Except for small consignments, intra-regional exports must be accompanied by the certificate of origin, which is issued by the designated authority in member States. Many

► **Table 2.4**

## **ECOWAS Trade Liberalization Scheme country and tariff reduction obligations**

<b>Group</b>	<b>Time to eliminate tariffs (years)</b>	<b>Yearly reduction of customs duties and taxes (%)</b>
I. Cabo Verde, the Gambia, Guinea Bissau, Burkina Faso, Mali, Mauritania, Niger	10	10.0
II. Benin, Guinea, Liberia, Sierra Leone, Togo	8	12.5
III. Côte d'Ivoire, Ghana, Nigeria, Senegal	6	16.6

Source: Decision A/DEC.6/7/92, ECOWAS.

COMESA provisions are more advanced and deeper than the AfCFTA provisions. The Simplified Trade Regime of 2010 regulates informal cross-border trade. To facilitate access by small-scale traders, it introduced mechanisms tailored to their requirements and decentralized to border areas where informal trade is rampant. With simplified certificates of origin, customs documents and customs clearance procedures, it reduces costs and increases the speed of crossing the border. Trade information desk officers were deployed to some border posts to inform small-scale traders about border crossing procedures and help them fill out forms. In addition, cross-border trade associations have been set up to increase familiarity and improve use of the Simplified Trade Regime. Also, the Great Lakes Trade Facilitation Programme facilitates cross-border trade by increasing the region's commerce capacity and reducing traders' costs.

The COMESA Digital Trade Solution supports member States fully embracing digital technologies and investing in information and communication technology (ICT) enterprises. The model supports electronic certificates of origin and a digital free trade area application in e-commerce, e-logistics and e-legislation. The COMESA virtual trade facilitation system is a regional customs bond and customs guarantee scheme. Another COMESA integration programme deeper than the AfCFTA provisions is phased monetary harmonization. It consolidates

currency convertibility, instruments of monetary cooperation, informal and formal exchange rate unions and the coordination of economic policies. In addition, the COMESA Regional Payment and Settlements System of 2009 linked all member State national payment systems.

In the ECOWAS free trade area, tariffs have been eliminated on the traded goods of member States, in accordance with the provisions of the ECOWAS Trade Liberalization Scheme and other agreements and protocols. Under the trade liberalization scheme, the free movement of goods requires the elimination not only of tariffs but also of non-tariff barriers. Other major components of the scheme are the Inter-State Road Transit Convention, integrated customs procedures, enhanced rules of origin (including its certification procedures) and harmonized standards. Initially, agricultural products and handicrafts enjoyed zero tariffs, and in 1990 that condition was extended to manufactured products of origin. Taxes and levies were also eliminated. The liberalization of trade in industrial products had two phases—first the consolidation of customs duties and non-tariff barriers, and then total trade liberalization.<sup>30</sup> The ECOWAS Trade Liberalization Scheme provided the timetable for eliminating tariffs on designated priority and non-priority industrial products produced by three groups of member States (table 2.4).

The ECOWAS Trade Liberalization Scheme (ETLS) assigns the task of processing certificates of origin to the Enterprise and the National Approvals Committee. The approval of ETLS products is not only regional but also national. A range of capacity-building activities and familiarization programmes for member States facilitates implementation. In August 2016, ECOWAS set up the ECOWAS Trade Liberalization Scheme task force<sup>31</sup> to fast-track the implementation of the scheme. The task force combines high level political leaders and practitioners selected by the ECOWAS Summit of Heads of States and Governments. The task force role will lead observatory missions and build a monitoring tool for the ETLS.<sup>32</sup>

ECOWAS integration arrangements deeper than AfCFTA provisions include a common external tariff established in 2015 to intensify and deepen trade integration and development. The five-band tariff provides a platform for trade in goods with third-party countries and customs union of the ECOWAS region. The ECOWAS harmonized value-added tax (VAT) programme and ECOWAS customs code provide platforms for customs integration. The principles of ECOWAS customs procedures and valuation are laid down in the 2017 ECOWAS Customs Code. The region also adopted a variable-speed approach for agreeing sets of common objectives. The goal of creating a common currency led to the adoption of a comprehensive Monetary Cooperation Programme in 1987, which sought to create a harmonized monetary system to support sustainable trade growth in the region. The creation of a Joint Technical Secretariat and National Coordinating Committees strengthened the surveillance of member State macroeconomic stability and convergence through semi-annual joint surveillance missions to member States, which produce regular reports on their findings.

The SADC free trade area is guided by the Regional Indicative Strategic Development Plan and the SADC Trade Protocol, which support the community's regional integration agenda. The protocol provides for: eliminating barriers to intra-SADC trade, harmonizing customs procedures and instituting trade laws and principles, trade defence instruments, intellectual property rights,

competition policy and a dispute settlement mechanism. member States began implementation in 2001, aiming to gradually liberalize 85 per cent of their intra-regional trade by 2008 and to transform the region into a customs union by 2010. The region applied an asymmetry principle—like the AfCFTA's approach—by allowing for member States' different levels of economic development, varying economic interests and concentration of import sensitive products highly vulnerable to competition. South Africa reduced its list of import sensitive products and front-loaded gradual tariff reductions on 85 per cent of its external trade.

For trade and economic liberalization, the Regional Indicative Strategic Development Plan (RISDP) outlined a series of integration milestones. These include a free trade area in 2008, a customs union with a common external tariff in 2010, a common market in 2015, monetary union in 2016 and finally a single currency and an economic union in 2018. To accommodate these, the Protocol on Trade was amended in 2010, and a Protocol on Trade in Services was developed and signed in August 2012. Within SADC, the Southern African Customs Union is the world's oldest customs union, founded in 1910. Its five member States maintain a common external tariff, share customs revenues and coordinate policies and decision making on a wide range of trade issues.<sup>33</sup> The region also encompasses the Common Monetary Area, which links Eswatini, Lesotho, Namibia, and South Africa in a monetary union. While the SADC region has faced setbacks in the RISDP, there are trade and economic liberalization achievements evident at smaller scales.

The ECCAS free trade area is discussed within the Central Africa Economic and Monetary Community (CEMAC) trade policy, as the CEMAC region seeks to bring in more members into its economic community. CEMAC's integration arrangement is deeper than the AfCFTA provisions. The main CEMAC provisions are customs initiatives for automation and rapid clearance declarations. Reference values are used for customs valuation, and the electronic cargo tracking note has been introduced. The CEMAC common external tariff liberalizes trade and harmonizes regulations.





IGAD plans to establish a free trade zone among its member States, but much of the cooperative effort in the region focuses on peace and security. The major initiatives related to trade reforms are the completion of one-stop border posts, development of an international alert to facilitate trading for peace across volatile borders, harmonization of regulatory regimes, transparency of custom procedures and harmonization of competition rules.

In UMA, member States signed a draft agreement for creating a free trade area in June 2010. Maghreb working groups were established and action plans developed for trade policy, trade facilitation, production capacity, trade-related infrastructure, finance for commercial transactions, trade information and integration of the factors of production.<sup>34</sup> UMA member trade policies fall into two groups: Morocco and Tunisia pursue a liberal trade policy, while in Algeria and Libya, the government exercises a monopoly over trade. By the 1990s, the governments in Algeria and Libya eased their grip on external trade to enable the private sector to operate.

Although UMA has a partial free trade area, its member States also belong to other bilateral trade agreements: the Agadir Agreement and the Greater

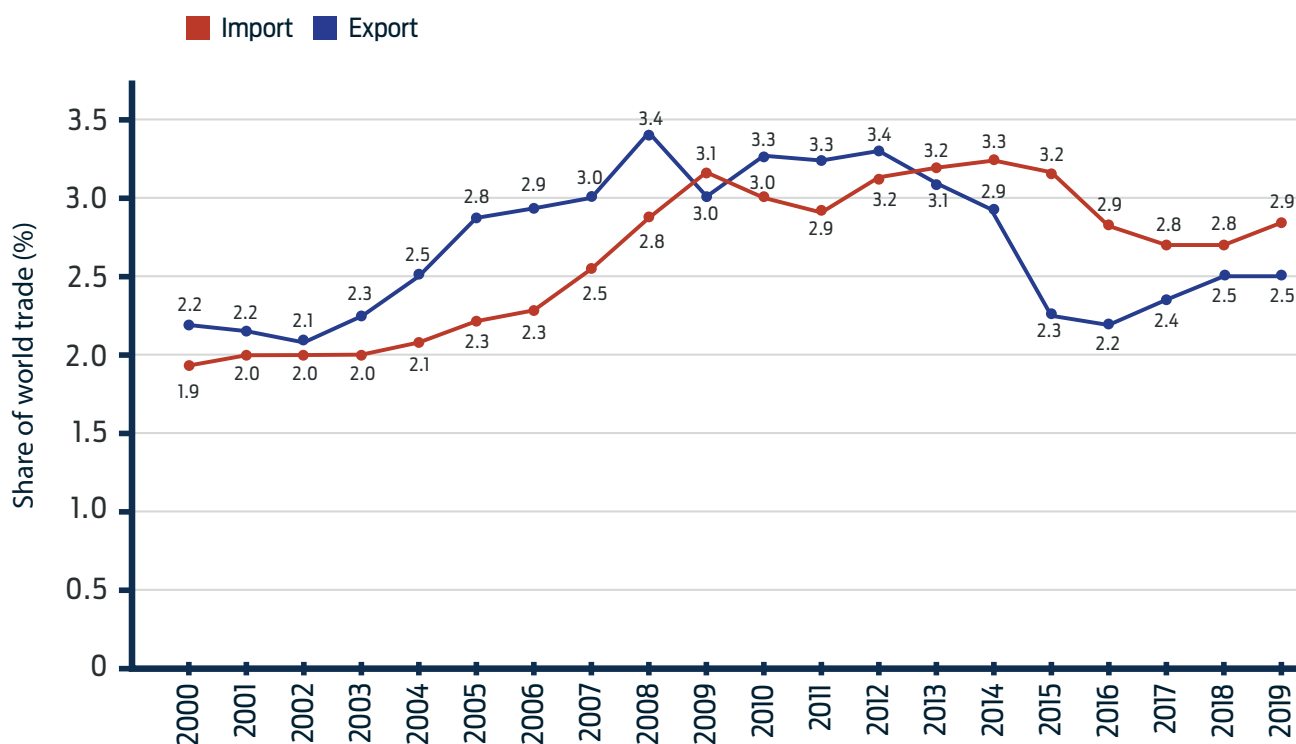
Arab Free Trade Area. The Agadir Agreement was signed in Rabat, Morocco, on 25 February 2004 to establish free trade among Jordan, Egypt, Morocco and Tunisia and to increase intra-agreement trade and trade with the European Union.

The Greater Arab Free Trade Area also known as the Pan-Arab free trade area, came into existence in 1997. It has 17 member States,<sup>35</sup> including four of UMA's five members (Algeria, Libya, Morocco and Tunisia). The Greater Arab Free Trade Area agreed to reduce customs fees 10 per cent each year and to gradually eliminate other trade barriers to industrial and agricultural goods.

The Agadir Agreement remains open to other countries in the region, particularly those that enjoy association agreements with the European Union and have implemented the Greater Arab Free Trade Area. The Agadir Agreement builds extensively on existing regional and bilateral initiatives and includes some temporary exceptions taken from the liberalization schedules of the agreements. The liberalization of agriculture follows the Greater Arab Free Trade Area, and member States abide by pan-European rules of origin, even though they are potentially incompatible with Greater Arab Free Trade Area rules.

► **Figure 2.3**

## Africa's exports and imports share as a percentage of world trade, 2000–2019



Source: Calculated by ECA from UNCTAD database.

Despite the CEN-SAD mandates for a free trade area, no agreement is in place, while emphasis in the region goes towards regional security and sustainable development. The region has implemented sectoral policies and programmes to boost regional integration and developed several legal and policy instruments. CEN-SAD operations cover investment in the agricultural, industrial, social, cultural and energy fields. Accomplishments include the creation of the African Bank for Development and Trade in 1999 and the Special Programme for Food Security in 1995.<sup>36</sup>

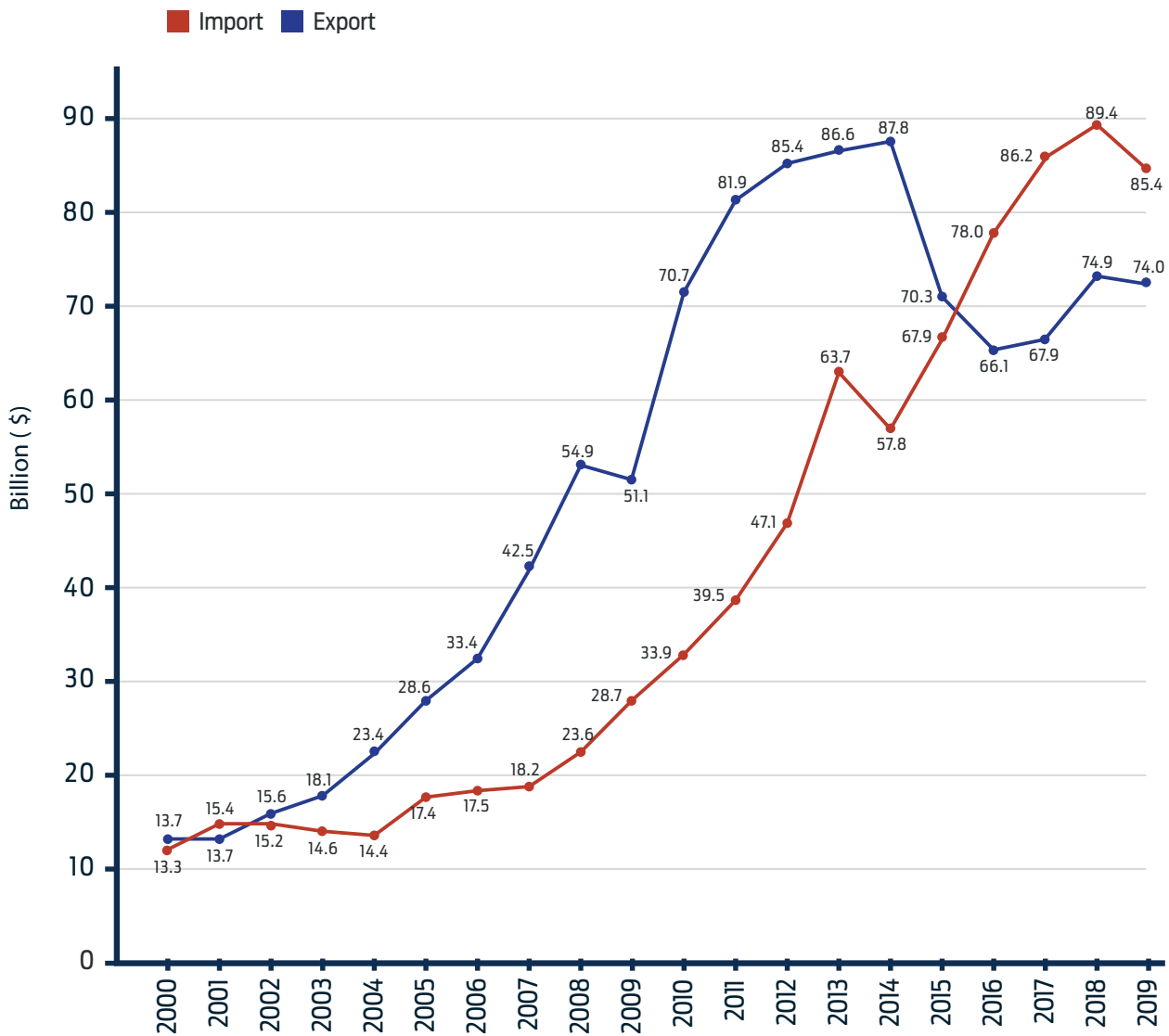
The Tripartite Free Trade Area initiative (along with the 2009 North–South Corridor proposal to upgrade and extend road and rail transport links in Southern Africa) were attempts to coordinate and harmonize programmes in trade, trade facilitation and infrastructure by improving roads, rail and ports. It also aims at increasing the power generation and energy trade potential of the Southern African Power

Pool with new power generation and transmission investments. The free trade area and North–South Corridor led to improved road and rail connections, reduced border times and related major industrial investments in Mozambique. The private sector played a large part in the viability of the initiatives, with road rehabilitation and maintenance carried out under a public-private partnership arrangement with a long-term private concession. For instance, the Chirundu one-stop border post, opened in 2009, streamlined procedures for border crossings and cut freight times for goods moving between Zambia and Zimbabwe from days to hours.

So, the RECs-FTAs are not homogenous. They have different provisions and implementation modalities. Some of provisions are like the AfCFTA provisions, while some are deeper and wider, designed and implemented according to the peculiarities of each region. The existence of various RECs-FTAs before the AfCFTA trade in

► **Figure 2.4**

## Intra-African trade, 2000–2019



Source: Calculated by ECA from UNCTAD database.

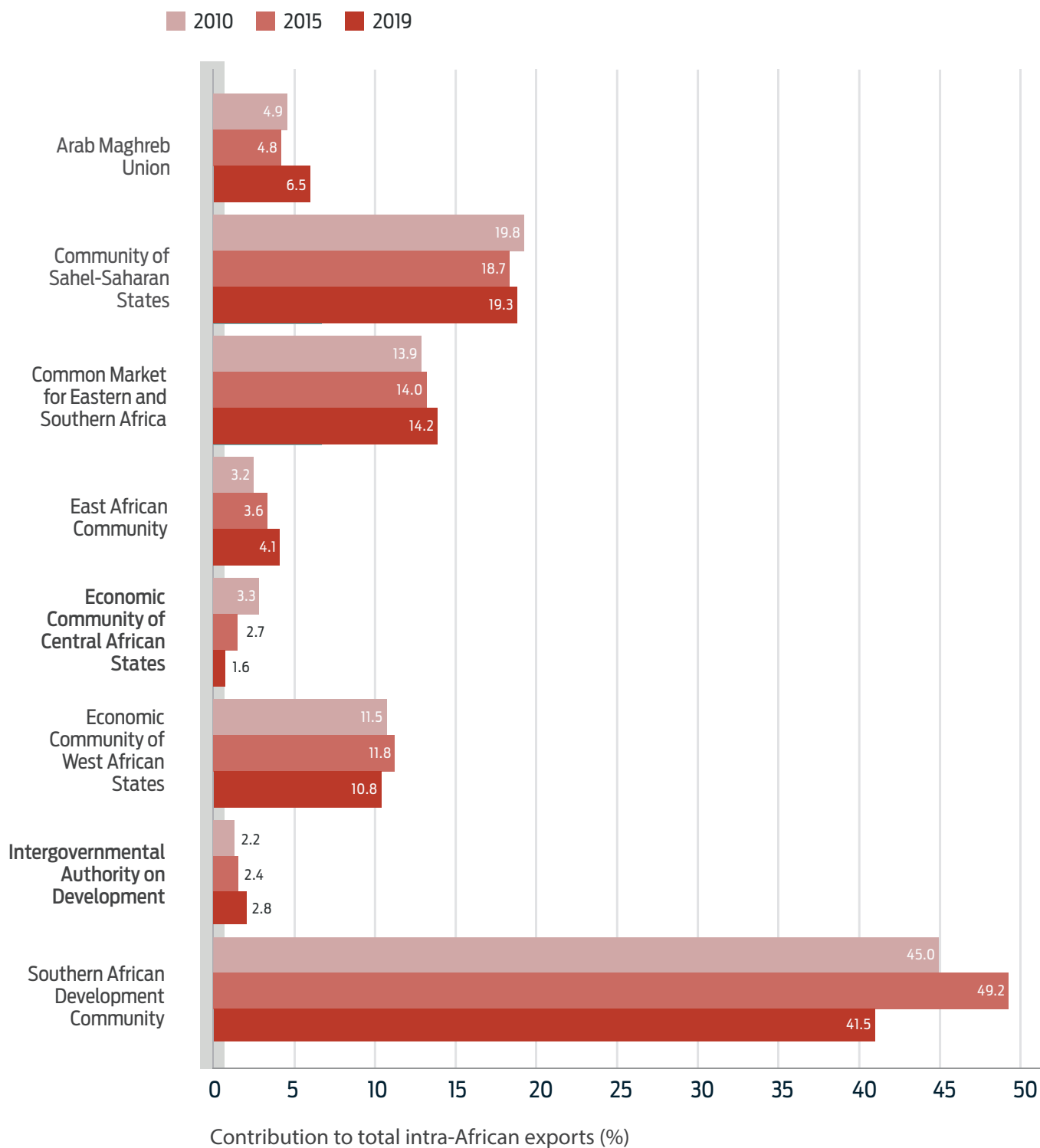
goods protocol was negotiated created challenges in the harmonization of regional and continental provisions. The diversity is problematic, since some negotiations that are not at REC level partly involve harmonizing various regional trade policies.

REC-FTA organizational structure and decisionmaking processes are determined by the treaties establishing the RECs, not by the AEC or the Abuja Treaty. The AU Summit of Heads of Government provides the political support, while the AU Council of Ministers provides technical

support on regional integration. Trade negotiations and implementation involving different technical departments are coordinated at the secretariat level. The trade department designs and negotiates a regional trade agreement, and many other departments are involved in implementation, calling for coordination and collaboration by the REC. This analysis also indicates that the AfCFTA should be operated within the framework of shared sovereignties of member States and the coordination and monitoring mechanisms of RECs in the economic and political realms.

► **Figure 2.5**

## REC contributions to intra-African imports 2010–2019



Source: Calculated by ECA from UNCTAD database.

### ***Performance of the RECs-FTAs and their potential to contribute to trade within the AfCFTA***

The effect of the RECs-FTAs on the trade performance of their respective RECs can be used as proxy to assess the suitability of leveraging their implementation mechanisms for the AfCFTA. The appraisal aims to understand REC trade patterns and contributions to broader continental trade development. It also assesses the determining factors of trade patterns and the institutional frameworks supporting integration. The appraisal supports the analysis of the AfCFTA's potential as a tool of trade reform in Africa. Complementing the descriptive analysis, an econometric analysis pursues the main drivers of each REC's trade performance and how they could be leveraged for the AfCFTA.

The analysis starts with the dismal contribution of Africa to world trade. African countries contributed 2 per cent of world exports and 2.3 per cent of world imports, on average, over 2000–2019 (figure 2.3). The AfCFTA has the potential to enhance this performance, and the RECs have an important role to play.

A major achievement of the RECs is their concerted effort to promote intra-regional trade, automatically enhancing intra-African trade. Intra-African exports increased from \$14 billion in 2000 to \$74 billion in 2019 (figure 2.4). During the same period, intra-African imports also increased from \$17 billion to \$81 billion. Between 2014 and 2016, intra-African trade dropped, but in 2017–2019, it increased again. AfCFTA implementation is expected to improve the trend by leveraging economies of scale, driving industrialization and diversifying exports through the harmonization of standards and the removal of tariffs, non-tariff barriers and regulatory differences.

The positive trend of intra-African trade can be the result of the contributions of various RECs intra-REC trade. SADC was the major contributor to intra-African trade in imports and exports over 2010–2019 (figure 2.5). SADC imports grew from 45 per cent of intra-African imports in 2010 to 49.3 per cent in 2015 and fell to 41.5 per cent in 2019. The CEN-SAD trend is the same, falling from 19.9 per cent

of intra-African imports in 2010 to 19.4 per cent in 2019. The ECOWAS contribution fell marginally from 11.6 per cent of intra-African imports in 2010 to 10.8 per cent in 2019.

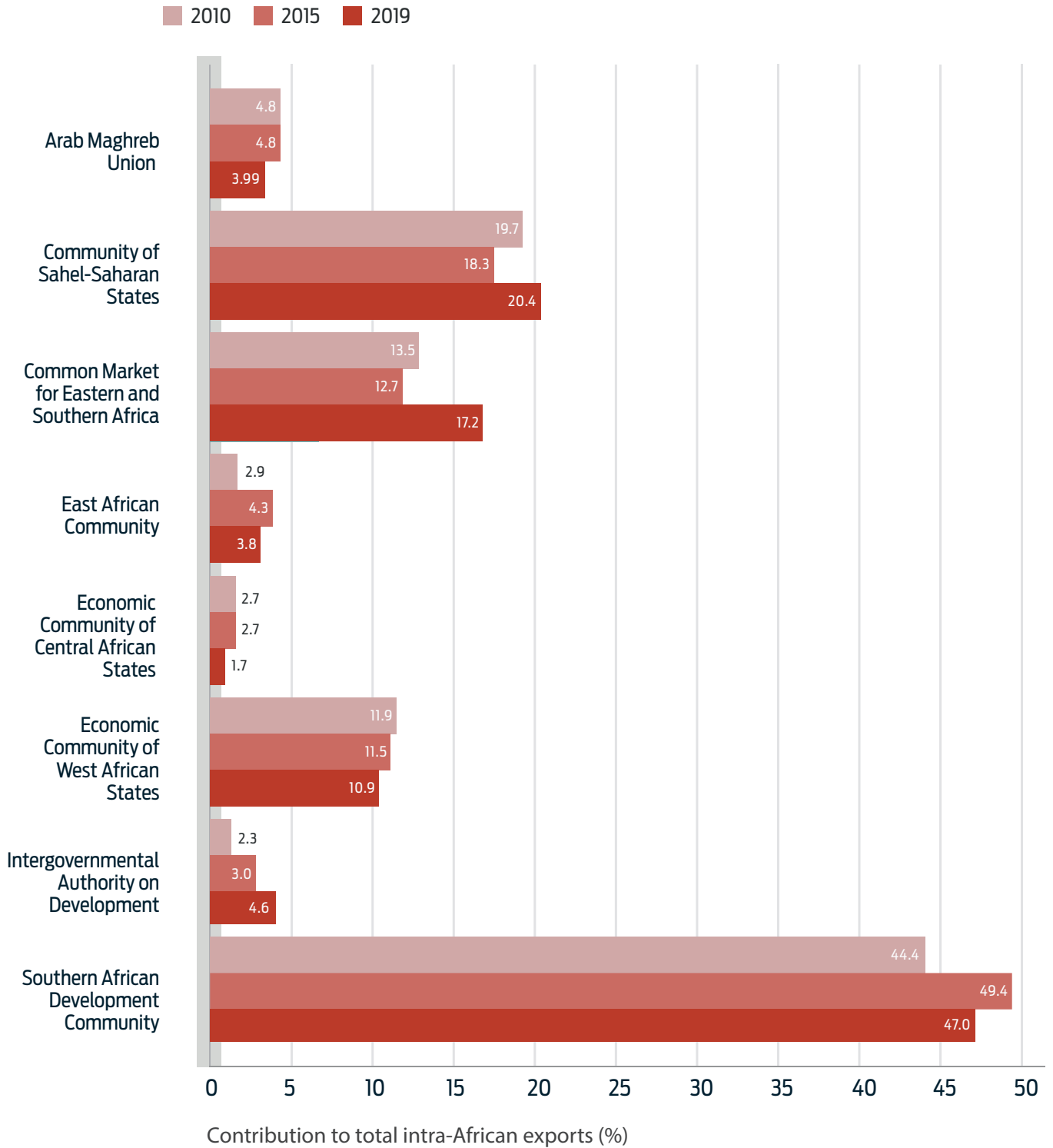
Of the RECs, SADC's intra-regional exports were the highest contributor to intra-African exports, averaging 47 per cent over 2010–2019 (figure 2.6). South Africa was the most diversified SADC country, with an export basket of more than 100 products.<sup>37</sup> Angola and Botswana had the least diversified economies, with two products—oil and diamonds—accounting for more than 95 per cent of their exports. Malawi relied on unprocessed tobacco and tea as its main exports, while Zambia depended on copper. Except South Africa, the countries in the region did not manufacture goods demanded by others in the region, generating little regional complementarity, weak linkages and little stimulus for industrialization.

ECCAS' intra-African exports contributed an average of 2.3 per cent to intra-African exports over 2010–2019 (see figure 2.6). ECCAS exports were dominated by fuels (oil, gas, coal), followed by minerals and metals. Oil made up 47.7 per cent, and refined copper and copper alloys were second, with 16.4 per cent. For Chad and Equatorial Guinea, raw materials represented 90 per cent of exports, while manufactured products accounted for just 8 per cent. Equatorial Guinea exported butane, phenols, alcohols, liquid propane, natural gas, and crude petroleum oils or bituminous minerals and halogenated and sulfonated derivatives, as well as ships, boats and floating craft. São Tomé and Príncipe's export products were heating and refrigeration equipment and spare parts for handling equipment. Cameroon's main export products were fruit, lumber, cocoa and cotton.

The EAC region's contribution to intra-African exports was around 3.7 per cent. Manufactured export products fell from 20 per cent of EAC exports in 2010 to 12 per cent in 2017.<sup>38</sup> For Rwanda agriculture accounted for 26 per cent of exports and minerals for 6 per cent, while for United Republic of Tanzania and Uganda, the main export products were stones, glass, minerals and metal.

► **Figure 2.6**

## REC contributions to intra-African exports, 2010–2019



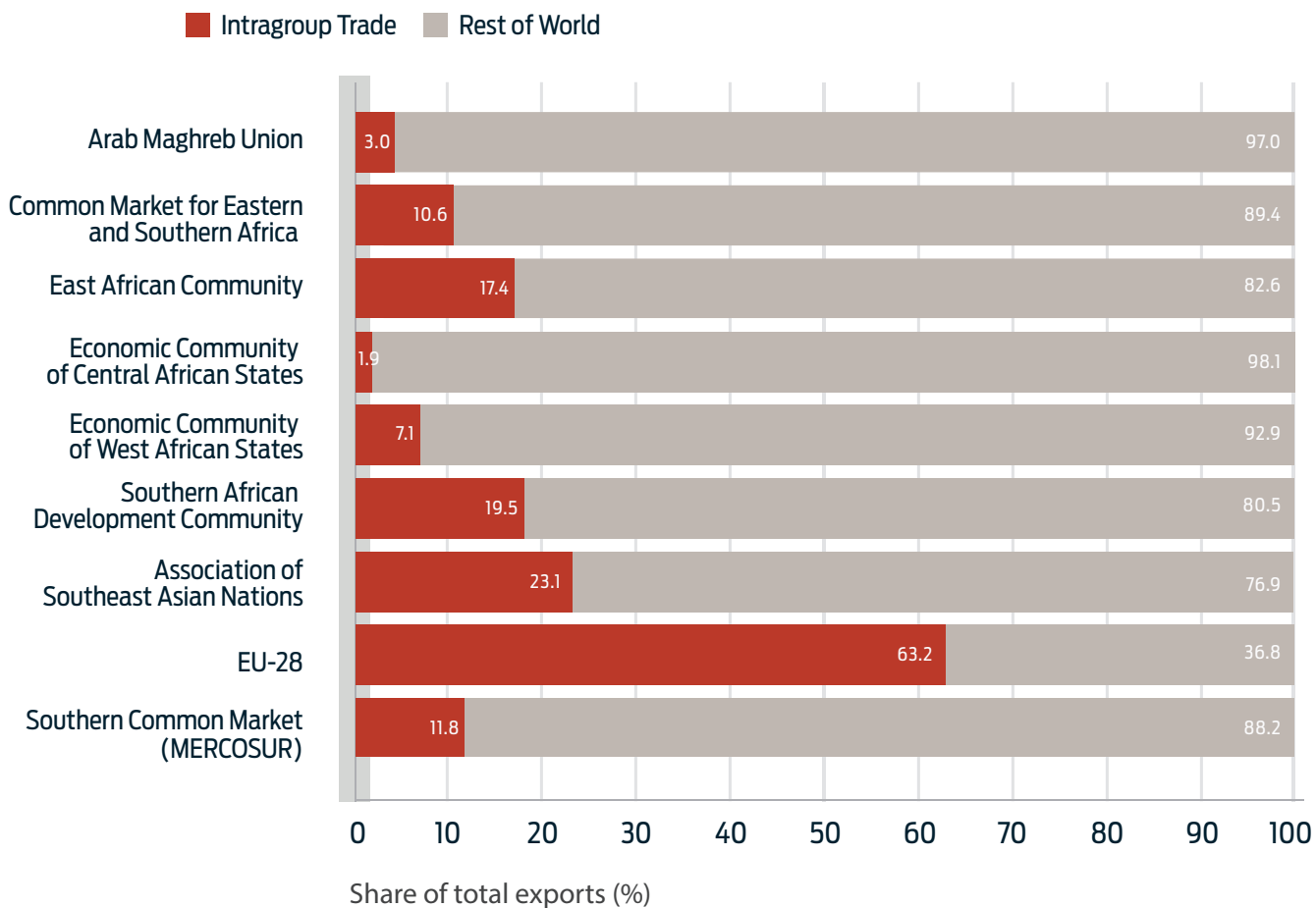
Source: Calculated by ECA from UNCTAD database.

The UMA contribution to intra-African exports fell from 4.8 per cent in 2010 to under 4 per cent in 2017 (see figure 2.6). Oil is the region's leading product (40.3 per cent of exports), followed by manufactured goods (33 per cent), food (13.1 per cent) and gold and metals (10.8 per cent). Agricultural raw materials did not appear in the average export mix, as they account for only 0.7 per cent of total exports. Algeria ranked 18th in the world for oil production, and Libya 21st—oil and its derivatives accounted for 99.1 per cent and 96 per cent of their exports, respectively. For Morocco and Tunisia, the major exports were manufactured goods (67.5 per cent of exports in Morocco and 75.5 per cent in Tunisia).

The exports of Morocco and Tunisia were limited to clothing, textiles, leather, car parts, chemicals and electrical switching equipment. Mauritania's exports were concentrated and dominated by gold (52 per cent), seafood (29 per cent), copper and iron ore.

The ECOWAS contribution increased from 8.1 per cent of intra-African exports in 1995 to 11.6 per cent in 2017. Five products accounted for 75 per cent of exports, and 12 products for 90 per cent, in 2017. The region specialized in exports of such raw materials as cocoa, cotton, uranium and mineral resources. Côte d'Ivoire is the world's leading producer of cocoa. Burkina Faso had a competitive advantage in

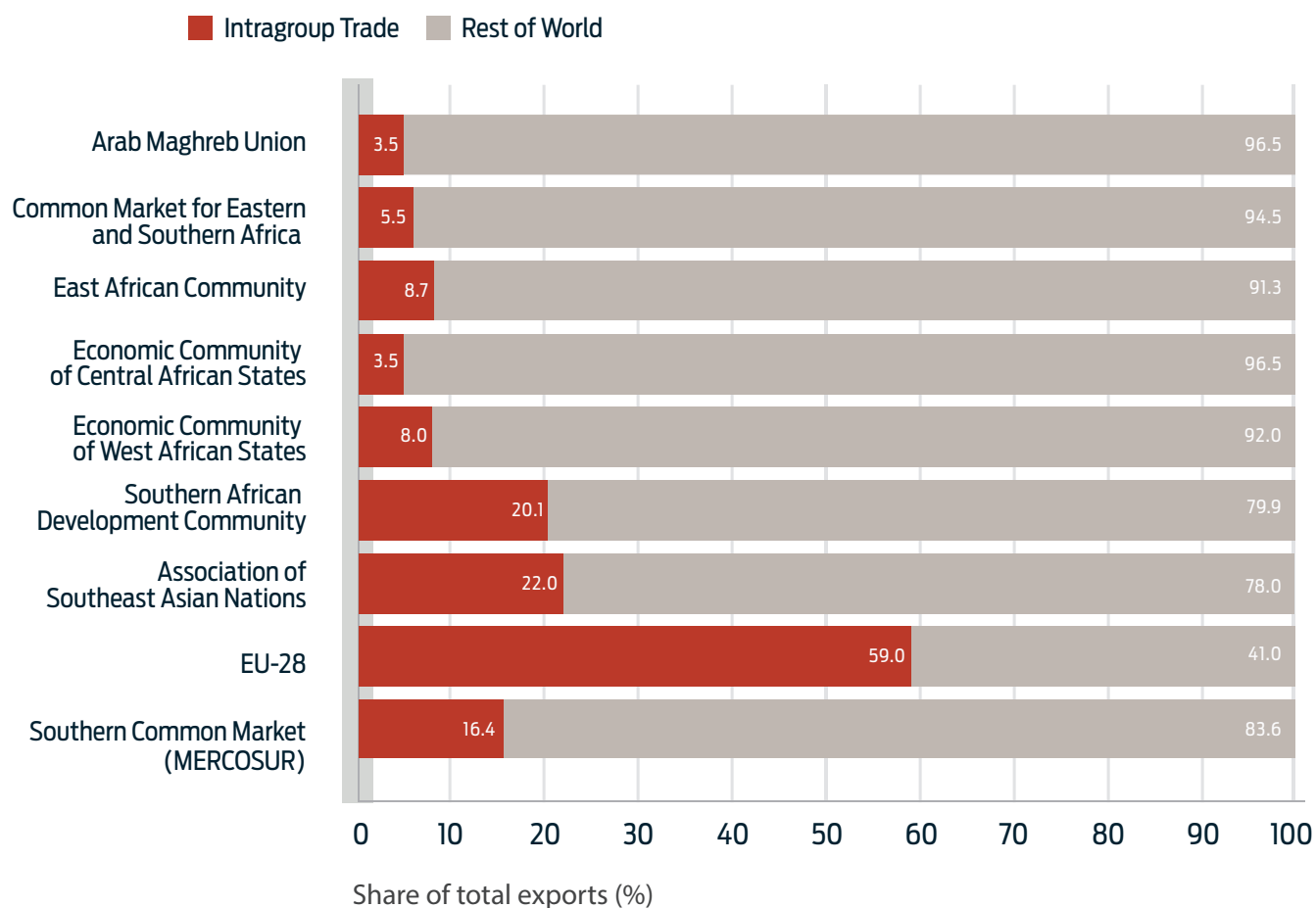
► **Figure 2.7**  
**Intra-regional exports as a share of total exports in Africa's RECs, MERCOSUR, the European Union and ASEAN**



Source: Calculated by ECA from UNCTAD database.

► **Figure 2.8**

## Intra-regional imports as a share of total imports in Africa's RECs, MERCOSUR, the European Union and ASEAN



Source: Calculated by ECA.

cotton, which made up 64 per cent of its exports in 2010 and 25.3 per cent in 2017. Ghana's main export product was cocoa beans, which made up 51.9 per cent of exports in 2010 and 25.3 per cent in 2017. In Nigeria, oil exports accounted for 86.5 per cent of total exports in 2010 and 81.5 per cent in 2017. Nigeria is the world's 12th leading producer of oil and Africa's largest. For ECOWAS's top 13 agricultural products, between 5 and 9 of the region's countries were among the world's 20 leading producers in 2017. The region has a near-monopoly, with more than 90 per cent of world production, of fonio, shea

nuts and yams. It also leads in producing cassava, cocoa beans and cashew nuts.<sup>39</sup> This analysis of the RECs' varying contributions to intra-African trade shows their varying potential and importance to continental trade.

Intra-regional trade is lower in Africa than in other regions outside Africa. In the European Union, intra-regional exports were 63.8 per cent of total exports in 1995–2015, and intra-regional imports were 59.7 per cent of total imports (figures 2.7, 2.8). In the Association of Southeast Asian Nations (ASEAN),



intra-regional exports were 24.2 per cent of total exports, and intra-regional imports were 22.7 per cent of total imports. In Africa, the EAC and SADC performed best. In the EAC intra-regional exports were 20.3 per cent of total exports, and intra-regional imports were 6.8 per cent of total imports. In the SADC intra-regional exports were 20.6 per cent of total exports, and intra-regional imports were 21.5 per cent of total imports.

In UMA, the intra-regional exports and imports were as low as 4.1 per cent and 2.5 per cent of the totals, respectively. On average, intra-regional trade in Africa, at around 13 per cent of total trade, is low compared with about 60 per cent, 40 per cent and 30 per cent in Europe, North America and ASEAN, respectively.

Another role of RECs-FTAs is that private sector operators use them as stepping-stones and frameworks for developing business initiatives and mobilizing investments. In ECOWAS, key respondents interviewed for this report thought that the ECOWAS platform facilitated the establishment of such enterprises as Asky, ECOWAS Bank Transnational and telecommunication companies. Dangote Cement Plc reaps the benefits of scale provided by the ECOWAS Trade Liberalization Scheme (box 2.1). According to key respondents from COMESA, EAC and SADC, most big manufacturing and services companies, such as Jubilee Insurance, Kenya Commercial Bank, MTN, Safaricom and Vodacom are major beneficiaries of free trade area provisions. Other beneficiaries are Bidco Company in Kenya and Uganda; Daqahlia Sugar Manufacturing and Refining Company in Egypt; East Africa Roofings in Jinja, Uganda; Egypt Starch and Manufacturing Company; Illovo Sugar Company in Eswatini, Malawi and Zambia; Lake Kariba Harvest Ltd Fish Farm, Zambia and Zimbabwe; Mabati Rolling Mills in Kenya; Mauritius Sugar Syndicate; Metal Fabricators of Zambia; Palfridge Limited Company in Eswatini and Zimplotw in Zimbabwe (boxes 2.2 and 2.3).

## ▶ Box 2.1

### Dangote Cement Plc

In the ECOWAS region, Dangote Cement Plc is accelerating cross-border manufacturing, investing \$5 billion to build an African cement empire. This includes a \$300 million greenfield cement plant in Senegal—contributing immensely to increased cross-border investments within the ECOWAS region and Africa—which recently began rolling products out into the local market. Cross-border investments—also described as Africans investing in Africa—are estimated to be growing by more than 30 per cent annually. In Senegal, the Dangote Cement project is a great for the country and the consumers. The government looks forward to more revenue from the sector and to more jobs for the local communities surrounding the plant, reducing poverty and generating more upstream and downstream activities. Small and medium-sized enterprises will be developed, with beneficial multiplier effects for Senegal's industries.

A representative for Dangote's Distributor West Africa said, "We are already exporting 18 per cent of the production to Mali, and the total export figure is 40 per cent if exports to other countries are combined. The demand for Dangote Cement is everywhere; we have people coming from Gabon and [Cabo Verde], and [Guinea-Bissau] to buy the product. Dangote Cement is also the biggest quoted company in ECOWAS and the only Nigerian company on the Forbes Global 2000 Companies."

In 2013, Renaissance Capital research credited Dangote Cement as a major force behind Nigeria overtaking South Africa as the biggest cement manufacturing country in Africa. As a strategy for capturing the ECOWAS regional market, Dangote already had cement plants in Ghana and Senegal, with good market prospects in other neighbouring countries such as Côte d'Ivoire, Liberia and Sierra Leone that lack limestone, a basic raw material in producing cement. The Dangote Group is consolidating its cement business across ECOWAS and the rest of Africa to reap the benefits of scale provided by the ECOWAS Trade Liberalization Scheme. According to Dangote, "We have 15 countries in the ECOWAS community, which is duty-free. [The export market] is big and profitable if you have capacity. Players should be encouraged to export if they have the capacity. We must also meet local consumption."

Source: CDTI, 2018

## ► Box 2.2

### The Madhvani Group of Uganda

The Madhvani Group of Uganda is using the EAC platform to develop into a widely diversified conglomerate. The group's current revenue in Uganda exceeds \$500 million, and its assets are valued at more than \$1 billion. The group is the largest private sector investor in industry in Uganda, with a substantial presence in soap, sugar, packaging, packaged tea, agriculture and agro-processing, and sweets and confectioneries. It also has a presence in hotels and tourism, information technology, and the distribution of industrial products and consumer durables. The Madhvani Group rehabilitated the Kakira sugar complex with financing from the World Bank, African Development Bank and Uganda Development Bank. It established a joint venture with Flower Direct of the Netherlands—called Chrysanthemums Uganda—which will grow 12 million stems for export to Europe. In packaging, the group's associated company Kioo Ltd. in Dar-es-salaam has the largest container glass plant in East Africa, and it has joint ventures in Uganda to produce bottle caps (Coleus Crowns) and cardboard cartons (East African Packaging Solutions).

Another focus area for the Madhvani Group is tourism, with activities centred in the main national parks of Uganda. The group operates the two leading safari lodges in the country—Mweya Safari Lodge in Queen Elizabeth National Park and Paraa Safari Lodge in Murchison Falls National Park. It rehabilitated a third lodge, Chobe Safari Lodge, to create another stunning destination on the Nile River. The group is planning a beach resort in Zanzibar and is taking advantage of regional opportunities for tourism investments in Kenya, Rwanda and United Republic of Tanzania. In keeping with its diversification strategy, it is examining options for joint ventures in the high-growth high tech sectors of telecommunications and related services.

*Source: Response from Key Informant Interview.*

## RECs-FTAs ACHIEVEMENTS AND CHALLENGES AND THEIR IMPLICATIONS FOR THE IMPLEMENTATION OF THE AfCFTA.

Some RECs-FTAs hope to reduce tariff charges on intra-REC imports of intermediate goods to zero. That has led some member States to reduce tariffs on intermediate imports. Tariffs in all RECs on imports of intermediate goods fell gradually over 2000–2019 (figure 2.9). In RECs with functional free trade areas, such tariff charges vary. In RECs without functional free trade area provisions (such as UMA and ECCAS) tariffs on intermediate imports were higher on average than in those with a functional FTA (COMESA, ECOWAS, EAC and SADC). Of the RECs with functional free trade areas, ECOWAS seems to have the highest weighted average tariffs.

## ► Box 2.3

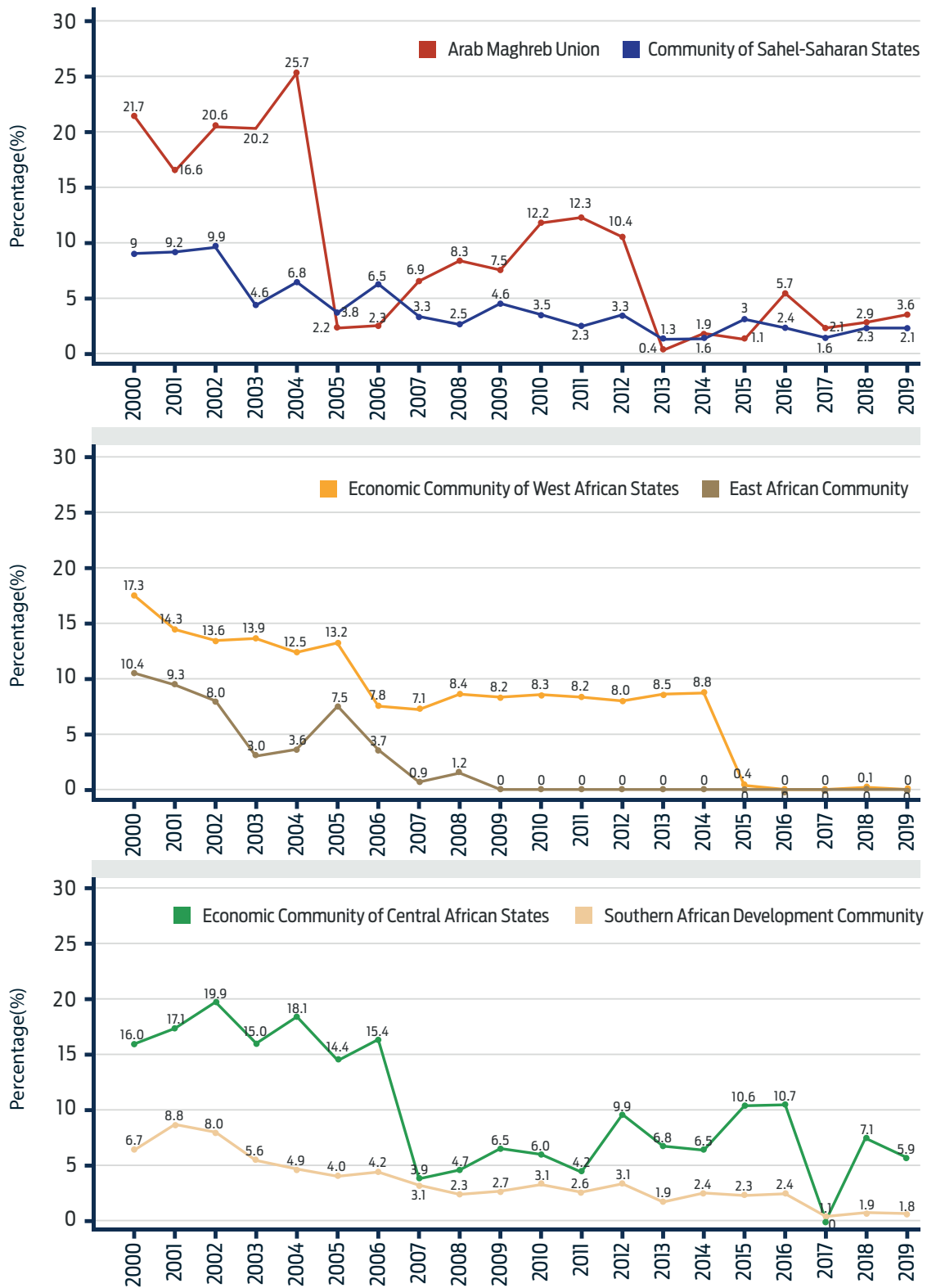
### Bakhresa Group of Tanzania

Bakhresa Group is one of the leading industrial houses in United Republic of Tanzania. Started humbly with a small restaurant in the port city of Dar Es Salaam in 1975, it has emerged as a family-owned business group that is prominent in the region. Its operations have spread in the Tanzania Mainland and Zanzibar and to Burundi, Kenya, Malawi, Mozambique, Rwanda, South Africa, Uganda and Zambia, with plans to spread its wings to other countries. The group now boasts of annual revenue of more than \$800 million and employs more than 8,000 people. The companies under its umbrella and its investments are primarily in logistics, packaging, entertainment, petroleum, food and beverages and marine passenger services.

*Source: Response from Key Informant Interview.*

► **Figure 2.9**

### Africa tariffs on intermediate goods, selected RECs, 2000–2019 (%)



Source: Computed by ECA from World Integrated Trade Solutions (WITS) database.

Note: Values for 2018 and 2019 are estimates and projected values.

► **Table 2.5**

## Trade costs index of RECs in Africa, 2000–2019

REC	2000	2005	2010	2015	2019a
UMA	186.79	213.30	171.24	152.41	156.95
COMESA	277.48	298.17	279.70	290.46	300.67
EAC	161.56	147.38	124.55	137.59	133.55
ECCAS	208.56	257.63	262.55	336.21	288.66
ECOWAS	229.42	236.25	230.21	225.08	223.30
IGAD	217.82	238.81	180.25	189.09	211.20
SADC	250.21	257.31	226.02	237.85	235.69
CEN-SAD	279.81	275.55	271.50	259.72	264.03

a. Estimate.

Source: Computed by ECA from the United Nations Economic and Social Commission for Asia and Pacific (UNESCAP)–World Bank Trade Costs database.

► **Table 2.6**

## Non-tariff component of trade costs index of RECs in Africa, 2000–2019

REC	2000	2005	2010	2015	2019a
UMA	74.78	201.23	164.86	146.60	145.14
COMESA	191.26	277.06	256.78	263.93	278.92
EAC	66.83	101.71	98.41	112.81	112.33
ECCAS	102.25	210.04	209.52	176.03	190.03
ECOWAS	221.25	177.21	187.61	178.15	179.58
IGAD	132.58	166.19	136.11	143.26	159.08
SADC	225.19	231.58	203.42	214.06	212.12
CEN-SAD	269.84	206.69	221.25	205.57	212.26

a. Estimate.

Source: Computed by ECA from the United Nations Economic and Social Commission for Asia and Pacific (UNESCAP)–World Bank Trade Costs database.

The positive values of tariffs on intermediate imports in some RECs results from member States' ineffective implementation of free trade area provisions. Due to preferences granted under the various RECs-FTAs, the trade costs fell significantly in some RECs for trade facilitation, tariffs and non-tariff measures, connectivity and logistics, and

geographical and cultural/historical/institutional factors in international trade. The trade costs index for ECOWAS declined marginally by 2.67 per cent over 2000–2019 (table 2.5). The index for EAC fell by 17.3 per cent during the same period. The index for IGAD fell by 3.03 per cent.

► **Table 2.7**

## AfCFTA ratifications by the member States of the AU-recognised RECs as of 5 December 2020

REC	Level of regional integration	member States that have ratified the AfCFTA	member States that have not ratified the AfCFTA	Remarks
UMA	Partial free trade area	Mauritania and Tunisia	Algeria, Libya and Morocco	2 of 5
CEN-SAD	Partial free trade area	Burkina Faso, Central African Republic, Chad, Côte d'Ivoire, Djibouti, Egypt, the Gambia, Ghana, Kenya, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Togo and United Republic of Tunisia	Benin, Cabo Verde, Eritrea, Guinea-Bissau, Libya, Morocco, Somalia and Sudan.	17 of 25
COMESA	Common market	Democratic Republic of Congo, Djibouti, Egypt, Eswatini, Ethiopia, Kenya, Mauritius, Rwanda, United Republic of Tunisia, Uganda and Zimbabwe	Burundi, Comoros, Eritrea, Libya, Madagascar, Malawi, Seychelles, Somalia, Sudan and Zambia	11 of 21
EAC	Partial customs union	Kenya, Rwanda and Uganda	Burundi, South Sudan and United Republic of Tanzania	3 of 6
ECCAS	Free trade area	Angola, Chad, Cameroon, Central African Republic, Democratic Republic of Congo, Equatorial Guinea, Gabon, Rwanda and São Tomé and Príncipe	Burundi and Congo	9 of 11
ECOWAS	Partial customs union	Burkina Faso, Côte d'Ivoire, the Gambia, Ghana, Guinea, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo	Benin, Cabo Verde, Guinea-Bissau and Liberia	11 of 15
IGAD	Partial free trade area	Kenya, Djibouti and Ethiopia.	Eritrea, Somalia, South Sudan, Sudan and Uganda.	3 of 8
SADC	Free trade area	Angola, Democratic Republic of Congo, Eswatini, Lesotho, Mauritius, Namibia, South Africa and Zimbabwe	Botswana, Madagascar, Malawi, Mozambique, Seychelles, United Republic of Tanzania and Zambia.	8 of 15

Source: Compiled by the ECA.

Other RECs showed fluctuations in the trade cost index. For instance, the index for SADC grew by 2.83 per cent over 2000–2005 but fell by 9.11 per cent in 2019. COMESA and ECCAS had the same pattern. In 2000 and 2019, some RECs such as CEN-SAD, COMESA and SADC had extremely high trade cost indexes compared with others, while EAC and UMA had the lowest indexes.

RECs that had near-zero weighted tariffs on intermediate goods had remarkable increases in the non-tariff component of trade cost index (table 2.6)—and non-tariff barriers related to trade costs tend to be more binding than tariffs. In COMESA, the non-tariff component grew by 68.08 per cent, and in EAC, by 45.83 per cent over 2000–2019. In SADC, it grew by 4.27 per cent. Regulatory and administrative bottlenecks add to the costs of regional trade and

transportation in SADC countries, which rank below the top 100 in customs service efficiency. Customs services affect logistics quality, competence and even timeliness. Limited clearance system interoperability and connectivity between countries are aggravated by border gates that do not operate 24 hours a day, lengthening queues and increasing transit times for goods. In 2015, delays at the border between South Africa and Zimbabwe cost truck operators at least \$400 a day in additional driver time, petty cash, parking fees and the opportunities lost to serve more clients due to longer roundtrips, according to estimate by transporters.<sup>40</sup> Concerted efforts by RECs to eliminating import tariffs must be supported by the total elimination of non-tariff barriers for trade promotion and development to be meaningful in Africa.

Other REC achievements that could be leveraged to support AfCFTA implementation directly relate to trade facilitation. To one key respondent for this report, implementing the ECOWAS Passport and biometric identification cards is a model achievement for the free movement of persons. COMESA and EAC have made commendable achievements in removing foreign exchange restrictions, taxes on foreign exchange, import and export quotas and roadblocks and easing customs formalities.

The litmus test for REC commitment to the AfCFTA is the implementation of provisions by their member States that requires monitoring compliance and domesticating the AfCFTA agreement. Domestication requires four steps: ratification, transformation, incorporation and the legislation of provisions. Each step is defined individually by the agreement, the force of the provisions and the institutional system of each member State. Each REC currently has a combination of AfCFTA State Parties and non-state parties affecting its involvement in implementing the agreement (table 2.7).

RECs' involvement starts with extending their overseeing and nudging roles in their respective free trade areas to the AfCFTA and using their positions to encourage member States to speedily ratify the agreement. Key respondents for this study reported that RECs face many impediments in performing these roles, including weak inter-agency

coordination and inappropriate monitoring and evaluation systems. Weak compliance and enforcement mechanisms limit the ability of private entities and member States to challenge each other in case of non-compliance.

These challenges are traceable to legal systems, among other sources. For instance, SADC has two dominant legal cultures—civil law and common law. member States that conform to the civil law culture follow a monist theory of international and domestic law,<sup>41</sup> while those that conform to common law follow a dualist theory.<sup>42</sup> The ECOWAS region has states with French and British legal systems. In Francophone member States with a monist legal system, regional laws and regulations can be appealed in the courts of member States. This is not the case in Anglophone member States with a dualist legal system, where international laws must be promulgated at the national level to have the force of law. RECs' multiple legal systems are a major impediment to supra-nationalism, since the regional institutions are expected to operate in accordance with the whim and caprice of member States.

Intra-African trade shows significant positive relationships with RECs' Gross Domestic Product (GDP) per capita and significant negative relationship with weighted average tariffs of all RECs except UMA and IGAD.<sup>43</sup> Those results indicate that substantial trade cost reductions and production increases in member States led to improved intra-African trade. In addition, the results show that tariffs and GDPs of exporter and importer countries were significant determinants of intra-African trade during 2010–2017. Five RECs created trade significantly—CEN-SAD, EAC, ECOWAS, SADC and UMA, while others neither created nor diverted trade significantly. According to nearly all key respondents for this study, member States did not fully explore the potential of REC-FTA provisions for promoting and increasing domestic and regional production and diversification. Intra-Africa exports as a share of GDP hardly increased beyond a low 4 per cent in that period. That trade pattern was influenced by the continent's historical links with the outside world. More than 80 per cent of exports went to markets outside Africa, with more than 50 per cent going

to the European Union and the United States.<sup>44</sup> To some key respondents, that pattern was traceable to member States' inadequate capacity to produce intermediate and final products and to other supply-related constraints.

Several RECs actively support the creation of regional value chains. Most notably, the Action Plan for the SADC's Industrialization Strategy prioritizes six key clusters, based on the comparative advantages of each country and the region as a whole: consumer goods, automobiles, agro-processing, pharmaceuticals, modern services, and minerals extraction and beneficiation. In ECOWAS, Burkina Faso, Côte d'Ivoire and Mali launched the first cross-border special economic zones to attract private sector investment in agribusiness, agro-industry and the mining sector. Yet, most such opportunities remain untapped. Regional sourcing in Africa remains too weak—under 15 per cent on average. In Southeast Asia, in contrast, intra-regional sourcing accounts for more than 80 per cent of exports in industries such as textiles and apparel, motor vehicles, and computer, electronic and optical products.<sup>45</sup>

RECs in Africa are heterogeneous. The share of intra-Africa value addition in exports is highest in EAC at 25 per cent. It is only 4 per cent in UMA. In certain cases, regional value chains are weakened by poor trade facilitation policies that give non-African countries room to take advantage. For example, the mining value chain in Southern Africa relied on South Africa as a supply hub for capital goods in the past, but that position was challenged by more competitive imports from non-African countries.<sup>46</sup> Agro-based value chains remain limited to primary processing. Activities such as marketing, branding and design could be key to capturing higher value addition.

Another trade facilitation challenge is compliance with rules of origin requirements and implementation. The EAC Time Bound Programme study<sup>47</sup> clearly showed that all member States except Rwanda impose measures equivalent to tariffs on intra-REC trade, including additional taxes and charges that affect import costs or import unit values. The additional taxes and charges accounted for 17 per cent of the number of non-tariff barriers.

## ► Box 2.4

### Trade facilitation issues

#### *Dangote cement in Ghana*

Accusations of unfair competition challenge the ECOWAS rules of origin. The entry of Dangote Cement to Ghana under the ECOWAS Trade Liberalization Scheme raised serious protests from local producers accusing Dangote of selling at below-market prices. The people of Ghana see Dangote cement as Nigerian cement, not ECOWAS cement. An officer of Ghana's ministry of trade said, "We cannot stop the competition because of [the ECOWAS Trade Liberalization Scheme], but we must make sure they are playing by the rules so that they don't have an unfair advantage over our people."


#### *Agro-products in Mali*

According to the Union of Large Industrial Enterprises of Côte d'Ivoire, it is difficult for millers to export and sell goods in Mali. The Nigeria Customs Service does not recognize the ECOWAS certificate of origin but requires a National Agency for Food and Drug Administration and Control document, and it will not allow banana to enter Nigeria. In Burkina Faso, the Burkina Faso Livestock Act makes food from livestock subject to value-added tax. To a dried food manufacturing company in Côte d'Ivoire, "The main challenge of [the ECOWAS Trade Liberalization Scheme] is that many border agencies are not duly and adequately informed of [its] benefits". On many occasions, exports products are blocked and delayed, especially in Mali. Moreover, massive importation of products from third countries, especially pasta from Turkey and Morocco, and the protection of certain sectors through the free zone will make ECOWAS products uncompetitive.

#### *Rules of origin for cement in Sierra Leone*

A case in Sierra Leone aptly illustrates the difficulty in complying with ECOWAS Trade Liberalization Scheme rules of origin. The country temporarily suspended cement imports from Senegal on the suspicion that the cement was essentially from Turkey, since the processing in Senegal allegedly did not meet originating requirements under the ECOWAS Trade Liberalization Scheme. While the Sierra Leone authorities sought clarification, the authorities in Senegal retaliated by raising barriers to imports from Sierra Leone.

Source: CDTi, 2018.



Since AfCFTA rules of origin are at the negotiation and design stage, they should be aligned to the existing REC rules.

United Republic of Tanzania imposed the most additional taxes and charges (40 per cent of the region's total), followed by Uganda (30 per cent), Kenya (20 per cent) and Burundi (10 per cent). EAC certificates of origin were often not recognized at borders, partly because of countries' mutual distrust. United Republic of Tanzania accounted for 50 per cent, Uganda for 30 per cent, and Kenya and Rwanda for 10 per cent each of the reported cases. Also, in ECOWAS, the ECOWAS Trade Liberalization Scheme task force reported multiple certificates of origin across member States. There are complaints that some countries issue country-specific certificates rather than issuing regional ones. The misinterpretations of protocols lead to some certificates of origin carrying names of countries rather than ECOWAS (box 2.4).

The Imani Development Trust surveyed the prevalence of non-tariff barriers in COMESA, EAC and SADC. Its report underscores that prevailing barriers tend to be arbitrary, qualitative and non-transparent. Non-acceptance of SADC or COMESA certificates of origin is due to health protection, vested interests, suspicion of the authenticity of declaration, temporary bans on selected products and non-notification of changes of verifying signatures. Non-tariff barriers tend to divert imports from regional partners to non-regional partners.<sup>48</sup> Most reported non-tariff barriers include rules of origin, customs procedures, competition policy and infant industry protection, and technical barriers to trade and sanitary and phytosanitary measures. The complaints by Namibian importers and exporters against other regional trading partners related to complicated customs procedures and imports and exports quotas. In SADC, non-tariff barriers mainly concern trade administration measures imposed by South Africa on other SADC members.

## **AREAS OF CONVERGENCE AND DIVERGENCE OF VARIOUS RECs-FTAs AND THE AfCFTA**

Under the AfCFTA, member States agreed to 90 per cent liberalization of tariffs on trade in goods, with the remainder designated as sensitive (7 per cent) or exclusive (3 per cent). According to the schedules, developing economies can liberalize sensitive products over 10 years, while least developed countries (LDCs) can take 13 years. Countries can also take advantage of a 5-years-or-less transition period before liberalizing sensitive products. The RECs have different scopes, and the pace of tariff liberalization is not steady. In COMESA tariff liberalization is 100 per cent, while in SADC it is 85 per cent, in EAC more than 95 per cent and in ECOWAS 72 per cent.

A key area of convergence is that both RECs and the AfCFTA recognize the platform provided by the WTO-Trade Facilitation Agreements (TFAs). The AU and RECs are making concerted efforts to implement various provisions of WTO TFAs to reduce roadblocks, harmonize and simplify customs and transit procedures and documentation, establish one-stop border posts and adopt integrated border management processes. The AU implementation strategies include simplifying and harmonizing customs and transit procedures among Member Countries. The REC strategies also include enhanced understanding of the WTO TFAs for better implementation, the development of regional committees on trade facilitation, the facilitation of domesticating WTO-TFAs by member States and the development of regional customs modernization programmes and joint border posts.



Potential areas of divergence are the application of duties or other charges with equivalent effects and the ineffective application of rules of origin. The imposition of additional taxes and charges affects import costs and values.<sup>49</sup> Since AfCFTA rules of origin are at the negotiation and design stage, they should be aligned to the existing REC rules. The negotiation and design of rules of origin should focus on determining the type and ideal way(s) of applying rules of origin during the implementation of the AfCFTA. An underlying challenge is the lack of a binding common standard for designing appropriate rules of origin. The WTO agreement on rules of origin does not prescribe preferred rules (see annex 6 on the complementarity, differences and implications of AfCFTA rules of origin for ECOWAS rules). The AfCFTA faces complexity in aligning interests across RECs. Flexibilities and variable geometry are needed, and compromise required, especially in recognizing REC rules of origin. The basic questions are:

- Does the design of the AfCFTA rules of origin support the mutual benefits of REC stakeholders?
- Can current and future AfCFTA institutions serve the functions and purposes of RECs-FTAs?

The answers to these questions should determine the appropriate design of the AfCFTA rules of origin, which should require the harmonizing the RECs' rules. The structure should be able to facilitate regional value chains, consider preferential rules of origin and draw lessons from the processes of negotiating rules of origin in RECs. For instance, it may be practical to map out the best model of rules of origin application but there are challenges. This is because RECs neither have the same rules of origin nor use the same guidelines. The foundations of some REC rules used a general approach that include change of tariff heading, or the proportion

of domestic value added or other specific technical requirements that the product needs to satisfy. **But** the AfCFTA rules use a mix of a general rules-based approach and a product-specific approach in which each product has its own primary rules of origin.

REC rule of origin regimes span a wide range of methods in determining preferential origin status. For example, COMESA and EAC use similar regimes but differ in the number of exceptions to the base rule and the annexes covering the products for which product-specific rules apply. SADC rules are based on the structure of the EU rules of origin. Due to differences, the AfCFTA approach is expected to strain the RECs' institutional infrastructure in supporting their member States during AfCFTA implementation. This may be followed by increasing expectations by member States and disagreements between them on the make-up of preferential rules of origin based on an across-the-board mechanism. The purpose of RECs' differentiating preferential and non-preferential goods could thus be compromised if the AfCFTA does not recognize preferential goods.

Another major issue relates to the complexity of implementing the regional rules of origin. COMESA and ECOWAS had simpler and clearer rules that were common across products, according to the Restrictiveness-index (R-index).<sup>50</sup> In general, those rules are straightforward, transparent, and predictable and require little or no administrative discretion. The ECOWAS R-index of 1.87 and COMESA 2.8 were lower than the 4.4 of SADC and 5.1 of the North American Free Trade Agreement.

Although rules of origin may be simple and transparent, their implementation in practice may be highly restrictive. For example, to use the ECOWAS rules, companies must obtain the certificate of origin valid for six months for every industrial product that they wish to export. Doing

so requires approval from the relevant ministries, departments and agencies of member States and the ECOWAS Commission. That dual approval creates a long wait between application and approval of the certificate of origin. The process discourages exporters from using “preferences of short duration”, and they seek ways to fast-track their exports even at a higher cost.<sup>51</sup>

The possibility of not using the same harmonized system of goods and statistical nomenclature as in all RECs may be another challenge. The headings describe goods according to the legislation and specify where particular customs duty rates apply—depending on the origin of the goods or other trade policy. So, critical components for harmonized rules of origin are common nomenclature, a management institution, and a technical unit to support the definition and implementation of the rules. The negotiation process of the Tripartite Free Trade Area could serve as a lesson for designing the AfCFTA rules of origin. The key challenge is largely twofold: how to agree to common rules applicable to the full free trade area bloc and how to apply the product-specific “list rule” annexed to the free trade area rules of origin protocol.

The AfCFTA rules of origin negotiations can be used to address these challenges. Progress is needed on finding common ground for the rules of origin protocol and general provisions. For the AfCFTA, the outcome of deliberating any product-specific rules of origin would likely have significant impacts on traders and would be informed by many national and regional sensitivities. The negotiators should reflect on the joint harmonization work programme of the WTO and World Customs Organization (WCO) relating to non-preferential rules of origin, which could forecast the challenges to be expected from the complexities of harmonizing product-specific rules under the AfCFTA.

## CONCLUDING REMARKS

The analyses of REC treaties, the AfCFTA and AEC show that the RECs’ mandates are in line with the AEC’s aspirations—along different dimensions and at different speeds—and support the modalities for implementing some AfCFTA provisions. Some RECs’ treaties contain the objectives of the AEC but leave big gaps in the legal instruments by which they should operate and in following AEC policy decisions. So, approaches to leverage the RECs in implementing the AfCFTA require well-thought-out frameworks and institutional arrangements.

Building an interface among RECs, AfCFTA and AEC becomes a vital strategy. To manage the interface, AU member States should be willing to cede sovereignty on trade-related matters and allow the AfCFTA protocols precedence over some aspects of their national laws. RECs instruments, institutional arrangements and decision-making processes can be leveraged to serve the implementation of the AfCFTA.

Efforts to implement the AfCFTA need to recognize the major factors that have constrained the effective implementation of various RECs-FTAs, such as poor infrastructure, high transaction costs and low levels of industrialization. Boosting industrialization should be a priority of the AfCFTA through developing and deploying various interface mechanisms supporting regional value chain projects or FTA-induced investment in all regions. Enterprise development should be supported by a one-year certificate of origin, consistent tax regimes and a continental digital trade solution like the COMESA digital trade solution.

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# Chapter 3

## The REC Trade in Services Liberalization Agenda and the AfCFTA

**C**an the services trade liberalization mechanisms of various regional economic communities (RECs) provide useful lessons for the implementation of the African Continental Free Trade Area (AfCFTA)? To address that question, this chapter will identify and map potential areas of convergence and tension in trade in services negotiations. It will also articulate policy actions for harmonizing the liberalization of the services sector. Since the AfCFTA negotiations on trade in services are ongoing, the analysis focuses on REC mechanisms for addressing barriers to trade in services and assesses their potential role for an approach to integrating services trade in the AfCFTA.

The AfCFTA agenda for trade in services is more complex than the trade in goods agenda. It involves simultaneous production and consumption and sometimes requires direct contact between producers and consumers. The General Agreement on Trade in Services (GATS) of 1995 contains several “general obligations and disciplines,” including most-favoured nation (MFN) treatment and transparency. The GATS distinguishes four modes of supply: cross-border supply of services, consumption abroad, commercial presence and presence of natural persons. At the World Trade

Organization (WTO) level, some African Union (AU) member States have schedules of specific commitments that identify the services for which they can guarantee market access, national treatment and limitations. The state parties can use that schedule to assume additional commitments on specified standards or regulatory principles as applied to each of the four modes.

Globally, Africa is a small player in the exchange of services—with only 2 per cent of the world’s exports in 2018.<sup>52</sup> Africa’s share of services exports is smaller than that of most other regions except the Middle East. Despite that, capturing all the trade in services activity in the continent is difficult since much of it is in informal sectors.<sup>53</sup> Moreover, statistics greatly underestimate the role of services in international trade, including African trade. It has been argued that African countries have been reluctant to incorporate provisions liberalizing trade and investment in services in their regional trade agreements before the AfCFTA because they saw little economic gain from trade in services.<sup>54</sup>

In the framework of the RECs’ trade in services liberalization, regional strategy focuses on identifying regional priorities for member States’ developmental aspirations. Doing so can include the following:



- Defensive interests—safeguarding universal access to specific services with regional objectives, such as promoting corporate ownership by nationals (empowerment) or specific business interests (small business development) by specific approaches and commitments.
- Promotion of regional competition and sector development—seeing services liberalization as an opportunity to promote national and regional competition in certain sectors or to introduce new technology or skills.
- Offensive interests—identifying opportunities for regional services and service providers in third party countries.

Regional trade in services integration policy has both negative and positive forms. Negative integration involves collective agreement on the national abolition of discriminatory measures. Positive integration involves the development and application of harmonized and common policies and institutions to fulfil economic and welfare objectives (rather than remove discrimination). Negative policy integration does not intrude on domestic jurisdictions, but positive policy integration does.

## **ADDRESSING BARRIERS TO SERVICES TRADE IN THE REGIONAL ECONOMIC COMMUNITIES**

Various RECs are implementing distinct regional integration programmes in trade in services.<sup>55</sup> The nature and extent of common regional services policy and regulatory measures can highlight areas for continent-wide approaches and can reveal the economic and trade policy environments in the REC services sectors to help identify policy options for the AfCFTA. This discussion focuses on potential areas of convergence and divergence between REC services liberalization agendas and the AfCFTA. Various REC treaties and protocols address the liberalization of trade in services (table 3.1).

► **Table 3.1**

## Treaties and protocols dealing with trade in service of regional economic communities in Africa.

Regional trade area	COMESA	EAC	ECCAS	ECOWAS	SADC
<b>Co-operation in infrastructure and services</b>	Chapter 11, Co-operation in the Development of Transport and Communications, articles 84-98	Chapter 17, Co-operation in Infrastructure and Services, articles 89-101	Chapter 9, Cooperation in Infrastructure and Transport and Communication, articles 47-49	Chapter 7, Transport and Communication, articles 32-33	Chapter 7, Cooperation, article 21, Infrastructure and Services
<b>Free movement of persons, labour, services, right of establishment and residence</b>	Chapter 28 Free Movement of Persons, Labour, Services, Right of Establishment and Residence, article 164	Chapter 17. Free Movement of Persons, Labour, Services, Right of Establishment and Residence, articles 104.1-2	Chapter 5, Freedom of Movement, Residence and Right of Establishment, article 40.1	Chapter 10, Cooperation in Immigration, article 59	Chapter 3 Objectives, article 5.d
<b>Co-operation in tourism and wildlife management</b>	Chapter 19, Co-operation in Tourism, article 138	Chapter 20, Co-operation in Tourism and Wildlife, article 115	Chapter 14, Cooperation in Tourism	Chapter 7, Tourism, article 34	Protocol on Development of Tourism, 1998
<b>Cooperation in energy</b>	Chapter 13, Co-operation in the Development of Energy, articles 106-109		Chapter 11, Cooperation in Energy	Chapter 5, Energy, article 28	
<b>Development of services</b>	Chapter 20, Development of Services, article 148			Vision 2020	
<b>Investment promotion and protection</b>	Chapter 26, Investment Promotion and Protection			ECOWAS Common Investment Market, ECOWAS Investment Code	Chapter 7, Co-operation, article 21.c, Trade, Industry, Finance, Investment

Source: Updated from Kigombe (2012).

### East African Community

The East African Community (EAC) used the Common Market Protocol to commit member States to liberalization in services sectors (table 3.2; see annex 8 for the treaties underlying EAC services liberalization). The EAC works through a positive list approach and by scheduling only sectors that countries are willing to open. In 2015, Burundi

scheduled 74 commitments, Kenya 63, Rwanda 101, Tanzania 59, and Uganda 98. Barriers to trade in services before the Common Market Protocol led to article 16 (5) of the protocol, which committed member States not to introduce new restrictions on services.

Even with that progress, all EAC member States are non-compliant with their commitments.

► **Table 3.2**

## Number of services subsectors committed to liberalization by EAC member States in the Common Market Protocol

member States/ Subsectors	Burundi	Kenya	Rwanda	Tanzania	Uganda	South Sudan
<b>Business</b>	31	15	32	7	33	NA
<b>Communication</b>	6	17	21	17	21	NA
<b>Distribution</b>	3	3	4	2	4	NA
<b>Education</b>	4	4	5	4	5	NA
<b>Financial</b>	9	12	15	16	11	NA
<b>Tourism and Travel</b>	4	3	4	4	4	NA
<b>Transport</b>	17	9	20	9	20	NA
<b>Total subsectors</b>	74	63	101	59	98	NA

Source: EAC (2014, 2016)

According to the EAC Common Market Scorecard of 2014 and 2016, a review of more than 500 key sectoral laws and regulations of the member States identified at least 63 measures that were inconsistent with commitments. Restrictions on services trade persist, though they were scheduled for elimination before 2015. Such measures were most common in United Republic of Tanzania (17) and Kenya (16), followed by Rwanda (11), Uganda (10) and Burundi (9). Burundi's strong performance is partly due to some of its sectors not yet being regulated through sectoral legislation.

About 75 per cent of the identified measures are national treatment-related, discriminating against services or service suppliers of member States. The rest affect MFN treatment, involving preferences for service suppliers outside the EAC. Nearly all inconsistent measures concern multiple modes of services supply, sectoral legislation and laws that cut across all sectors. The major bottlenecks result from the institutional framework for common market legislation, which is not yet in place in all member States (see annex 8). Little progress has been made towards implementing the Common Market Protocol, and only limited coordination has been made in implementing schedules.

### ***Southern African Development Community***

In the Southern African Development Community (SADC), the 1996 Protocol on Trade, which came into effect in 2000, forms the legal basis for reform in trade in services (see annex 9 for reform efforts and major challenges to them, such as the Regional Tourism Organization of Southern Africa established in 1998). Under the protocol, modelled on the GATS, four sectors were identified for priority negotiation, and the Support to the SADC Regional Integration and Multilateral Trading System was established.

member States also made commitments under the GATS. Eight member States made horizontal commitments to supply services through commercial presence. Seven made commitments in financial services—all in the banking sector. Only three countries made commitments in insurance, and one made horizontal commitments related to foreign investment. Several commitments were made in the travel and tourism sector, indicating its importance in the region and its potential to increase foreign direct investment flows and promote economic growth.



The major bottlenecks relate to the wide scope of the Protocol on Trade. Achieving equivalence, harmonization and standardization for the region's education and training systems is difficult. Moreover, providing reliable and sustainable energy efficiently is another challenge. The ability to harmonize regional and national policies, strategies and programmes in various areas of trade in services is weak.<sup>56</sup>

### ***Common Market for Eastern and Southern Africa***

Progress in the Common Market for Eastern and Southern Africa (COMESA) is in the context of the COMESA treaty. A regional telecommunications network was established, along with an infrastructure programme tied to the Tripartite Agenda.<sup>57</sup> COMESA Regulations on Trade in Services (2009) aim to promote member States' sustainable development by eliminating barriers to trade in services, enhancing cooperation to improve the markets' competitiveness, expand the depth and scope of commitments to reduce trade barriers in line with GATS article V and increasing, improving and developing the export of services. Each member State set out a schedule of specific commitments under article 26 of the regulations. The schedule includes terms, limitations and conditions on market access; conditions and qualifications on national treatment; undertakings relating to additional commitments; the time frame for implementation; and the date of entry into force. member States have an opportunity to modify or withdraw any commitment to remove restrictions in its schedule at any time after three years from the date when that commitment enters into force.

The major bottleneck relates to the staggered implementation of relevant protocols by member States (see annex 10). By the end of March 2010, only four member States had signed the Protocol on Free Movement of Persons, Labour, Services and Right of Establishment.<sup>58</sup> member States have

limited capacity for implementation and policy coordination. Integration programmes receive low priority, and some member States lack the ability to take the integration agenda forward. Overlapping memberships in the COMESA, SADC, EAC and the Intergovernmental Authority on Development (IGAD) obstruct regional integration and the full implementation of a common market.

### ***Economic Community of Central African States***

The Economic Community of Central African States (ECCAS) treaty strives for freedom of movement; rights of establishment; energy cooperation; cooperation in tourism; cooperation in transport and communications; cooperation in the development of human resources, education, training and culture and the simplification and harmonization of trade procedures in the region. Article 3, in particular, concerns the freedom of movement and right of establishment of nationals of member States within the region.

Challenges are related to difficult economic geographies and low population densities. The region has the least developed power sector in Africa, with utilities that are inefficient at securing revenues and have high distribution losses. Surface transportation is slow and expensive due to cartelization and restrictive trucking industry regulations. Road connectivity is limited between members of ECCAS and the Economic and Monetary Community of Central Africa (CEMAC), dwell times at two key ports are long and passenger and freight traffic are low. The region is known for poor railway performance. Air transport markets are dwindling, and air connectivity is poor. The information and communications technology backbone is in its early stages, access rates are low and prices are the highest in Africa. The use of information and communications technology is modest, and mobile phone roaming is far less developed than in other parts of Africa (see annex 11).



The AfCFTA services trade liberalization could be the RECs' progress in liberalization a much-needed boost, particularly if the AfCFTA avoids the pitfalls that have kept the RECs from attaining their full potential.

► **Table 3.3**

### ECOWAS member State commitments in trade in services

Sectors	Number of member States with commitment	member States with commitment
Environmental services	2	Guinea and Sierra Leone
Health services	3	The Gambia, Ghana and Sierra Leone
Cultural services	5	The Gambia, Ghana, Senegal, Sierra Leone and Togo
Business	6	Benin, Côte d'Ivoire, Ghana, Guinea, Senegal and Sierra Leone
Communication	6	Côte d'Ivoire, the Gambia, Ghana, Sierra Leone and Togo
Distribution	1	Senegal
Educational services	4	The Gambia, Ghana, Mali and Sierra Leone
Financial services	7	Benin, Côte d'Ivoire, the Gambia, Ghana, Nigeria, Senegal, and Sierra Leone
Tourism and travel	13	Benin, Burkina Faso, Côte d'Ivoire, the Gambia, Ghana, Guinea, Guinea-Bissau, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo
Transport	9	Benin, Côte d'Ivoire, the Gambia, Ghana, Guinea, Niger, Nigeria, Senegal and Sierra Leone
Construction	5	Côte d'Ivoire, the Gambia, Ghana, Sierra Leone and Togo

Source: ECOWAS Commission (2017)

## ***Economic Community of West African States***

Liberalization of services in the Economic Community of West African States (ECOWAS) depends on regulatory cooperation, harmonization and mutual recognition. The approach differs from the scheduling of commitments undertaken at the WTO. It aims to further broaden and deepen services integration in the region and enhance member States' competitiveness. Through various trade in services protocols and supplementary protocols, the ECOWAS continues to broaden coverage and reduce the limitations on market access and national treatment across services sectors. The main platforms are the ECOWAS treaty provisions (table 3.3) and the implementation of the ECOWAS Trade in Services Agreement (ETISA). There was no specific regional approach until July 2016 when a Regional Services Trade Policy was announced, based on a service policy review requested by ECOWAS in the context of United Nations Conference on Trade and Development (UNCTAD) support for the AfCFTA Protocol on Trade in Services.

The transport, financial and tourism and travel sectors generated the most interest in the region. In the tourism and travel sector, for instance, Nigeria's film industry employs about 300,000 people directly and more than 1 million indirectly, generating between \$500 million and \$1 billion in revenues annually. The sector is patronized across the continent and outside the continent by the diaspora community.

The implementation of the ECOWAS Common Investment Market (ECIM) is improving the investment environment. The region adopted the Supplementary Act on Investment Rule, which provided the legal framework for the treatment of investment and further harmonization of investment policies and codes.

The ECOWAS Supplementary Competition Act applies to the traditional areas of competition policy. It covers mergers and acquisitions, the abuse of dominant market position, and agreements and concerted practices involving the restraint of trade. It contains provisions on state aid and

public enterprises couched in flexible language that preserves policy space for the member States to pursue development policies.

The main challenges are non-ratification, non-implementation of protocols and a poor regulatory framework. Non-compliance with the Protocol on Free Movement of Enterprises and Establishment creates practical difficulties for economies and hampers increases in services trade in the region.

The analysis has shown that regional collaboration for services trade liberalization in Africa, despite the ambitious goals that many RECs set for themselves, has so far been hampered by weak commitment from member States (see annex 12). The RECs have not reached higher levels of liberalization due to inadequate trade-related infrastructure, a poor enabling environment and non-implementation of regional protocols and decisions. The AfCFTA services trade liberalization agenda could give the RECs' progress a much-needed boost, particularly if the AfCFTA avoids the pitfalls that have kept the RECs from attaining their full potential.

## **POTENTIAL OF THE AFRICA CONTINENTAL FREE TRADE AREA APPROACH TO SERVICES TRADE INTEGRATION**

Given the challenges to the regional approach to liberalizing trade in services, the AfCFTA platform can be used to develop concrete steps to prioritize the services sector, its regulation and reform. An assessment of the current approach of reforming regulatory regimes across regions will help increase the potential leverage of the services sector and of services reform for promoting continental integration. In the assessment, the analysis of existing regional services policy is central. Not all services sectors across Africa are necessarily ready for immediate or full liberalization. The AfCFTA can consider allowing the RECs to coordinate the ideal sequencing of liberalization and the determination of the priority sectors in their member States.

A shortcoming of African economic integration has been a linear model that relegates trade in services to the final stage. However, the AfCFTA Protocol on Trade in Services changes that model by negotiating trade in services concurrently with trade in goods. That agreement would be the largest ever concluded if it is implemented effectively. The protocol's scope is as wide as the GATS's. It stipulates the pursuit of "trade liberalisation which is in line with Article V of the GATS" (article 3(2e)). Like the GATS, the protocol operates at two different levels. The first applies across the board to measures affecting trade in services, including the MFN principle (article 4) and transparency (article 5). The second applies to sector-specific commitments by member States on market access and national treatment—but addressing only the general obligations, since members' specific commitments that will determine the impact of the Protocol have not yet been finalized.

The protocol's article 7 introduces special and differential treatments by noting that State Parties should consider challenges faced by other State Parties. It grants flexibilities, such as transitional periods, case by case to accommodate special economic situations and State Parties' development, trade and financial needs. The provisions go beyond the usual distinctions based primarily on economic measurements to allow for "differentiated opportunities" and "targeted supports" based on such other factors as conflict status, resource endowments, proximity to ports, the level of industrialization and the size of the agricultural sector. The protocol also incorporates the need for "special consideration" in (progressive) services liberalization for technical assistance and capacity building and for "critical sectors of growth, social sustainable economic development". The AfCFTA agreement allows the Council of Ministers to waive obligations based on "exceptional circumstances" (article 15) and includes other flexibilities for balance of payment difficulties (article 14), general exceptions (article 15), security exceptions (article 16), modification of schedules and concessions (article 23) and technical assistance and capacity building (article 27).

The AfCFTA approach will be more efficient than regional ones if it recognizes that meaningful services liberalization requires focusing on the regulatory environment. The environment determines access for foreign suppliers (market access) and the conditions for their local operations (national treatment). The approach should build on the substantial reform already achieved in the regional negotiations to phase out trade-restricting measures against foreign and national services and suppliers. MFN treatment, the rules on market access and national treatment are negative integration tools for the AfCFTA Protocol on Trade in Services. However, implementing those articles may be difficult because of member States' diverse regulatory measures. Harmonization can address the needed convergence of multiple national regulatory policies and standards.

Harmonization could create a secure framework to enhance competitiveness by ensuring a level playing field for local and foreign services and suppliers. The Organization for the Harmonization of Business Law offers a good example—it promotes integration and economic development among its 17 participating countries and a secure legal and judicial environment in Africa.<sup>59</sup> Mutual recognition can also be easily achieved through the harmonization of standards. The Protocol on Trade in Services recognizes the importance of harmonization for the fulfilment of mutual recognition in certifying services suppliers (article 10(1)).

EAC and the West African Economic and Monetary Union (WAEMU) apply mutual recognition of professional qualifications among their member States. EAC signed four mutual recognition agreements (MRAs), covering accountancy (2011), architecture (2011), engineering (2012) and veterinary services (2016). Also, WAEMU implemented MRAs relating to accounting, engineering, legal and medical services, among others. Other RECs, such as COMESA and SADC, are making efforts to develop MRAs.<sup>60</sup> The implementation of MRAs through harmonization can be lengthy and costly and requires confidence and trust building.<sup>61</sup> It also

requires supportive institutional structures—a legal and institutional framework for monitoring and support at both the national and the REC level.

The pursuit of policy coherence and coordination should go beyond the services sector. Many African economies are undergoing structural change as agriculture cedes its preeminent role to the services sector, but both agriculture and manufacturing remain important. The trend towards services should be incorporated in the integration and economic strategies to recognize services' role in facilitating production and boosting exports. The draft agreement establishing the Tripartite Free Trade Area contains guidelines useful for trade negotiations (in the agreement's annex 12) and provides insight on liberalization. The process should also allow member States to exchange offers and requests on basis of schedules of specific commitments, including for sectors and subsectors that have been liberalized under REC programmes. The AfCFTA can consider and adopt the TFTA measures to simplify the regulatory framework.


The least complex and least costly reforms that would generate significant benefits warrant attention. To discover those, criteria might include the status of existing reforms in RECs, the existence of regional policies or institutions, multilateral commitments at the WTO level and the selection of specific services sectors for liberalization under the AfCFTA. Interim agreements or phasing in the terms of commitments might be attractive to RECs. Pre-commitments can preserve policy space while allowing time to establish regulatory frameworks before liberalization or to strengthen regional service suppliers before they are exposed to competition.

The AfCFTA approach should raise awareness about consumer protections in regional trade-related institutions, services-specific institutions and the private sector. Highlighting the ECOWAS Coordinating Committee on Consumer Protection (ECCCP) initiative and establishing a network of consumer protection agencies for information sharing could strengthen consumer protection.

The AfCFTA approach could also consider sector-specific modalities. The transport services sector is marked by insufficient policies and regulations and the prevalence of informal operators. The approach should devise ways to step up the implementation of transport programmes; the adoption and enforcement by states and organizations of the UNCTAD/International Trade Centre/World Customs Organization/WTO standards, regulations and mechanisms on trade and transport facilitation; and the establishment of a system for real-time management of road transport information, procedures and documents. Various regional regulations need to be evaluated for relevance.

Africa needs to boost its air shipping by reducing airport taxes and fees and by improving safety regulations and compliance monitoring. Guaranteeing air rights to continental carriers—rather than distorting markets by supporting national carriers—could promote air traffic growth. Air transport in Africa suffers from high entry and operating costs, strong global competitors and fragmented markets, limiting the economies of scale. For example, African airlines carry fewer than 3 per cent of passengers in Africa, with 80 per cent of total traffic flown by non-African airlines.<sup>62</sup> Liberalizing routes for just 12 African countries would increase passenger traffic by 81 per cent, create more than 155,000 jobs and add \$1.3 billion (0.1 per cent) to the continent's annual GDP.<sup>63</sup> African airports and navigational service providers are typically government-owned monopolies and contribute to higher operating costs for cargo airlines. For instance, landing a 200-tonne aircraft in Johannesburg costs around \$2,500, and in Nairobi around \$1,500, compared with the cost at London's Heathrow Airport of \$500.<sup>64</sup> Safety standards also poses major challenges. Carriers from 13 African countries are on the European Union's blacklist due to the countries' inability to guarantee safety checks.<sup>65</sup>

The AfCFTA approach should focus on regulating aerospace management, consumer protection and airline safety. Regional coordination can give new impetus to the sector, since the main hurdles



For financial services, the AfCFTA should focus on harmonizing banking supervision, encouraging banks to engage in cross-border activities and instilling greater confidence in the stability of the regional financial markets, especially interbank deposits.

stem from inappropriate national regulation and government inaction despite the enabling regional and continental protocols and institutional arrangements. The Single African Air Transport Market (SAATM), the best platform to achieve this objective, aims to create a single, unified air transport market in Africa and to liberalize civil aviation in support of the continent's economic integration agenda. The SAATM is to be created through the immediate implementation of the 1999 Yamoussoukro Decision. The granting of fifth freedom rights for scheduled air services permits a carrier to fly between two other African countries on a flight originating or ending in its own country. As of February 2021, 34 African countries had agreed to open their skies—they collectively represent 80 per cent of the African aviation market.

For financial services, the AfCFTA should focus on harmonizing banking supervision, encouraging banks to engage in cross-border activities and instilling greater confidence in the stability of the regional financial markets, especially interbank deposits. The ECOWAS Common Investment Market (ECIM) is a good regional initiative for the AfCFTA to consider. To boost financial integration, each REC can be encouraged to establish a common banking passport and private sector credit reporting. In addition, legal and judicial support for banking transactions should be strengthened, including the legal protection of secured transactions, enforcement of collateral and the registration and enforcement of property rights and debentures. A common approach to accounting standards,

professional qualification and regulation would also promote financial integration. Afreximbank, the leading and coordinating institution of the Pan-African Payment and Settlement System (PAPSS), has a formidable role to play. The integration of cross-border payment systems can promote innovation and competition in the financial sector while reducing costs for trading firms.<sup>66</sup>

Although all the RECs considered liberalization of trade in services at some point in their formation, only EAC achieved tangible reform. Much hope is now placed on the AfCFTA services agenda to coordinate reform across the RECs and member States. Liberalizing the cross-border movement of Africans can drive economic activity. Promoting tourism can boost productive transformation, particularly in small island developing states. In Seychelles, for example, visa-free travel boosted tourist arrivals by 7 per cent annually during 2009–2014, helping the country to graduate to high-income status. In the EAC, the free movement of persons increased African travel to Rwanda by 22 per cent and grew Rwanda's bilateral trade with Uganda and Kenya by 50 per cent.<sup>67</sup>

member States and the RECs need to take advantage of the Export Trading Companies (ETCs) launched by the Afreximbank in June 2019. The ETCs assist relatively small companies with export potential and integrate them into global value chains in both trade in goods and trade in services. The ETCs are critical to aggregating products produced by small and medium-sized enterprises, smallholder

farmers and even large companies and connecting them with the market. If that model is included under the AfCFTA, it will facilitate harmonization of the regulations for trade in services and so reduce costs of trading. The PAPSS addresses fragmented payment and settlement systems, limited access to foreign currencies and the lack of convertibility of most currencies in the continent. PAPSS would reduce transaction costs for intra-regional payments and, it is hoped, formalize a large share of the \$40–50 billion in informal intra-African trade. The RECs should collaborate with Afreximbank and the AU to ensure that a regulatory framework governing intra-African payment and settlement is included under the AfCFTA trade in services.

## CONCLUDING REMARKS

This chapter focused on the mechanisms RECs use to address barriers to trade in services and assessed the role of the AfCFTA approach. The analysis shows that regional efforts are limited by the low commitment of member States and inconsistent alignment of regional policies with national regulations. The AfCFTA approach can be efficient for meaningful services liberalization if it recognizes the need to harmonize the regulatory environment. Harmonization should gather multiple national regulatory policies and standards. It should also devise ways to build on existing regional negotiations and take advantage of other pan-African institutions.

The Afreximbank's innovation ecosystem includes the following digital platforms: PAPSS, Trade Information Portal, Regulatory Platform, Customer Online Application African Collaborative Transit Guarantee Scheme and Africa Customer Due Diligence Repository Platform (MANSA Platform). The ecosystem should work with all African financial institutions to boost their capacity to issue transit bonds. The AfCFTA secretariat should collaborate with Afreximbank to complete the study on Informal Cross Border Traders and Creative Africa Exchange quickly. That study would identify financial interventions that Afreximbank could finance and policies that governments may need to put in place to formalize informal cross-border trade.

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# Chapter 4

## Multiple Trade Regimes: Whose Rules Should Apply?

**T**he African Continental Free Trade Area (AfCFTA) and the regional economic communities–free trade areas (RECs–FTAs) coexist, as analysed in chapter 2, with the AfCFTA agreement, in article 19, calling for a “deeper level of integration”. How should that be understood? This chapter offers an interpretation of article 19 and proposes measures for harmonizing trade regimes to reduce the cost of complying with regulations. These steps will clarify the implications of building the interface among regional economic communities (RECs), RECs–FTAs and the AfCFTA to implement the AfCFTA agreement effectively.

Africa is home to at least 30 regional trade areas (RTAs). Of 55 African countries, 48 belong to more than one REC (see table 2.2). The multiple memberships make it difficult for countries to

contribute and honour their obligations to all their RECs. Because the rules associated with each RTA are unique, the arrangements are costly and cumbersome. Compliance requirements are duplicated and complicated for countries belonging to several RECs, since the same traded product can be subject to different sets of rules in different countries of origin and destination. Overlapping membership hinders trade standardization and enforcement.

There are conflicting views of the effect of the multiple memberships on regional integration. According to UNECA (2004:41) “membership in several communities could maximize the benefits of integration and minimize the losses by spreading risks. This could be especially important for countries with weak economies, which could benefit from gains in each REC”.

States with multiple memberships in the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC) and the Southern African Development Community (SADC) embraced the Tripartite Free Trade Area (TFTA) with ease. The presence of the West African Economic and Monetary Union (WAEMU) in the Economic Community of West African States (ECOWAS) region expedited the negotiations for the ECOWAS common external tariff, which used the WAEMU common external tariff as a platform for design and implementation.<sup>68</sup> Perceived hegemony in some RECs can make the pay-offs or benefits of membership problematic. For instance, some members of the SADC keep memberships in other RECs to maximize benefits from the other arrangements. WAEMU coexists with ECOWAS to protect the interests of smaller Francophone countries, giving them a common voice in integration negotiations to limit the dominance of the larger Nigeria, which has been outside the ECOWAS economic partnership agreement since 2014. Or in Southern Africa, South Africa and Namibia were reluctant to participate in the Southern African Customs Union (SACU) economic partnership agreement negotiations in 2007. Regional transactions in Africa's complex political landscape will face further challenges.

UNECA (2006) called for the rationalization of the RECs to overcome some of the challenges. This provided the main impulse for the AU recognizing only eight RECs. A key interviewee for this report stated that the overlapping memberships were a challenge to using "RECs-FTAs as the building block for the AfCFTA". The potential challenges, discussed in chapter 2, are:

- Complexity of multiple and different tariff regimes and non-tariff barriers.
- Difficulty in establishing common external tariffs and harmonizing standards.
- Difficulty in interpreting and enforcing rules of origin at borders.
- Poor development of tariff liberalization under the different agreements.

Muhabie Mekonnen Mengistu (2015) argued that the eradication of multiple memberships is desirable due to such associated problems as overlapping authorities, contradiction and duplication of activities, problems of policy harmonization and high burdens of management and finance imposed on the member States. The proliferation of RECs and consequent issues due to overlapping mandates and multiple memberships have long been viewed as impeding economic integration in Africa, contradicting and even undermining using RECs as pillars of the African Economic Community (AEC).<sup>69</sup> The multiplication of treaties and addition of signatory member States create a web of conflicting laws that need complex interpretations to be implemented. If the conflicts are unaddressed, disputes among parties could become more frequent sources of confusion and administrative dilemma.<sup>70</sup> Countries join RECs for economic, political and geographical contiguity reasons—one key respondent for this study suggested that some do so without examining the associated obligations posed by conflicting policies or the difficulties of absorbing regional policies into national legislation.<sup>71</sup>

A dichotomy between wider and deeper economic integration—encountered by the AU in coping with a wider and more diversified membership—led to variable geometry and variable speed becoming core principles of the AfCFTA. "Variable geometry" refers to situations where subgroups pursue deeper and more intensive integration and cooperation on specific issues, while other members remain permanently outside those initiatives. "Variable speed" means that member States are bound by common objectives, but some are allowed a longer time to meet them: some states can move ahead, and others can catch up when they are ready.

Variable geometry and subsidiarity could provide a basis for distributing powers and responsibilities across national and regional organizational structures according to their comparative advantages for performing different functions.<sup>72</sup> Mengistu (2015: 424) argues that "the variable geometry of regions also makes the African integration process more challenging and the existence of too many regional

organisations in the African integration process have made it difficult to meet the objectives of regional blocs, especially when countries which have different [histories] and levels of integration are coming together". Conversely, in relation to the AfCFTA, Teye (2019) argues that the Agreement will be unsuccessful if all countries are not on board, with accepting the principle of variable geometry as crucial.

In building the interface among the AfCFTA, RECs and RECs-FTAs, these principles may lead to multiple economic groupings with overlapping memberships and different integration objectives. The question is, how realistic is the implementation of the AfCFTA and the interface with RECs and RECs-FTAs where countries have multiple memberships in AU-recognized RECs?

## ARTICLE 19 OF THE AfCFTA

An explicit objective of the AfCFTA is to "resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes."<sup>73</sup> Achieving that would require, among other things, the consolidation of various trade arrangements in Africa. Article 19 of the AfCFTA agreement guides the relationship between the AfCFTA and other intra-African trade instruments, including Africa's pre-existing free trade areas (FTAs), by providing for the resolution of incompatibilities or inconsistencies. In such cases, the AfCFTA is to prevail, but with one crucial exception: RECs that have achieved "among themselves higher levels of regional integration" are to persist or maintain such higher integration.<sup>74</sup> The article thus allows REC trading arrangements to persist as islands of deeper integration within the AfCFTA system. So, the AfCFTA does not, in the short term, consolidate the RECs-FTAs.

Some RECs—AU-recognized ones and others—have deeper integration than the AfCFTA. For instance, EAC, ECOWAS, the Economic and Monetary Community of Central Africa (CEMAC) and the Southern African Customs Union (SACU) have functioning customs unions, COMESA has an FTA, and SADC also has an FTA with some exclusions. How will treatment differ between REC-FTA member States and other AfCFTA State Parties?

To examine that issue, this study asked key respondents to provide their basic understanding of article 19. One key respondent from a REC thought that under article 19, the AfCFTA shall prevail to the extent stated in the text about the MFN and preferential treatment clauses. Another thought article 19 seeks to make the AfCFTA superior to REC treaties and so to engage in treaty suppression. That implies that the agreement sees regional integration as insufficient to warrant seamless integration into the continental agreement and gives the agreement's provisions superiority over any conflicting provisions: the AfCFTA takes a pre-eminent position in resolving supra-national conflicts.

Another respondent thought the AfCFTA agreement provisions would have precedence over any individual or regional arrangement, unless an exception is clearly mentioned and agreed by the AfCFTA or AU. A public sector respondent thought the agreement has a greater influence over its components—the RECs and member States. Yet another thought that article 19 establishes a principle of hierarchy to prevent conflicts of text and to guarantee that the AfCFTA provisions take precedence over conflicting regional texts. On the other hand, a private sector respondent believed that, to avoid trade disputes, RECs should be the ones to address inconsistencies with the AfCFTA.

#### ► Box 4.1

### Implications of AfCFTA article 19: The EAC case

According to the EAC Single Customs Territory Procedures Manual, which lays down the main principles governing the single customs territory (SCT), imports into the EAC are subject to the common external tariff (CET).<sup>1</sup> Given that Kenya, Rwanda and Uganda are the only EAC members that have ratified the AfCFTA, the EAC's CET will likely be weakened by these countries' implementation of the AfCFTA tariff concessions, at least to the extent of resulting in deviations to the EAC's CET. However, country-specific deviations from the EAC CET are allowed. The EAC provides for "stay application" schemes under which the Council of Ministers may allow a member to deviate from the CET rates for one year. Country-specific waivers are granted by the council case by case, if justified by some injury or threat of injury, upon request from the member State. In practice, such deviations have been limited. However, possible AfCFTA tariff concessions by EAC members that have ratified the AfCFTA agreement could cause them to seek substantial deviations, weakening the CET. Since deviations are approved by consensus, consent by EAC members that have not ratified the AfCFTA to a wholesale and indefinite stay of application are unlikely. Article 19(1) can be invoked to argue that the EAC regime has a higher level of economic integration than the AfCFTA. The alternative would make EAC's CET regime impractical, in effect annulling the EAC customs union.

1. EAC (2014).

Source: Response of Key Informant Interview

The varying interpretation of article 19 could increase the cost of regulation compliance during AfCFTA implementation. The challenge of managing the interface can be analysed in three major contexts:

- The internal coherence of the AfCFTA measures and provisions.
- The AfCFTA protocols, annexes and provisions versus RECs' trade instruments.
- Variable ratification of the AfCFTA by REC member States.

The huge gap in understanding the implications of article 19 for the implementation of the AfCFTA and its coexistence with the RECs-FTAs makes the analysis important. The starting point is the drafters' intent that all AU member States ratify and domesticate the agreement. Even if that happened, challenges would occur because many phrases of article 19 are not defined, so they can be interpreted in various ways.

The "regional agreement" referred to in the article is not qualified, so the scope of the article could be much wider than the economic integration agreements. There is no distinction between an implementation outcome that creates a conflict and one that creates an inconsistency: "conflict" and "inconsistency" seem to be cobbled together with the same meaning and are not defined in the AfCFTA agreement. The word "conflict" could be restricted to "conflict of laws," but a State Party could face a contradiction with the laws of more than one jurisdiction. "Inconsistent" means lacking agreement among parts, or incompatible with another fact or claim.<sup>75</sup> It is not certain whether the drafters of the AfCFTA had a different meaning in mind.

The word “Notwithstanding” in paragraph 2, article 19 creates a specific, yet conditional exception to Article 19 (paragraph 1) as it relates to RECs, regional trading arrangements and customs unions. Markedly, these phrases, which are central to the obligations of signatories, are not defined, allowing heterogeneous interpretations and implementation, as well as preventable disputes or specific trade concerns (box 4.1). The categories of regional integration agreements referred to in article 19(2) do not follow the Balassian sequential forms of economic integration.<sup>76</sup> So, a trade-related agreement such as SACU Customs and Excise Legislation may be found to have achieved a level of economic integration that is higher than the AfCFTA because the impact of the legislation is trade-related (box 4.2).<sup>77</sup> The contextualisation of article 19 also bears on the applicability of article 5(b), which treats the RECs as building blocks for the AfCFTA<sup>78</sup>.

A key respondent from a REC would see MFN as applying to specific measures, whether tariffs or non-tariff measures. So, the interpretation of what constitutes a REC that has achieved a higher level of integration must be understood in respect of individual measures. For tariffs, that is clear cut: if a REC has lower tariff or no tariff at all for a given tariff line, it has achieved a higher level of integration. However, for non-tariff measures, the interpretation can be complex since the measure could be couched in protectionist or liberal language. Individual RECs and countries face a further challenge in interpretation, depending on whether they lose or gain. So, determining “higher level of integration” cannot be oversimplified as a matter of MFN and preferential treatment clauses, since these clauses have real-life application contexts.

So, the issue is whether article 19 and article 5 can be reconciled. Article 5(b) says that RECs-FTAs constitute building blocks “for”—rather than “of”—the AfCFTA—a contextual issue that will be analysed in chapter 7.

#### ► **Box 4.2**

### **Implications of AfCFTA article 19: The SACU Case**

All SACU member States use the same Customs and Excise Legislation.<sup>1</sup> However, Lesotho and Botswana, two SACU countries, have not ratified the AfCFTA agreement, so inconsistencies or conflicts will be inevitable.<sup>2</sup> The most obvious would be the variance between the SACU common external tariff (CET) and the AfCFTA schedule of tariff concessions, which would reduce or eliminate tariffs for specific tariff lines subject to the SACU CET. According to AfCFTA article 19, such variances are justified in so far as SACU has achieved a higher level of integration than the AfCFTA.

Two scenarios can be contemplated in this context. In the first, SACU has higher import duties than the AfCFTA. This could lead to different applications and interpretations of the conditional exception under article 19(1). Implementing the AfCFTA agreement depends on the consent of members of customs unions that are non-state parties to the agreement. So, in instances where State Parties Eswatini, Namibia and South Africa offer zero-rated concessions to other State Parties, SACU member States could use the SACU regime to object. In the second scenario, SACU countries that are State Parties to the AfCFTA agreement might decide to follow the SACU schedule of concessions. In that case, the SACU CET would be retained because AfCFTA states not retaining it could weaken the customs union and possibly lead to its dissolution.

1. Republic of South Africa Government Gazette (1964).  
2. TRALAC (2020).

Source: Responses of Key Informant Interview



Interpreting trade agreements leads to implementing technical measures that could trigger differences among State Parties. If the State Parties are members of a REC, the challenge arises on the applicable trade regime. A challenge could also arise where third parties seek to assert their rights under the AfCFTA towards a subset of REC parties that have ratified the AfCFTA. Depending on the choice of the AfCFTA states, the outcome could go either way—breaching obligations under the REC or breaching them under the AfCFTA regime.

## **IMPLEMENTATION MODALITIES OF MULTIPLE TRADE REGIMES**

The AU–RECs relationship is governed by numerous texts: the Lagos Plan of Action and the Final Act of Lagos (1980); the Abuja Treaty (1994); the Protocol Relating to the Establishment of the Peace and Security Council (2003); the Protocol on Relations between the AU and the RECs (signed in 1998

and updated in 2007); the Memorandum of Understanding (MoU) on Cooperation in the Area of Peace and Security between the AU, RECs and the Coordinating Mechanisms of the Regional Standby Brigades of Eastern and Northern Africa; and the framework to guide relations between the African Union Commission (AUC), RECs and the AfCFTA. Among these documents, only the framework for the Division of Labour between the AU Commission, Regional Economic Communities, member States, and Regional Mechanisms pursuant to Declaration (MYCM/DECL/1(I)) defines subsidiarity.

Among these texts, three key legal instruments can operationalize the RECs, RECs-FTAs, the AfCFTA interface and the implementation of the agreement, even in the context of multiple trade regimes. They are the Abuja Treaty, the Protocol on Relations between the AU and the RECs and article 19 of the AfCFTA agreement. The Abuja Treaty remains the glue that holds the AfCFTA, AEC and RECs together. The article 19 rules should serve an intermediate function harmonizing trade regimes

to reduce the cost of complying with regulations in Africa. That step should be supported by the AfCFTA MFN clause and other preferences. Article 4(5) of the Protocol on Trade in Goods and article 4(4) of the Protocol on Trade in Services outline the sets of preferences that can be granted to AfCFTA State Parties under the MFN provision.

This intermediate function should be complemented by implementation of the decision adopted at the 33rd Ordinary AU Assembly held in February 2020 in Addis Ababa. The assembly directed the AfCFTA Secretariat to:

- Continue to monitor developments concerning third-party agreements involving AfCFTA States Parties and report to the AU Summit.
- Develop Reporting Guidelines and Templates for Notification of Third-Party Agreements in line with relevant provisions of the AfCFTA agreement.
- Include a section on third party agreements in the future Framework of Collaboration among the AfCFTA Secretariat, the AU Commission and the RECs.
- Submit for consideration and adoption by the AfCFTA Council of Ministers the Reporting Guidelines and Templates for Notification of Third-Party Agreements and the Framework of Collaboration among the AfCFTA Secretariat, the AU Commission and the RECs.

As noted earlier, most of the texts use the term “RECs” generically, without adequately recognizing their diversity or their development in the various policy, economic and social environments that affect their relationships with other stakeholders. Given such variety, the ability of the AfCFTA rules to address multiple trade regimes may be limited without an appropriate legal framework. Africa has pursued economic integration without a legal framework that specifically states the rules of conduct or defines the entities to which the rules apply—rules that form part of the legal system and impose an obligation to obey.<sup>79</sup>

As stated, effective economic integration is the product of well-defined legal frameworks and institutions. The application of article 19, supported by an appropriate legal framework, should serve as a foundation for further rationalizing multiple trade regimes in the context of the Abuja Treaty’s objective of establishing an AEC. That process would address the splintered regional spaces, overlapping institutions, duplicated efforts, dispersed resources and disputes over legitimacy that result from the multiple treaties. The main benefit of rationalization for RECs would be institutional strengthening through eliminating overlapping functions and targeting resources efficiently.

The framework for Division of Labour among the AU Commission, Regional Economic Communities, member States, and Regional Mechanisms can be used to develop a roadmap for each REC in implementing the AfCFTA. The roadmap would define the activities, objectives and priorities for the RECs to cooperate in implementing the AfCFTA agreement. The 2017 AU Assembly decision that there should be a clear division of labour and effective collaboration among the AU, the RECs, the Regional Mechanisms (RMs), the member States, and other continental institutions, in line with the principle of subsidiarity, was welcome.<sup>80</sup> The organization of a coordination platform as the principal forum for harmonizing their work and coordinating the implementation of the continental integration agenda should be supported with appropriate mechanisms to monitor progress. The division of labour must not isolate the institutions but make them partners in progress. RECs and their specialized agencies should be strategically placed to closely support member States by clearing political and technical challenges to multiple trading regimes for implementing the AfCFTA provisions. Annual joint AU–REC summits would provide an opportunity to evaluate the results of RECs’ building block role.

The framework that determines the sharing of competencies in six areas for the AfCFTA—policy formulation; policy adoption; implementation;

Interpretive notes should be developed for all relevant texts. Adequate legal interpretation would guarantee the uniform applications of laws and bring consistency and certainty to implementing them.

monitoring, evaluation and reporting; resource mobilization and partnerships—should be implemented and periodically reviewed to address changing dynamic trading environments. Benchmarks can be developed defining the alignments and determining how well each REC is implementing AU policies to assess the RECs' role of in actualizing and implementing the AfCFTA. The principle of the AfCFTA article 5 should be used to create space for a rules-based approach to special and differential treatment. While the AfCFTA provisions are fairly comprehensive, RECs and member States are likely to encounter challenges due to weak administration, since the provisions are not automatic and could bypass member States with less legal and institutional capacity. Unclarity and insufficient tools for monitoring and sharing best practices could also compromise the application of the principles. For example, the AfCFTA's Protocol on Trade in Goods recognizes different levels of development among State Parties and the need to provide flexibilities, special and differential treatment, and technical assistance to those with special needs.

The preamble to the Protocol on Trade in Services also acknowledges the "least developed, land locked, island states, and vulnerable economies in view of their special economic situation and their development, trade, and financial needs." Article 6 of the Protocol on Trade in Goods also supports a more nuanced and differentiated approach. Flexibilities include special consideration and an additional transition period in implementing the AfCFTA agreement to be applied case by case. In the Protocol on Trade in Goods, flexibilities include modification of tariff concessions (article 11), trade remedies (article 17), infant industries (article 24), general exceptions (article 26), security exceptions

(article 27) and balance of payments difficulties (article 28), with article 29 covering technical assistance and capacity building.

The treatment of these principles by the TFTA can provide useful lessons for implementing them. During the negotiation of combining COMESA, EAC and SADC into the TFTA, the principle of REC *acquis* (accepting the RECs' cumulative law) was adopted, so negotiations started from the point already reached by the three RECs. Tariff negotiations and concessions took place between member States that had no existing preferential arrangements in place. States in FTAs were obliged to trade under the terms of their existing obligations.<sup>81</sup> TFTA's slow progress should provide a timely warning to the AfCFTA about the dangers of reaching an impressive political consensus while failing to achieve the necessary ratifications and hence experiencing delays in implementation.<sup>82</sup>

Given the principle of variable speed, some member States' inadequate human and financial resources could slow AfCFTA implementation. The AfCFTA Secretariat followed the example of the Tripartite Task Force to deal with the issue.<sup>83</sup> The task force provided such mitigating measures as short-term technical assistance, building analytical capabilities for trade policy formulation and implementation, and imparting trade negotiation skills. The Task Force also coordinated and managed negotiations—ensuring the proper conduct of negotiating sessions and the proper sequencing and prioritization of negotiating topics. When negotiations end, the Task Force is also charged with coordinating and managing the implementation of the agreement and ensuring that an effective monitoring and evaluation mechanism is in place.



## CONCLUDING REMARKS

The AfCFTA agreement's article 19, relying on a comparative advantage principle, is interpreted differently by stakeholders facing multiple trade regimes and the regional and continental complementarity principles of numerous texts and frameworks. Simply affirming standards may not generate a coherent common approach.

To resolve the challenges, the incorporation of variable geometry and a differentiated approach, and a focus on RECs-FTAs as building blocks, appear to signal a normative shift in special and differentiated treatment from a defensive approach towards a more affirmative approach that allows the use of substantive law to advance trade development. Within this structure, article 19 can serve as the basis for managing multiple trade regimes.

However, article 19 has its limitations: trade policy space will continue to be an issue, and RECs, like WTO rules, allow for flexibility in domestic regulation within limits. Therefore, interpretive notes should be developed for all relevant texts. Adequate legal interpretation would guarantee the uniform applications of laws and bring consistency and certainty to implementing them. This requires legal integration of the trade policies of member States to allow the AfCFTA to operate at a supra-national level.

In the AfCFTA, the framework for Division of Labour among the AU Commission, Regional Economic Communities, member States, and Regional Mechanisms should incorporate best practices from across the continent. In addition, member States would need to maintain the flexibility to tailor rules and regulations to national circumstances. Rules must be developed in a balanced, inclusive way so that member States with less developed legal systems and weaker bargaining power are not neglected. A better understanding of comparative laws, diverse regulatory good practices, and practical solutions would be needed.

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# Chapter 5

## RECs and non-tariff barriers, trade remedies and trade dispute settlements in the implementation of the AfCFTA

### NON-TARIFF BARRIERS

**T**he economic impacts of reducing non-tariff barriers (NTBs)—especially the “sand in the wheels” NTBs that restrict trade for the benefit of domestic producers—can be substantial. Trade promotion efforts by regional economic communities (RECs) have been limited by the growing non-tariff components of their total trade costs.

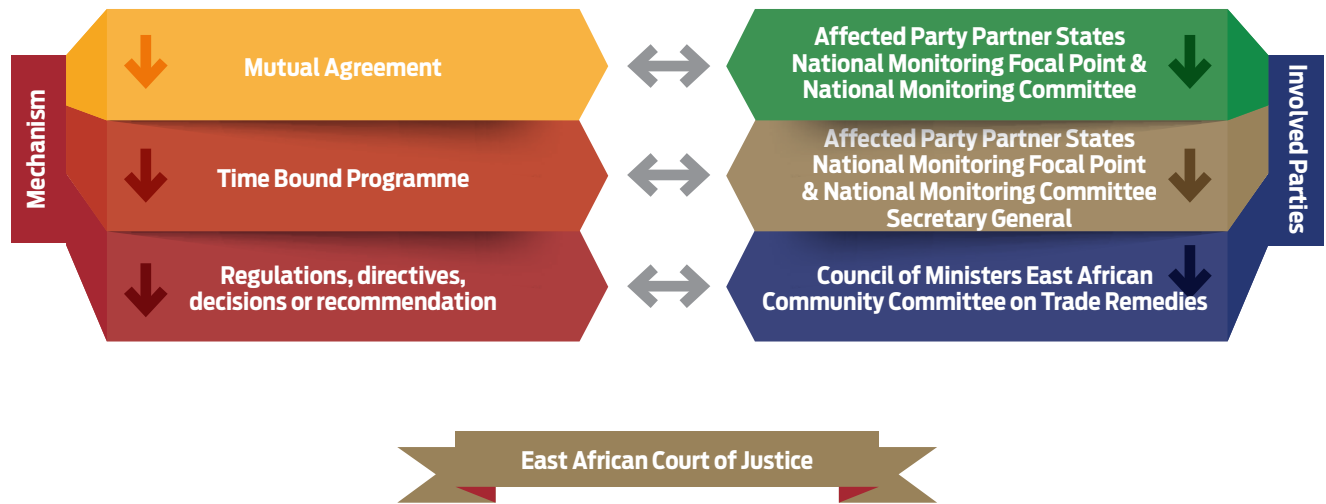
According to annex 4 of the African Continental Free Trade Area (AfCFTA) agreement, trade facilitation is “the simplification and harmonisation of international trade procedures, including activities, practices, and formalities involved in collecting, presenting, communicating, and processing data required for the movement of goods in international trade” (article 1(g)). The annex aims to simplify and harmonize international trade procedures and logistics to expedite importation, exportation and transit and to expedite the movement, clearance

and release of goods, including goods in transit across borders, within State Parties. This chapter examines the major trade facilitation issues of NTBs, non-tariff measures (NTMs), trade remedies and trade dispute settlement. It analyses the potential roles of RECs in addressing NTBs and dispute settlement mechanisms (DSMs) for effectively implementing the AfCFTA.

In the AfCFTA Protocol on Trade in Goods, annex 5 addresses NTBs. Without prejudice to rights and obligations under the World Trade Organization (WTO) agreements, it provides a mechanism for identifying, categorizing and progressively eliminating NTBs in AfCFTA states. The annex provides for institutional structures for eliminating NTBs, general categorization of NTBs, reporting and monitoring tools and facilitation in resolving identified NTBs. It contains two appendices, one dealing with general categorization of potential sources of NTBs, and the other with procedures for eliminating NTBs and cooperating to eliminate them.

► **Figure 5.1**

## Mechanism to resolve NTBs in the East African Community



Source: Adapted from EAC (2017)

African Union (AU) member State negotiations that led to annex 5 started in 2017 and concluded in 2018. In 2019, the AU, supported by the United Nations Conference on Trade and Development (UNCTAD), developed an online tool to implement the annex.<sup>84</sup> The online tool builds on the Borderless Alliance and Tripartite tools and is compatible with them.<sup>85</sup> The tools concern cross-border NTBs and include focal points (responsible officials) in both the reporting and foreign/responding country. Insufficient awareness in the private sector prevents businesses from making the best use of the instruments. The AfCFTA NTB online tool was adopted by all AU member States at the level of Ministers of Trade and Heads of State at the AU Extraordinary Summit on 7 July 2019. Afterwards, it would be operational in all AU member States.

Many RECs have mechanisms for managing NTBs, with attendant benefits and challenges. For instance, ECOWAS lacked a region-wide framework for reporting, monitoring and eliminating NTBs

and addressing NTMs. The result was multiple NTB tools and classifications with no unified regional approach to eliminating NTBs—instead, many country and subregional efforts address NTBs and NTMs with different procedures. There are three tools in the ECOWAS region: Borderless Alliance,<sup>86</sup> the ITC Trade Obstacle Alert Mechanism (TOAM)<sup>87</sup> and the AfCFTA NTB tool. The TOAM was launched by the International Trade Centre (ITC) in 2014 as a national portal for Côte d’Ivoire, followed in 2018–2019 by five other national portals in WAEMU member States. Most obstacles reported in TOAM are domestic issues, with cases picked up and treated by a domestic focal point in the reporting country. Only a minority cross borders.

To address multiple mechanisms and the associated confusion, NTB focal points and the private sector call for using the same procedures in all of a REC’s member States. Borderless Alliance, a private sector group in ECOWAS, obtained a copy of TOAM, adapted it to the ECOWAS environment,

launched operations and hosted it. In 2019, the ITC connected various TOAM portals at the regional level for a WAEMU-wide monitoring portal. The WAEMU experience of the TOAM transition enabled the region to use the same process and procedure for the AfCFTA NTB frameworks. The AfCFTA tool was formally negotiated and adopted by all ECOWAS member States. Then the region started operationalizing the AfCFTA NTB mechanism. It put national committees in place and set up complaint desks at the borders to deal with problems raised by NTBs.

In the East African Community (EAC), mutual agreement is the first solution sought for an NTB (figure 5.1). Pursuing it requires an affected party to report the NTBs to a National Monitoring Committee (NMC) or a National Monitoring Focal Point (NMFP). If the partner state where the NTB originated does not agree with eliminating the NTB, the partner state of the affected party notifies the EAC Secretary General and requests that the matter be referred to the EAC Council of Ministers.

If the partner state of the affected party does not notify the EAC Secretary General within 30 days, the affected party has the right to notify the Secretary General directly. The major challenge with this mechanism is the unwillingness of member States to agree to the strategy of conflict resolution. Although mutual agreement is the fastest way to resolve NTBs, discussions can take a long time, allowing NTBs to persist.

Whether the origin of complaints is within the same partner state as the affected party or a different partner state, the second mechanism for resolving NTBs is a time-bound programme. When the complaint is within the partner state, the NMC would investigate it and prepare a plan for eliminating the barrier. The plan should include:<sup>88</sup>

- The impact of the non-tariff barrier on business in the partner state and the institutions of the partner state responsible for the NTB.
- The timeframe for eliminating the NTB and the performance benchmarks and means to verify its elimination.

- The challenges that could be encountered in the process of eliminating the NTB and recommended solutions.

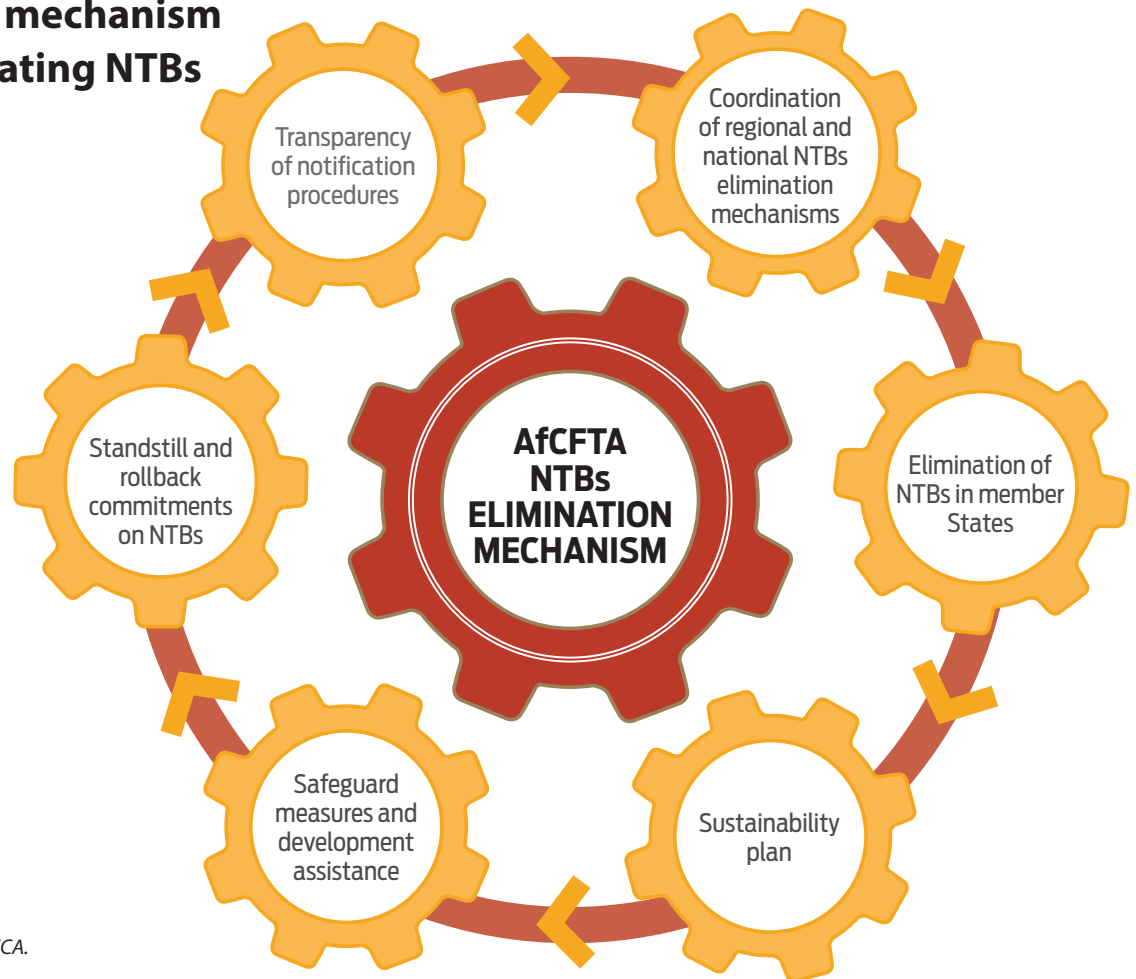
If the NTB is not resolved even with the convened meeting of the NMC, it can be referred to the EAC Council of Ministers by the Secretary General. Here, a third mechanism would be applied: regulations, directives, decisions or recommendations by the council concerning eliminating the NTB, or else a referral of the matter by the council to the EAC Committee on Trade Remedies. If the decision is made by the committee, it is then submitted to the council. Finally, any person or partner state aggrieved by the decision of council or committee may refer the matter to the East African Court of Justice.

The member States of the Tripartite Free Trade Area (TFTA) established a specific facility where private traders can lodge complaints concerning NTBs.<sup>89</sup> By March 2013, 329 complaints were registered on the system, of which 227 (69 per cent) were resolved. The facility does not have a dispute resolution mechanism, so it is useful as a transparency tool but falls short of serving as a forum for resolving NTB disputes. The AfCFTA NTB Portal and TOAM help national authorities implement reforms to simplify and streamline trade regulations and provide trade operators and trade support institutions with relevant information on trade rules and procedures.

Continental strategies for eliminating NTBs, given the multiple regional tools and inherent incompatibility of the different resolution mechanisms, should focus on harmonizing regional actions and strategies. Comparing the AfCFTA NTB tool and REC tools can provide guidance on whether to have a single portal for NTBs. Adopting a single portal has the advantage of ensuring efficient and effective monitoring of NTB issues, and NTBs by their nature require a harmonized approach. So, ideally, it would be appropriate to address them under one regulatory regime.

However, practical circumstances may not allow that, partly because RECs' regulatory scope is greater than the AfCFTA's, with some RECs treating regulatory issues outside the trade policy

► **Figure 5.2**  
**Proposed mechanism**  
**for eliminating NTBs**



Source: Compiled by ECA.

framework. Dealing specifically with NTBs requires a supplementary and stand-alone mechanism (figure 5.2).

The mechanism would contain six elements with specific actions. The first element provides for transparent notification procedures for NTMs. It strengthens coordination with the private sector in determining, prioritizing and minimizing the unnecessary burden of NTMs. It also sets up a surveillance mechanism for NTMs and legislation for NTB elimination. For this element, NTBs should be categorized according to WTO standards. The element must also cover national legal provisions—the export and import rules—and must define NTBs and NTMs in the context of the AfCFTA. Customs procedures, customs warehouses, transit systems and the declaration of goods for customs

procedures should be presented in a qualified, consistent, logical and succinct manner.

The second element coordinates regional and national NTB elimination mechanisms with international best practices. The AfCFTA should work with the RECs to develop continental rules and regulations consistent with international standards. The element requires recognizing harmonized standards, technical regulations and conformity assessment procedures to promote transparency in line with the WTO agreement on technical barriers to trade and sanitary and phytosanitary standards (TBT and SPS). The ECOWAS process of connecting various national TOAM portals and the TFTA process of developing the Tripartite NTB mechanism can provide useful lessons in developing this element.

The third element eliminates NTBs in member States. The EAC and Common Market for Eastern and Southern Africa (COMESA) simplified trade regimes and the Time-Bound Programme mechanism are good platforms for developing this element. The COMESA Regional Customs Transit Guarantee (RCTG-CARNET) Scheme is another platform. The element should focus mainly on actions and strategies to achieve the full elimination of NTBs in member States within the context of the AfCFTA. The RECs can be used to develop basic strategies to identify NTBs for elimination, verify information on NTBs, prioritize NTBs for elimination, enhance transparency by adhering to the protocol on notification procedures and set up an effective surveillance mechanism.

The fourth element creates a sustainability plan for the system of reporting, monitoring and eliminating NTBs/NTMs. It cuts across institutional and fiscal sustainability. As a first step, the AfCFTA should leverage the RECs' legal mandates, classification of NTBs, institutional frameworks and detailed resolution mechanisms. An agreed continental plan should provide technical support to sustain the regional institution system.

The fifth element provides safeguard measures and development assistance that recognize private sector inputs and partnerships as essential in both designing continental strategies and initiatives and identifying impediments to NTB elimination. The business sector and RECs should be empowered to receive official information on implementation more easily and to provide timely feedback on policies. The basic strategies are to implement a more inclusive and consultative process for involving the private sector in trade remedy measures and to deepen public and private sector engagement through regular dialogues. The element also requires developing rules of procedures for private sector engagement, building the capacity of relevant stakeholders and strengthening the private sector to identify NTBs, eliminate them and conduct compliance reviews.

The sixth element would secure standstill and rollback commitments on NTBs from all AU member States. RECs have a principal role in developing memorandums of understanding with

their member States on these commitments and ensuring that they fulfil the commitments. States should commit to reducing both tariffs and NTBs by phasing out or eliminating existing NTMs that would impede African trade and not introducing new ones. The RECs should be encouraged to introduce standstill and rollback provisions into their regional policies on NTBs.

## **LEVERAGING REC POLICY AND INSTITUTIONAL ARRANGEMENTS FOR TRADE DISPUTE SETTLEMENTS AND TRADE REMEDIES IN THE AfCFTA**

Dispute settlement on international trade matters and legal instruments for economic integration remain issues in Africa. African governments customarily do not litigate against each other—an attitude unlikely to change as long as litigation is perceived as an affront to sovereignty. The path to a culture favouring rules-based dispute settlement and the benefits of legal certainty probably lies in adopting special forums with jurisdiction over technical matters. The AfCFTA dispute settlement mechanism is generally modelled after the WTO's. Disputes between State Parties relating to interpreting or applying provisions are settled in accordance with the Protocol on Rules and Procedures on the Settlement of Disputes.

With the interface of AfCFTA, RECs-FTAs and the existing multiple trade regimes, overlaps of jurisdiction in dispute settlement can occur. That challenge is compounded by the current relationship between the WTO DSM and REC DSMs, which can create overlaps or conflicts of jurisdiction and of hierarchy in dispute settlement. That can happen where the same dispute or related aspects of the same dispute could be brought to two distinct institutional jurisdictions or two different DSMs.

Forum-shopping can result if disputing entities have a choice between two adjudicating bodies or two different jurisdictions for the same dispute.<sup>90</sup> When the DSMs of two agreements are triggered

► **Table 5.1**

## Comparison of dispute settlement mechanisms of selected RECs, the draft Tripartite Free Trade Area text and the AfCFTA

Provision	COMESA	EAC		SADC	Draft TFTA text	AfCFTA
		Common market	Custom union			
Authority	COMESA Court of Justice	East Africa Court of Justice Appellate Division	Panel Committee on Trade Council of Minister	Panel and tribunal of SADC (for appellate stage)	Tripartite Council and panel	Dispute Settlement Body
Compulsory jurisdiction	Yes	Yes	No rules	Yes	No rules yet	Yes
Forum choice	Forum exclusivity	Exclusive	To WTO if disputes arise between a partner state and a foreign country	Exclusive for the same matter in SADC	No rules yet	Exclusive
Composition of panels	No panels. Technical committee and, afterwards, Court of Justice	No	Yes, from roster of panellists	Yes, from roster of panellists	Yes, from roster of panellists	Defined by State Parties
Binding decisions	Technical committee: no. Court of Justice: yes	Appellate division: yes	Yes, but by the Committee on Trade Remedies and Council of Ministers	Yes, final	Yes, by the Tripartite Council	Yes, by the Dispute Settlement Body
Implementation of final report	No rules	Shall take required measures without delay	No rules	Rapid Processing Time implementation is voluntary, not adjudicative (as in WTO)	No rules yet	Rules and measures of the Dispute Settlement Body
If no implementation	Sanctions	No rules	Surveillance	Negotiations on the level of suspension. Arbitration on the level of suspension	Surveillance by Tripartite Council	Temporary measures such as compensation and suspension of concessions
Trade cases	Only by the technical committees. None by the Court of Justice	None (only cases on human rights)	None	None	Mechanism not yet finished	Experts review group, panel and arbitrators

Source: Compiled by ECA.



in parallel or in sequence, two problems can occur: both tribunals might claim final jurisdiction (supremacy) over the matter, or they could reach different and opposite results. Many RECs-FTAs include (substantive) rights and obligations that are parallel to the WTO's.<sup>91</sup> WTO article 23 claims exclusive jurisdiction for the WTO Dispute Settlement Undertaking for WTO violations by allowing a WTO member to trigger the DSM in case of any dispute.<sup>92</sup> The WTO could thus attract jurisdiction over disputes with (potential) trade effects even if other forums could handle them.

The success of any DSM depends on the enforcement of rulings. The enforcement of a ruling in favour of a small country against a larger one can challenge small economies. The remedy of withdrawing equivalent concessions against a big economy would be counterintuitive, since doing so would cause economic self-harm to the smaller one. When a ruling is made in favour of an economically small country, such as Lesotho, against, for example, South Africa, given the huge dependence of Lesotho on South Africa, enforcement of the ruling could amount to economic self-sabotage.

To address some of these issues, DSMs of RECs and the TFTA can provide lessons (table 5.1). Article 77 of the ECOWAS treaty provides for an enforcement mechanism, but it is rarely taken up. The ECOWAS Community Court of Justice is tasked with arbitrating disputes, but its role in economic affairs is practically or legally limited, and it has rarely (if ever) arbitrated a case related to economic integration. Unlike the AfCFTA DSM, ECOWAS trade dispute resolution is under the exclusive jurisdiction of the judicial courts and relies on alternative dispute resolution. The settlement of trade disputes is also based on private alternative dispute resolution mechanisms, including private party negotiations, consultations, mediation, conciliation, grievance mechanisms and international arbitration.<sup>93</sup>

The mechanism to settle disputes in COMESA refers specifically to the Court of Justice as having compulsory jurisdiction, unlike the AfCFTA DSM, which assigns dispute settlement to the Dispute Settlement Body (see table 5.1). Judgments by the

COMESA Court of Justice are final, with no appeal possible, so they are binding on the parties. Moreover, the court can impose sanctions if a party fails to implement its decision. The court's proceedings can be either written or oral. In addition, trade cases can be brought to technical committees and the Council of Ministers. Some examples of trade cases in the COMESA region are Kenya v. Zambia (rules of origin for palm oil-based cooking fat), Kenya v. Mauritius (unwarranted technical specifications on its exports), Malawi v. Kenya (duties on cooking oils; discriminatory excise duties); Zambia v. Kenya (duties on palm oil-based cooking oil); and Zambia v. Kenya (ban on long-life milk). No available evidence shows that any of these trade cases were settled amicably with this mechanism.<sup>94</sup>

Unlike the AfCFTA DSM, EAC establishes two mechanisms for solving trade disputes: one for common market issues, and the second for customs union issues. Organs in the common market mechanism are the Summit, the Sectoral Council, the Co-ordination Committee, Sectoral Committees, the East African Court of Justice, the East African Legislative Assembly, the Secretariat and such other organs as may be established by the Summit. The East African Court of Justice hears and determines trade disputes, but its judgements are subject to appeal to the Appellate Division. The court also has jurisdiction over private party contracts and is excluded from the jurisdiction of the national courts of the partner states. Appeal of a judgement is feasible, but it is restricted to points of law, lack of jurisdiction or procedural irregularity. The execution of a judgement of the East African Court of Justice imposes a pecuniary obligation and is governed by the rules of civil procedure in force in the partner state in which execution is to take place.

Organs in the customs union mechanism are the Panel, Committee on Trade Remedies; the Council of Ministers and the Secretariat. As implied by the AfCFTA DSM, the basic principles guiding EAC dispute resolution are mutual trust, political will and sovereign equality; peaceful coexistence and good neighbourliness; peaceful settlement of disputes; good governance; equitable distribution of benefits and cooperation for mutual benefit. The operating principles include people-centred

and market-driven cooperation, the provision of an adequate and appropriate enabling environment, the establishment of an export-oriented economy, the principle of subsidiarity, the principle of variable geometry, the equitable distribution of benefits, the principle of complementarity and the principle of asymmetry.

The customs union mechanism provides for the possibility of an amicable settlement through consultations. If no consultation is held by a specific period (30 days, or 10 days for perishables), the issue may be referred to a panel or the Committee on Trade Remedies. Disputing parties can comment on the interim report and the report of the panel. Like article 12 of AfCFTA agreement's annex 9, which establishes the Sub-Committee on Trade Remedies, EAC has the Committee on Trade Remedies, which receives the report and makes a final and binding decision. A reasonable period is allowed for voluntary or mutual implementation by the parties or for an arbitral award. As in the AfCFTA DSM, alternative means of dispute settlement are available, as is binding arbitration.

Dispute settlement in the SADC involves the following institutions: the Summit of Heads of State or Government; the Organ on Politics, Defence and Security Cooperation; the Council of Ministers of Trade; the Integrated Committee of Ministers; the Standing Committee of Officials; the Secretariat; the Tribunal and SADC national committees. The Tribunal is constituted for proper interpretation and for the adjudication of disputes, with its composition, powers, functions, procedures and other related matters prescribed in a protocol. The Tribunal gives advisory opinions on matters referred to it by the Summit or the Council. The decisions of the Tribunal are final and binding. SADC also permits each member State to create a SADC national committee. Once a forum is chosen, it excludes any other and exercises all the rights and obligations assigned in the SADC protocol.

The SADC DSM is like the AfCFTA DSM, with third party participation, a mechanism for specific deadlines and procedures for multiple complaints. It manages the role of experts and interprets the regulations that the Committee of Ministers of Trade

must adopt to facilitate implementation. Like the AfCFTA arrangement, SADC dispute settlement is a quasi-adjudicative mechanism with a political stage of consultations between the disputing parties, and two adjudicative stages: a panel and an appellate stage. The mechanism allows panellists to initiate consultations using a third party. In the AfCFTA, the panel would adopt a timetable in accordance with articles 15(2) and 15(3) of the protocol, considering the maximum timetable of 34 weeks, or 10 days for perishable goods. In both the SADC and the AfCFTA mechanism, the procedures of the panel are planned, and disputing member States have the right to a hearing, as well as written initial and rebuttal submissions. The panel instructs the losing party to put remedial measures in place to ensure conformity with the SADC Protocol and may recommend ways for them to be implemented. Disputing parties can appeal issues of law relating to the final report of the Tribunal.

To implement the panel's recommendations, parties agree on a reasonable period, not to exceed six months from the adoption of the report. If recommendations are not implemented within 20 days after that the agreed upon period's expiration, disputing parties can negotiate a mutually satisfactory solution. If parties fail to negotiate this solution, the complainant can request authorization from the Council of Ministers of Trade to suspend concessions or other obligations equivalent to the level of the nullification or impairment. If the member State objects to the proposed suspension, the matter is referred to arbitration for a final decision. Alternative means of dispute settlement are available with good offices, conciliation and mediation. There are no prescribed provisions for the adoption or surveillance of implementation or for litigating the implementation of a decision.

The TFTA DSM involves interpreting disputes and trying to reach amicable settlements through cooperation and consultation, or the use of good offices, conciliation and mediation. If no consultation between the parties takes place after 30 days, or 10 days for perishables, the issue can be referred to the Tripartite Council, which would request the establishment of a panel. The panel is constituted within seven days of the meeting of the council.

Disputing parties can comment on the interim report and the report of the panel. The Tripartite Council is notified of the report and makes the final and binding decision on the adoption of the report. A reasonable period to implement the reports can be set up voluntarily, mutually, or by an arbitral award. Alternative means of dispute settlement are also available, as well as binding arbitration.

The basic lessons of the TFTA agreement for the AfCFTA DSM concern institutions, the enforcement of rulings and sanctions. TFTA establishes a secretariat that deals solely with dispute resolution. The agreement also creates institutions for member States to exercise authority over dispute resolution, relying on their ability to work collectively. The authorities given to the secretariat include rights of oversight, inquiry, proposal, the right to initiate action and the right of sanction. These rights make the secretariat operate at a supranational level.

Although, all the regional mechanisms have the necessary policy and institutional arrangements, their operations have produced mixed results. A respondent for this report noted that although the COMESA mechanism was used to resolve 98 per cent of reported cases in 2019, there are still many pending trade disputes. In SADC, the annex is not yet operational, the panel procedure for settling trade disputes is not yet drafted, and no panel has generated any jurisprudence. The escalating trade dispute between Kenya and Uganda over milk exports is just one of many unresolved disputes. Tanzania locked out Ugandan timber, sugar and maize, while Kenya is reluctant to open its market to manufactured products from Uganda. In addition, African countries have been unable to successfully use the WTO system—due to their low integration in global markets, they have had almost no disputes with major trading partners. Moreover, a huge part of African exports to third markets is traded as primary commodities (in some instances under preferential trade regimes), a kind of trade with fewer incentives for disputes. The length of a WTO dispute can run into months and sometimes years, and the cost can be very high.

Even with all these arrangements, many AU member States adopt retaliatory measures to address trade disputes. A typical example Nigeria's 2019

closure of land borders, as the government sought to halt the illicit export of petroleum products and the smuggling of rice across the border from neighbouring countries such as Benin. Another is Ghanaian officials sealing the trading premises of some Nigerian traders in Ghana because of their alleged inability to pay the \$1 million equity required by the Ghana Investment Promotions Council.

Integral to trade reforms is the development of WTO-compatible trade defence measures (TDMs). There are three forms to deal with challenges posed by dumped imports, subsidized imports and import surges that injure or threaten to injure domestic producers. The AfCFTA allows state parties to apply anti-dumping, countervailing and safeguard measures in articles 17–19 of the Protocol on Trade in Goods, the annex to the AfCFTA agreement and the AfCFTA guidelines, in accordance with relevant WTO agreements. Also, article 4 of annex 9 of the AfCFTA agreement allows the application of preferential safeguard measures as necessary to prevent or remedy serious injury or threat of injury and to facilitate adjustment following an investigation by the importing State Party under the procedures established in the guidelines. The national trade ministry is required to assess the likely impact of tariff liberalization on susceptible import sectors. The assigned focal person is expected to assess customs data and analyse import patterns. This is complemented with platforms for private sector stakeholders to flag harmful import surges.

These measures should help to ensure that the benefits of economic integration are preserved and fully harvested by member States. Their effective application calls for close cooperation and support from the regional and national institutions on whose shoulder would lie the effective and authorized use of the TDMs. At both the REC and the national level, the legal institutions, capabilities and operational modalities are limited. For effective implementation of the AfCFTA, concerted effort would be needed in each area of anti-dumping, anti-subsidy and safeguard measures. Operational modalities are also needed for initiating and conducting trade defence investigations and applying appropriate tools to measure dumping and subsidy margins and thresholds. In each area, the integrity and transparency of an investigation are crucial and

subject to WTO oversight. Ongoing AfCFTA policy issues concern the adequacy of the temporary trade defence measures, the capacity to use them and the absence of accompanying measures to support exports.

Finally, under the WTO rules, decisions on trade defence investigations must be subject to judicial review.<sup>95</sup> So, until the capacity deficits are closed, the trade remedies may be unable to play their part in smoothly and effectively implementing the AfCFTA. The AfCFTA Secretariat and the RECs can facilitate training and capacity-building programmes for officials and other stakeholders involved in the implementation. They can assist State Parties with implementing trade remedies, adopting the necessary national legislation and establishing national investigating authorities and other required institutions.

## CONCLUDING REMARKS

The legal framework for eliminating NTBs should be developed and prioritized in the AfCFTA agreement. For RECs to manage NTBs, the legal mandate given by member States in the AfCFTA negotiations and agreement should be respected, with any deviation at the REC level decided only by the member States. The RECs can have the leading role in vetting, monitoring and facilitating the removal of all NTBs in their region. The relevant regional and national agencies require adequate human and financial resources to effectively monitor and support member States in implementing regional commitments in their domestic laws and applying them. The efficiency and effectiveness of AfCFTA's NTB tools and mechanism and DSMs would be boosted by partnerships with the RECs to facilitate and implement them. So, all existing REC-based NTB control instruments and mechanisms and DSMs need to be integrated into the AfCFTA for a win-win achievement. RECs' best interests call for legal and institutional framework for implementing NTBs and guidelines for streamlining existing portals to be compatible with the AfCFTA NTB tools and mechanism.

Effective management of the AfCFTA DSM and trade remedies requires the harmonization of various REC mechanisms to avoid multiplication of institutions and deter forum shopping. The AU Trade Observatory should be used to integrate RECs mechanisms into a continental arrangement for monitoring, reporting and eliminating trade deflection—a major source of trade disputes in Africa. This analysis has also shown that the role assigned to RECs regarding NTBs, trade remedies and trade dispute settlements should be based on existing capacity and the institutional architecture available at the regional level. For effective AfCFTA DSMs, the AfCFTA Secretariat must have the authority of a supranational entity, as in the TFTA arrangement. In addition, since DSMs involve legal issues, the relationship of the AfCFTA and REC regimes must be fully understood in the context of Vienna Convention Law of Treaties so that rules on treaty interpretation, among other things, can be established.

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# Chapter 6

## The RECs, the AfCFTA and the African Economic Community beyond the Continental Customs Union

### INTRODUCTION

**T**he basic issues for successfully realizing the African Economic Community involve the experiences of REC economic integration and determining the best options for economic integration at the continental level.

The basic objectives of this chapter are:

- To document the content and characteristics of the stages of integration in the Abuja Treaty.
- To draw useful lessons in terms of their complementarity to the African Continental Free Trade Area (AfCFTA) provisions and the pitfalls of implementation.

The linear model of integration has been the framework guiding regionalism in Africa. It assumes

that trade reforms will have a positive impact on trade, economic growth and poverty reduction. In both the African Economic Community (AEC) and the AfCFTA, the integration agenda is more than a trading arrangement. Rather, the agenda consists of mechanisms to integrate national markets and herald cooperation in production.

Article 4(2) of the AEC gives details of how the objectives of the treaty are to be achieved, and article 28 specifies that:

- During the first stage, member States undertake to strengthen the existing RECs and to establish new communities where they do not exist in order to ensure the gradual establishment of the Community.
- member States shall take all necessary measures aimed at progressively promoting increasingly

► **Table 6.1**

## Major initiatives towards continental regional integration in Africa

Year	Initiatives	Main focus
1980	Lagos Plan of Action (LPA) and the Final Act of Lagos	To incorporate strategies and programmes for self-reliant development and cooperation among African countries
1999	Cross-Border Initiative (CBI), later the Regional Integration Facilitation Forum (RIFF)	To facilitate cross-border economic activity
1999, 2001 and 2002	The Sirte Extraordinary Session, the Lusaka Summit and the Durban Summit	Birth of AU, roadmap for the establishment of the AU and launching of the AU
2002	New Partnership for Africa's Development (NEPAD)	To deal with Africa's development problems in a new paradigm
2009	Minimum Integration Programme	Action plan to accelerate coordination, convergence and collaboration among the regional economic communities to achieve the ultimate objective of the African Economic Community
2012	Action plan for Boosting Intra-African Trade (BIAT)	To fast-track establishment of the African Continental Free Trade Area
2015	Agenda 2063—The Africa We Want	Africa's Aspirations for the Future

Source: ECA.

closer cooperation among communities, particularly through coordination and harmonisation of their activities in all fields or sectors in order to ensure the realisation of the objectives of the Community.

The economic integration approach adopted by the AEC depends on the success of regional economic communities (RECs). For this reason the AU has termed the RECs “the building blocks of the AEC.” It was envisaged this would systematically follow an implementation plan and execution strategy, with activities along the six stages laid out in the Abuja Treaty done concurrently in all RECs.<sup>96</sup> In line with the objectives of Abuja Treaty, many initiatives were developed to support regional integration (table 6.1). However, implementing the programmes to establish the AEC was slow. In response, on 9 May 2009, the Minimum Integration Programme (MIP) was adopted.

The MIP is an action plan to accelerate coordination, convergence and collaboration among the RECs to achieve the ultimate objective of the AEC.<sup>97</sup> The plan has trade-related objectives for progressively eliminating tariff barriers and non-tariff barriers (NTBs), for signing partnership agreements among RECs, and for enhancing the capacities of RECs, AUC and member States. The United Nations Economic Commission for Africa (UNECA) analyzed the status of RECs with respect to some of the objectives set out in the MIP. The analysis showed that the Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC), Economic Community of West African States (ECOWAS) and Southern African Development Community (SADC) appear to be the most advanced RECs in the integration process. Regarding trade liberalization, these RECs had several delays in achieving their planned customs union, but they will eventually fulfil the continental objective.<sup>98</sup>

There is thus a need to analyze the status of some selected RECs at different stages of integration as foreseen in the Abuja Treaty to seek lessons and draw upon best practices in integration, and to assess the potential role of the RECs in these arrangements.

## **ANALYSIS OF THE CUSTOMS UNION STATUS OF SELECTED RECs IN AFRICA**

In implementing the common external tariff (CET), a customs union member country would have to increase tariffs on some products and reduce them on others. The overall impact will depend on the balance between these two effects. The CET is expected to enhance local production, promote intra-trade and provide stability in trade, making it easier to understand trade rules and prevent trade deflection. So, an effective customs union needs to have a generally accepted CET and should be based on a common trade policy. The choice of an appropriate CET is a critical element for ensuring the effectiveness of a customs union and, for developing countries, it should have two main characteristics:

- The CET should have low rates.
- There should be significant complementarities among member countries, which then create opportunities for specialization and trade.

Theoretically, an optimal CET's welfare improvement should exceed the associated customs revenue losses incurred by member countries. Practically, the choice of an appropriate CET structure is limited to cascading tariff and uniform tariff structures.

In a cascading tariff structure, higher tariff rates are applied to final goods rather than to production inputs. This has the advantage of promoting more competitive local processing industries.

Unfortunately, this choice is difficult to design and implement because it is impossible to satisfy all contending interests. It is typically subject to lobbying by various industries to adjust rates. Uniform tariff structure specifies the same tariff rate for all goods equally. This tariff structure has several advantages, including simplicity and ease of design and implementation. It also ensures that trade flows broadly reflect comparative advantage.

One overriding legal requirement must be satisfied in determining the CET rates of every customs union. The CET has to conform to paragraph 5 of article XXI of the GATT, which requires that tariffs against non-members should not be higher than tariffs prior to the formation of the customs union. Article XXIV of GATT 1994 further states that the incidence of duties and other regulations of trade before and after the formation of a customs union must be based on an overall assessment of weighted average tariff rates and customs duties.

In broad conformity with GATT/WTO law, several approaches have emerged to determine CET rates. These are:

- Simple average of members' tariffs against non-members.
- Import-weighted average of members' import tariffs against non-members.
- Consumption-weighted average of members' tariffs against non-members.
- Minimum and maximum of members' import tariffs against non-members.

The result of the application of any of these approaches for determining CET rates must also honour member countries' agreements with and obligations to the WTO as reflected in member countries' bound rates.

► **Table 6.2**

## Average tariff rates of ECOWAS member States before ECOWAS common external tariff

Grouping	ECOWAS member States	Pre-CET average tariff rate range %
Group 1	UEMOA Member States <sup>a</sup>	12
Group 2	Gambia, Ghana and Sierra Leone	12.8–13.7
Group 3	Cabo Verde, Guinea and Liberia	6–7
Group 4	Nigeria	29.1

<sup>a</sup> These are Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Mali, Niger, Senegal and Togo.  
Source: CDTi (2018).

► **Table 6.3**

## Structure of the ECOWAS common external tariff

Category	Heading	Rate (%)	Number of tariff lines
0	Essential social goods	0	85
1	Basic necessities, raw materials, capital goods, specific inputs	5	2,146
2	Inputs and intermediate products	10	1,373
3	Final consumer goods	20	2,165
4	Specific goods for economic development	35	130
Total			5,899

Source: ECOWAS (2019). *ECOWAS Common External Tariff (CET)*.

CET is a fundamental feature of the customs union, and it is meant to achieve a policy objective that moves the final power for tariff policymaking from the level of member States to that of the regional authority.

The subsequent analysis assesses the status of customs unions of selected RECs, drawing policy implications for the continental customs union and for the effective implementation of the AfCFTA.

### ***Analysis of the customs union status of ECOWAS***

Establishing an ECOWAS CET is meant to intensify and deepen the integration process by starting as a free trade agreement (FTA) with an ECOWAS trade liberalization scheme and proceeding to a customs union. The legal mandate is derived from article 3 of the 1993 ECOWAS Revised Treaty. The negotiations around the ECOWAS CET provided a good example of



► **Table 6.4**

## Comparison between the ECOWAS member States tariff concessions and the ECOWAS common external tariff, 2017

ECOWAS CET (HS2012), average = 12%					
	Status	Binding coverage	Binding violations (number of tariff lines ≠ ECOWAS CET)	Tariff lines related to agriculture products	WTO bound duties, average (%)
<b>Benin</b>	LDC	40%	623	15	29
<b>Burkina Faso</b>	LDC	40%	620	15	44
<b>Cabo Verde</b>	DC	100%	482	67	16
<b>Côte d'Ivoire</b>	DC	34%	883	421	11
<b>The Gambia</b>	LDC	15%	-	-	103
<b>Ghana</b>	DC	15%	-	-	92
<b>Guinea</b>	LDC	39%	613	15	21
<b>Guinea-Bissau</b>	LDC	98%	-	-	49
<b>Mali</b>	LDC	40%	621	15	29
<b>Niger</b>	LDC	97%	616	15	45
<b>Nigeria</b>	DC	20%	641	-	121
<b>Senegal</b>	LDC	100%	115	94	30
<b>Sierra Leone</b>	LDC	100%	3	3	47
<b>Togo</b>	LDC	15%	-	-	80

Source: Oyejide and Olayiwola (2020).

ECOWAS and West African Economic and Monetary Union (UEMOA) collaboration and competition. In 2003, UEMOA and ECOWAS embarked on intra-regional negotiations for an ECOWAS-wide CET. The fast-track initiative was unsuccessful, as UEMOA only completed its external tariff in 2000. Negotiations were delayed for several years because of Nigeria's reluctance to adopt an UEMOA 4-band CET as a baseline for the ECOWAS CET, stating that the CET negated Nigeria's development aspirations. Nigeria asked for 50 per cent tariff to be included as the fifth band. With opposition from UEMOA, it was finally agreed that the ECOWAS CET would include a fifth band, set at 35 per cent to protect sensitive industries. The implication of this arrangement is that ECOWAS's agenda is being driven by the more integrated and liberally-oriented UEMOA countries, who had successfully managed to "upload" their

standards to ECOWAS. In effect, this choice meant that many of the changes in the movement from UEMOA CET to ECOWAS CET would be borne by non-UEMOA member States.

Key elements of the most favoured nation (MFN) applied tariff rates of member States during 2000–2004 show the degree of convergence of tariff policy practices among them. The countries fall into four broad categories (table 6.2). The UEMOA countries that had the same simple average tariff rate of 12 per cent constitute one category—group 1. The non-UEMOA countries that had simple average tariff rates ranging from 6.5 per cent (Guinea) to 29.1 per cent (Nigeria) constitute a second broad category. This second category can be further divided into three subgroups—groups 2, 3 and 4.

The final ECOWAS CET structure contains five tariff bands at rates of 0 per cent (for essential social goods), 5 per cent (goods of primary necessity, raw materials and specific inputs), 10 per cent (inputs and intermediate goods), 20 per cent (final consumption goods) and 35 per cent (specific goods for economic development) (table 6.3).

ECOWAS CET entered into force on 1 January 2015. Nine member States started the implementation—Nigeria and all the UEMOA countries (Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Mali, Niger, Senegal and Togo). Nigeria approved implementation of the CET, together with some temporary supplementary protection measures (SPMs), effective from 11 April 2015.<sup>99</sup> Ghana postponed implementation because of ratification issues. Because of the Ebola epidemic, Guinea, Liberia and Sierra Leone started implementation in 2016. In Cabo Verde and Guinea Bissau, the delay was due to the late arrival of the Portuguese version of the CET documents. In Gambia, technical problems in integrating the CET into the computerized customs system delayed implementation.

In the transition period, 2015–2019, nearly all member States violated the ECOWAS CET (table 6.4). The UEMOA country violations were because of technical difficulties in migrating some tariff lines to the fifth band. Nigeria's violation was because of the presence of an additional three documents concerning the import prohibition list (IPL), the national list and the import adjustment tax (IAT). In 2019, CET implementation challenges led to the transition period being extended to 2022.

The major challenge to the effective implementation of ECOWAS CET is its differential impact on member States and their limited capacity for its implementation. A comparison of simple average MFN applied tariff rates between Nigeria and other member States shows that Nigeria not only imposed additional levies on imports, but it also relied heavily on the use of import prohibition to control the volume of a wide range of imported products. So, it is the combination of high nominal tariff rates with the additional levies and import prohibitions that demonstrate the full extent of the limitations of Nigeria's trade regime. This is of note

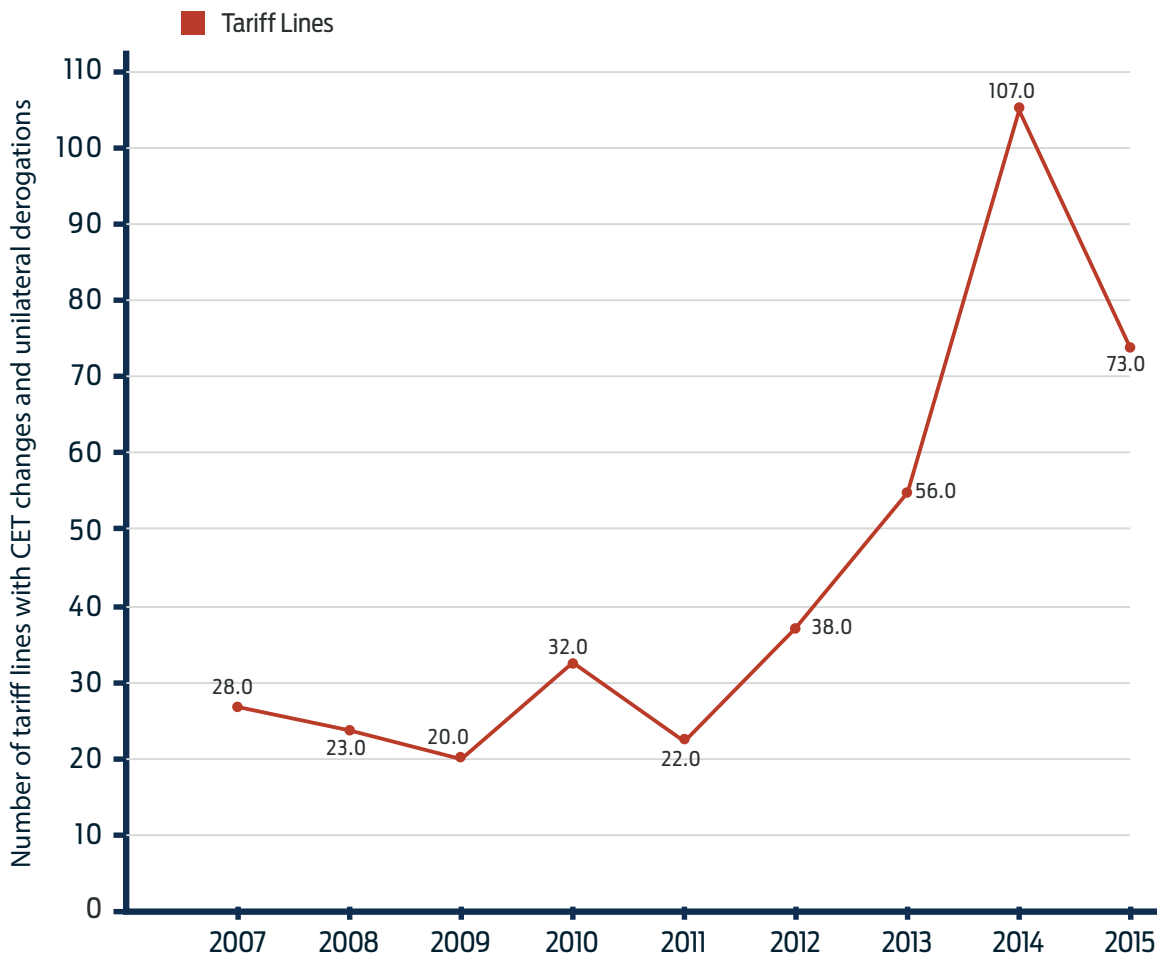
because Nigeria's adoption of and adherence to ECOWAS CET involved higher levels of adjustment related costs. The CET structure and rates imposed a significantly higher adjustment cost to Nigeria than other non-UEMOA countries. For instance, Nigeria's 2009 tariff structure based on these five bands produced a simple average applied MFN tariff rate of 11.9 per cent. This reflects a significant degree of liberalisation when compared with the 2003 level of 28.6 per cent. In broad sectorial terms, the average tariff on agricultural products fell to 16 per cent from 50 per cent, while that of industrial products fell to 11 per cent from 25 per cent.

This adjustment cost provided justification for Nigeria's decision to implement the CET with supplementary protection measures, which allow member States to have MFN-applied rates during the transition period that deviate from CET rates. Nigeria attached an import adjustment tax (IAT), which involves additional taxes on 177 tariff lines (3 per cent of the total) of the CET. In this list, total import tax (import duty plus IAT) was raised to 70 per cent (the maximum allowed by the regulation) for salt, sugar, grains, vehicles, beverages, tobacco products and alcoholic drinks. Similarly, total tax on fabrics was increased to about 40 per cent. What used to be called additional or special import levies were converted, in effect, to import adjustment taxes, which are permitted under the supplementary protection measures regulation.

In addition, Nigeria maintains an import prohibition list of 25 locally-produced products that have enjoyed 15 years of special protection.<sup>100</sup> A total of 399 tariff lines were affected by the adjustment, of which only 56 lines fall under the standard health/safety/environmental protection exceptions.<sup>101</sup> As expected, the majority of prohibitions (41.4 per cent) were from band 5 (final products), which also had the highest number of exceptions. There are two major characteristics of the prohibited products (see annex 2). The first category consists of 343 tariff lines related to industrial and agricultural products, which Nigeria had the potential to produce. The second category had 56 tariff lines of products that have the potential to cause or have contributed to health hazards and environmental damage.

► **Figure 6.1**

## Tariff lines with common external tariff changes and unilateral derogations in EAC



Source: Bunder (2018).

### **Analysis of the customs union status of EAC**

The EAC protocol to remove internal tariffs and NTBs on intra-EAC trade, introduced an EAC CET and a list of products classified as sensitive that warrant additional protection. Under the customs union agreement, effective from 2005, the protocol included one exemption to the CET—the duty-remission scheme (DRS). The scheme allows a country to select companies that may import specific

products duty-free as input for manufacturing and mainly for the purpose of export promotion. However, these must be chosen jointly by the REC at regional level. member States can also apply for “stays of application” to smooth the implementation of the CET and remain at some pre-CET levels for a transition period. Any change of CET or a unilateral derogation of the CET has to be approved by the



Council of Ministers, the main executive body of the EAC. member States consult with domestic stakeholders when they prepare their positions on the annual tariff negotiations.

Under article 12 of the EAC Customs Union Protocol, Partner States adopted a CET with a three-band structure:

- 0 per cent for raw materials and plant and machinery.
- 10 per cent for intermediate goods.
- 25 per cent for finished goods.

All the partners were to adhere to this schedule. In terms of implementation, in 2007, Kenya aligned its tariffs, except for sensitive products, to the agreed band structure. The EAC prioritized customs revenue as a critical source of income for the Partner States. The EAC drew up a list of products that needed more protection from competition from imported goods. The list included rice, milk, sugar, maize, palm oil, wheat flour and second-hand clothing.

An analysis by Bunder shows that unilateral exemptions by Partner States on a wide range of strongly traded goods destabilized the CET. The use of a duty-remission scheme and “stays of application” became accepted practice and channels to deviate from the CET for other reasons.<sup>102</sup> In theory, to apply a lower tariff rate or convince other countries that their industry needs special protection for a limited time, Partner States have to prove they cannot source enough of a product regionally. In practice, derogations were rarely based on evidence. The duty-remission scheme was problematic and open to abuse.

The EAC Secretariat has no supranational power in trade and serves predominantly to facilitate negotiations and to give advice on what would be beneficial for the community. Weak regional oversight makes it hard to analyze the customs union. Partner States kept several national unregulated support schemes at the regional level. The creation of sensitive items under the rules of the CET poses the main challenge of implementation at the partner states level. Customs valuation procedures are different and this leads to different

► **Table 6.5**

## Criteria of a full and effective customs union

SN	Criteria	ECOWAS	SACU	EAC	CEMAC	COMESA
1	CET	Yes	Yes	Yes	Yes	Yes
2	Common valuation of imported goods	Partial	Full	Full	Partial	Partial
3	Common classification of tariff	Yes	Yes	Yes	Yes	Yes
4	Customs modernization	Limited	Full	Full	Limited	Limited
5	Free circulation of community goods	No	Partial	Partial	No	No
6	Revenue sharing formula	No	Yes	No	Yes	Yes
7	Trade defense mechanism	No	Partial	Partial	No	Partial
8	Institutional arrangement for trade defence mechanisms	No	Partial	Partial	Partial	Partial
9	Common trade policy	No	No	No	No	No
10	Common customs code	Partial	Yes	No	No	No
11	Loss of sovereignty	No	Partial	No	No	No
12	Competition policy	Yes	Yes	Yes	No	Yes

Source: Compiled from responses by key informant interviews and the analysis of chapter 6.

Note: Yes = positive responses from REC, public and private sectors.

No = negative responses from REC, public and private sectors.

Partial = no effective implementation of the provision.

Full = effective implementation of the provision.

computed values for taxation. The list of industrial products that are exempted from the CET is also different across partner states. Sometimes they did not notify the EAC Secretariat as to which industries received rebates. For instance, Kenya's Tax Remission for Exports Office was regarded as the main cause of distortions and derogation channels. Between 2005 and 2015, instabilities in the CET stemmed from both unilateral exemptions and CET changes. The unilateral derogations increased from 15 to 20 tariff lines from 2007 to 2012, to 56 in 2013, 107 in 2014, and decreased to 73 in 2015 (figure 6.1).

Changes to the regional CET are made more frequently. The strong influence of domestic interest groups, and governments' focus on securing protection for their specific local industries rather than considering what is best for the regional economy, are major challenges. Countries are willing to use exemption schemes to destabilize the CET to secure national tariff preferences. Unilateral derogations from the CET become an accepted tool to reach consensus in tariff negotiations. As there is consensus-based decisionmaking in the EAC, each country has the power to block decisions if it

does not get its will. There are two other challenges. First, all Partner States belong to other FTAs and this led to a perforation of the CET. Second, some Partner States are not in legal compliance with the CET obligation due to their membership in other regional arrangements.

### ***Analysis of the customs union status of other RECs***

COMESA has a 4-band CET as follows:

- 0 per cent for raw materials.
- 0 per cent for capital goods.
- 10 per cent for intermediate goods.
- 25 per cent for finished goods.

This structure is subject to periodic reviews. With this arrangement, member States have the flexibility to deviate from the CET to address national issues arising from implementation. It also gives policy space to maintaining production incentive schemes—such as industrial rebates on a time-bound basis—and to preserving market access acquired prior to the formation of the union.

Other trade related aspects are warehousing, tariff classification, temporary admission, collection of customs duties, cross-border trade and export drawbacks, simplification and harmonisation of

trade documentation, and customs regulations and procedures with particular reference to the valuation of goods. There is also the provision for trade remedies and the prevention, investigation and suppression of customs offences, and rational and joint institutional arrangements. COMESA customs union also contains principles of export promotion schemes. With this scheme, the sale of goods benefiting from export promotion in the territory is subject to authorization by a competent authority and is limited to a percentage of the annual production of a company, as allowed by the customs law of COMESA.

SACU also has a single customs territory and a CET. The SACU member States cannot individually conclude trade in goods agreements with third parties. They must make joint tariff offers in order to protect the integrity of the union. SACU applies a differential CET on imported products from non-SACU countries, and most favoured nation tariffs on all imported products, except products originating from the European Union, SADC and MERCOSUR, which are charged preferential duties in accordance with their respective trade agreements.

The highest MFN applied duty is 142.77 per cent for unstemmed and unstripped tobacco and 111.36 per cent for stemmed and stripped tobacco. Except for second-hand clothes, the MFN applied tariff on clothing ranges from 40 per cent to 45 per cent. The same duty rates are applied to all imports of sugar and second-hand clothes regardless of

The AfCFTA should be seen as an opportunity to correct the anomalies in implementing article 88 and to fast-tracking different stages of the AEC.

origin. A specific duty of 213.1 c per kilogram is applied on sugar imports, and 60 per cent or 2,500 c per kilogram for second-hand clothes imports. The highest average MFN applied tariffs are for knitted clothes (41.3 per cent), non-knitted clothes (40 per cent), other clothing (28.7 per cent), carpets (26.6 per cent), leather products (26.4 per cent), umbrellas (25.8 per cent) and footwear (22.2 per cent). Because SACU is also an excise union, all member States agree on the rates of specific excise and ad valorem duties applicable to goods grown, produced or manufactured in the union. SACU also has a unique revenue sharing arrangement. Sharing customs revenue generated mainly by South African imports contributes to the union's stability.

The Central African Economic and Monetary Community (CEMAC) CET has five rates; 0 per cent, 5 per cent, 10 per cent, 20 per cent and 30 per cent.

The average is 18.1 per cent with a coefficient of variation of 0.53, which indicates moderate rate dispersion. Agriculture (23.6 per cent on average) is the most protected sector, followed by manufacturing (17.8 per cent) and the extractive industries (11.2 per cent). The products with the highest levels of tariff protection are clothing (30 per cent), coffee and tea (28.6 per cent on average), beverages and tobacco (27 per cent on average), and fruit, vegetables and garden produce (26.4 per cent on average). The Community also has charges of equivalent effect consisting of a community integration tax of 1 per cent, a levy of 0.05 per cent on imports from non-members of the Organization for the Harmonization of African Business (OHADA), and VAT and excise duty governed by Community provisions. Fees are charged for pre-shipment inspection and the electronic cargo tracking note (ECTN).

Overall, the CET is characterized by mixed escalation—negative from unprocessed to semi-finished products and positive from semi-finished to finished products. This structure partly explains

the tariff exemptions granted unilaterally to local production industries for some imports by member States. Since 2007, member States adopted several suspension measures (customs duties and taxes and/or internal taxes) to limit the increase in the cost of basic necessities. Compared to the multilateral trading system, the CET rates are higher than the rates bound by Gabon on 2,058 tariff lines, by Congo on 2 tariff lines, and by Central African Republic on 1 tariff line. Central African Republic, Chad and Congo apply other duties and taxes higher than those bound.

The case study analysis of selected RECs points to the difficulties inherent in implementing an African customs union. Each REC has different arrangements with respect to customs union designs and implementation. An analysis using basic criteria of a full functioning customs union and responses from key informant interviews shows that all RECs are either a partial customs union or a customs union in transition (table 6.5). In terms of implementation, all have CETs with differential band arrangements. Both ECOWAS and CEMAC have a 5-band structure with different products composition, EAC has a 3-band structure, and COMESA has a 4-band structure. Across RECs, there is a common tariff classification, with no full implementation of a common valuation, trade defence mechanism and free circulation of community goods. Only SACU has a well-structured revenue sharing modality. RECs do not have common trade policy nor do they totally cede sovereignty on trade matters to support CET implementation.

The CEMAC CET, with tariff rates up to 30 per cent and an unweighted average of about 19 per cent, is higher in comparison with other RECs in Africa. CET rates in other African RECs—with an average rate of 14.7 per cent in COMESA, 14 per cent in ECOWAS and 11.9 per cent in SACU—are lower than that of CEMAC. In addition, average tariffs in all RECs are not uniform for all sectors. This pattern is suggestive that some RECs customs unions have a protectionist bias and the evidence of tariff escalation is mixed.<sup>103</sup>

## CHALLENGES OF RECs ECONOMIC INTEGRATION IN ACHIEVING THE AFRICAN ECONOMIC COMMUNITY

The analysis shows four major implementation issues that would determine the supportive roles of REC customs union towards effectively implementing the AfCFTA and having a continental customs union. They are:

- Structure and rate of the common external tariff.
- Implications of a partially or fully functioning customs union.
- Stakeholder involvement in the trade policy process.
- Mixed targets and timelines.

### ***Structure and rate of the common external tariff***

The standard escalating structure of selected RECs customs unions hides two issues that should be addressed.

The first issue is that there are many cases where the inputs used in the production of a product attract a higher tariff rate than the product itself.

The second issue arises from the highest band. For example, the analysis of the fifth band of the ECOWAS CET—with a tariff rate of 35 per cent—shows that when these goods are individually identified, they are found to range from raw materials, to intermediate inputs, to final consumer goods. As a result, the composition of these goods disrupts the escalating structure of the CET. This second issue relates to the structure and rates of the CET that place tariffs on too many types of

goods that do not need protection. Since the use of tariff protection results in higher domestic prices, production subsidies may be more appropriate for key traded goods.<sup>104</sup>

### ***Implications of a partially or fully functioning customs union***

There are two emerging issues in a fully functioning customs union—the free circulation of goods and tariff revenue sharing. With respect to the issue of free circulation of goods in the presence of a CET, goods imported into any part of the union automatically assume the appellation of “community” goods. Once appropriate import duties have been paid at the point of entry, the goods can circulate freely across all parts of the union without further customs charges. So, using the platform of the AfCFTA to move to a full African customs union requires exploring the practical ways of leveraging the AfCFTA framework to ensure effective free circulation of goods. Particular attention should be paid to the degree of harmonisation of customs valuation systems and customs rules and procedures across the union.

A customs union that permits free circulation of goods would automatically confront the issue of tariff revenue sharing among member States. In implementing the AfCFTA, a comprehensive study is needed to examine the form, rationale and operational modalities for collecting and sharing tariff revenue, as well as the formulae and key indicators to be used. Another challenge would be dealing with member States that enter into bilateral trade and economic partnership agreements that negate the spirit of customs unions and the AfCFTA. Examples are the proposed bilateral trade agreement between Kenya and United States and the economic partnership agreement between ECOWAS and the EU.



### ***Stakeholder involvement in the trade policy process***

Key to success is the participation and commitment of stakeholders in each phase of implementing economic integration. The policymaking entities, cross-border agencies, implementing agencies and port authorities, the private sector and development partners are among the potential stakeholders involved in trade. As the main beneficiaries of trade reform, providing traders and businesses with the opportunity to share views and make suggestions is critical to ensuring that the initiative leads to concrete and practical benefits. Conflicting and opposing industry interests can hamper the implementation of the AfCFTA. The economic size of respective stakeholders, and the decisionmaking process at the regional level, mean there is some inequality in participation. The AfCFTA Secretariat should note that the emergence of a full customs union may depend on political influence and will, on the formal and informal relationships the Secretariat maintains with the stakeholders and the degree of transparency in the consultation process.

### ***Mixed targets and timelines***

There have been many different continental-level initiatives for integrating African countries, all with proposed timelines and targets. However, meeting timelines is always difficult. For instance, the Tripartite Free Trade Agreement (TFTA) initiative came before the AfCFTA and was partially incorporated into the AfCFTA when some of its provisions were used during the negotiations. The proposed timeline for the finalisation of TFTA was 2014, but TFTA did not officially launch until 2015 and in 2020 the agreement was not yet ratified. In fact, none of the REC economic integration initiatives have been achieved within the stipulated timelines. Of the six stages for accomplishing Africa integration goals, the only one that has been achieved satisfactorily is the creation of regional blocs in regions where they did not exist before. The other stages have all missed their deadlines of enforcement for AEC.

## **CONCLUDING REMARKS**

The basic lessons from this analysis are numerous. First, there is a marked difference between deeper economic integration in theory and in practice. Second, the supportive roles of different forms of deeper integration in implementing the AfCFTA may be unrealistic given their inherent challenges. Third, there are mixed levels of progress for RECs in pursuing the provisions of the Abuja Treaty. The analysis shows the likely challenges of implementing the AfCFTA without a common continental trade policy. The CET violations by member States in a customs union would pose implementation challenges to the AfCFTA if they are not adequately addressed with regional schedules of tariff concessions. Allowing each member State in a customs union arrangement to submit its schedules of tariff concessions would negatively affect the commonality of tariffs and customs administration of the union.

The influence of domestic interest groups leads to instability in customs union management. So, stakeholder ownership and participation are key to the success and stability of any trade arrangement. The basic lesson for African economic integration is the inherent challenge of implementing a customs union without effectively implementing a free trade agreement. While RECs platforms can provide additional impetus, the AfCFTA must be implemented by member States. The AfCFTA should be seen as a steppingstone towards the realisation of AEC. This is feasible provided all stakeholders—RECs and countries—take ownership of the agreement and make a concrete commitment to promoting its implementation and success. The advent of the AfCFTA should be seen as an opportunity to correct the anomalies in implementing article 88 and to fast-tracking different stages of the AEC.

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# Chapter 7

## The political economy of the relationship between the RECs and a continental system of integration: A focus on RECs, FTAs and AfCFTA/AEC

### INTRODUCTION

**T**he objective of this chapter is to examine key political economy challenges in building relationships between regional economic communities (RECs) and free trade agreements (FTAs) and the African Continental Free Trade Area (AfCFTA). This is done by analysing the determinants of key stakeholder interests and positions and the implications of these determinants in building the interface between RECs and AfCFTA. The analysis starts with the interpretation of “RECs as building blocks of the African Economic Community (AEC)” and “RECs–FTAs as building blocks for the AfCFTA.” The study combines legal interpretation with economic analysis of the determinants of stakeholder interests and positions in integration arrangements.

The policy arrangement of building relationships between RECs and the AEC can be found in the 1998 protocol<sup>105</sup> on the relationship between the

AU and RECs, which set out to achieve the following objectives:

- Strengthen the existing RECs in accordance with the provisions of the Abuja Treaty, treaties and the protocol.
- Promote the coordination and harmonisation of the policies, measures, programmes and activities of RECs to ensure that the provisions of article 6 of the treaty are implemented in a harmonious manner to facilitate the five stages set out in article 6, and to efficiently integrate the RECs into the African Common Market.
- Promote closer cooperation among the RECs.
- Provide an institutional structure for the coordination of relations between the Community and the RECs on the implementation of stages 1 to 4 as set out in article 6.

The protocol can be a precursor and enabler of cooperation and coordination of policies, measures, programmes and activities (article 3a). The protocol gives impetus to establishing a framework for coordinating activities and contributing to the realisation of the objectives of the AU Constitutive Act and the Abuja Treaty. (A few of the articles worth noting are documented in annex 14.)

Evidence suggests that various REC treaties are not effective in accelerating integration processes that would shorten the periods provided for in article 6 of the Abuja Treaty (see chapter 2). Moreover, implementation may be difficult given the lack of coherence in various REC-FTAs. In July 2019, the limited use of regional integration instruments drove the AU to look into the issue of division of labour among the AUC, RECs and Member States.<sup>106</sup> The AU was identified as the body to coordinate the formulation and adoption of continental policy decisions.

RECs have multiple responsibilities:

- They are responsible for the formulation of regional policies in line with the continental orientations.
- They serve as a focal point for facilitating consultations for the formulation of continental policies and programmes/projects.
- They are in charge of aligning national development plans with regional and continental development frameworks.
- They are required to support the participation of member States in negotiating legal instruments aimed at building common understanding and positions.

In line with the protocol, member States are responsible for formulating and implementing regional and continental policies, programmes and projects, and they support aligning national development plans with regional and continental arrangements. The other key shared responsibilities and divisions of labour are:

- Implementation.
- Monitoring and evaluation.
- Partnerships.
- Resource mobilization.

To understand the political economy of the relationship between RECs and member States within the context of the AfCFTA, it is necessary to:

- Analyse stakeholder understanding and interpretation of the notions of “RECs as the building blocks of the AEC” and “REC-FTAs as building blocks for the AfCFTA.”
- Examine the likely effects of the AfCFTA on trade performance of REC member States.
- Suggest ways of building relationships between REC-FTAs and the AfCFTA.

## **UNDERSTANDING AND INTERPRETING RECs AS THE BUILDING BLOCKS OF AEC AND REC-FTAs AS BUILDING BLOCKS FOR THE AfCFTA**

Articles 9 to 13 of the agreement set out the AfCFTA institutional framework. Key respondents of the survey were asked to provide their basic understanding of the “RECs as the building blocks of the AEC” and “REC-FTAs as building blocks for the AfCFTA.” REC respondents understood that the AfCFTA processes should be guided and informed by the existing mechanisms and best practices of RECs. Implementing the agreement should maintain the integration levels already achieved by the RECs, and that “the agreement must not legislate standards and trade regulations that are REC-minus.” A private sector key respondent understood that the existing REC trade and economic policies would be the foundation of the AfCFTA. The platform of the

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African Union

African Continental Free Trade Area

Union Africaine

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União Africana

African Continental Free Trade Area

African Continental Free Trade Area

الإتحاد الأفريقي

African Continental Free Trade Area

African Union

African Continental Free Trade Area

African Continental Free Trade Area

الاتحاد الأفريقي

African Continental Free Trade Area

AfCFTA would be a convergence of REC activities and agreement implementation would be at regional levels, thus avoiding reinventing the wheel.

Other stakeholders thought RECs should provide the operational framework and considered RECs as decentralised entities of the AfCFTA, better able to engage their member States. They thought the RECs ought to be used as premier regional platforms for engaging and harmonising policies for efficiently implementing the AfCFTA. In addition, RECs were “the first stop to the final destination of the Agreement.” RECs—both good and bad—should be included in implementing the Agreement, forming the foundation of the AfCFTA. To a respondent from SADC, RECs are key players in continental economic integration and the summation of their programmes should constitute the AfCFTA. To another respondent from ECCAS, the AfCFTA should build on REC achievements in order to advance its continental integration agenda. To an SADC public sector respondent, the legal basis for establishing the RECs should serve as the reference

for creating the AfCFTA. A private sector respondent, harmonising all the REC agreements and institutions should serve as the building blocks for the AfCFTA.

As RECs were not part of the initial negotiations, some key private sector and government respondents said the RECs should not be party to the AfCFTA implementation and their role should be limited to monitoring and oversight. RECs should be regarded as third parties and the agreement can neither be binding on them nor create obligations or rights without the consent of member States. Since the duties and rights of the AfCFTA are only enforceable among contracting parties, there should be no imposition of implementation rights and duties on RECs. A private sector respondent reported that establishing the AfCFTA implies a natural death for RECs and, because of this, REC involvement would delay implementing the agreement. “I know it is not easy to be agreeable by all Members States, but that is the reality if Africa wants to move forward.” A key respondent also reported that “RECs as building blocks of AEC is short of legally binding

instruments on which the relationship between the AfCFTA and REC-FTAs should be based.” Any type of relationship with RECs and the AfCFTA would be ad-hoc and not obligatory. So, for there to be a legal identity, there should be a legal basis on which the relationship is built. This is necessary because RECs are independent, self-contained legal regimes that operate on a substantive basis in a context that goes beyond trade policy.

These responses show that key respondents do not see RECs as building blocks of AEC nor as building blocks for the AfCFTA. These findings have implications for the applicability of the article 5 principles. The issue relates to how article 19 is reconcilable with article 5: that is, whether maintaining the RECs has consequences for implementing the AfCFTA article 5 and article 19 (see chapter 4).

In this context of the AfCFTA article 19, the phrase “building blocks” is not defined in the agreement. The ordinary meaning would be that the AfCFTA will build on and achieve REC FTA plus standards. A litmus test for this would be weighing each AfCFTA provision against each individual REC to establish the feasibility of this principle building on the REC FTA plus standards. If it is found that REC-FTAs harbour conflicting provisions, the basis of the principle would be shaky. Establishing REC FTA provisions that fit the article 5(b) principle may end up being a contest of wills between individual RECs and member States.

Article 5(f) identifies “preservation of the *acquis*” as one of the principles governing the AfCFTA. The term *acquis* is further stated in article 18 of the Protocol on Trade in Services. The phrase “best practices” is not defined and neither is the phrase “negotiated agreement on sectors for regulatory cooperation.” In the context of article 5(b), the extent to which both phrases amount to building blocks can only be inferred by the extent to which the AfCFTA state parties will consent to adopting measures underpinning these two elements of best practices and regulatory cooperation.

Article 19 of the AfCFTA set the context for Article 5(b) and for the other principles linked to its operationalisation, implying that Article 5(b) requires interpretative context, drawing on the other AfCFTA provisions and on the Protocols of the agreement. The associated principles and provisions show that the intention of the negotiators was to create a grandfather clause by creating exceptions to the AfCFTA, albeit leaving the definition of what constitutes an exemption at the behest of the state party seeking to apply the exemption. The grandfather clause has implications. It constitutes an exemption that allows signatories to continue under existing measures rather than implementing the new rules, regulations and laws. It also exempts signatories engaged in specified activities when new rules come into force, and requires that all other parties abide by the new rules.

Juxtaposing the grandfathering principle with the provisions of articles 5 and 19, notably those provisions do not define specific activities, amounts to a blanket and undefined exception. Given that grandfather clauses generally create unfair competitive advantages for grandfathered parties, such clauses are normally subject to some form of regulation. With the grandfathering principle, article 5 and article 19 leave the meaning of the provisions open to interpretation. Thus, the meaning of REC-FTAs as building blocks for the AfCFTA cannot be stated with certainty. The interpretation of article 5(b), as well as associated provisions that have a bearing on its meaning, can only be achieved in two ways:

- Through the interpretation of the state parties.
- Through litigation under AfCFTA dispute settlement mechanisms.

Another major issue is that many REC trade agendas are heavily influenced by external actors. As pointed out by Draper, African regional integration relied on European Union intellectual foundations that had a limited ability to address Africa’s challenges.<sup>107</sup> Enejekor (2011) underlined the idea that indiscriminately copying institutions found

in Europe and elsewhere is not only a delusion, but also an obstacle to progress in building a community.<sup>108</sup> In the context of the AfCFTA, in 2015 ECOWAS suggested extending the existing mandate for the negotiation of the West Africa EPA to that of the AfCFTA negotiations. Potentially influenced by the EPA negotiation experience, member States did not follow up on the proposal. This analysis supports the UNECA findings that RECs can play a building-block role only if there is complementarity among RECs, political will, a commitment to ratify protocols, faster implementation and a reduction in length of negotiations.<sup>109</sup> Hence, there is a challenge in accommodating the differences within the AfCFTA structure without compromising the AU's strategy of RECs as key components of African regional integration. This also questions the practicality of AfCFTA article 8(2), given the presence of diverse trade and tariff concessions in various RECs.<sup>110</sup>

The constructive interaction between the RECs and the AfCFTA will depend on fundamental improvements in the geopolitical context of RECs. There is thus a need for practical pathways for developing the necessary political and economic synergies between very diverse RECs and AfCFTA processes and structures.

## **AN ECONOMIC ANALYSIS OF THE RELATIONSHIP BETWEEN THE RECs AND THE AfCFTA**

The economic explanation of the interests and positions of REC member States and the AfCFTA starts from the assumption that free trade maximizes welfare and imposing tariffs reduces it. Creating an FTA involves eliminating tariffs and moving towards free trade, thus increasing—though not necessarily maximizing—welfare in member States. Viner accepted that forming a customs union would increase trade between the member States, but he argued that whether this is desirable or not depends on the source of the increased trade.<sup>111</sup> Viner identified two possible cases as a source for increased trade: trade creation (TC) and trade diversion (TD). This simple model was used

to analyze the determinants of key stakeholder interests and positions in implementing the AfCFTA.

As the welfare effect of the AfCFTA, rather than the expansion of world trade, would determine the interests and positions of key stakeholders, Viner's metric would be the right metric to assess the impact of the agreement. The reduction in trade barriers will stimulate intra-trade, which could lead to increased trade among the members—trade creation. Economic efficiency is enhanced because this encourages intra-region substitutes for higher cost imported products from outside the region. However, intra-trade expansion may be at the expense of trade from cheaper sources outside of the regional trade agreement—trade diversion. If additional trade among the partners is the result of trade diversion, a country can suffer a welfare loss. Whether a country gains or losses from entering into a regional trade agreement will depend on the balance between the trade-creating and trade-diverting effects of the agreement.

The imposition of tariffs leads to a loss of consumer surplus, unmerited gains to the government through tariff revenue and an increase in domestic producers' surplus.<sup>112</sup> The implementation of AfCFTA tariff liberalization will reverse this situation and yield additional trade gains:

- Due to increased competition within the continent, inefficiencies will be reduced and monopolistic rent seeking eliminated. This should lead to increased consumer welfare.
- Member countries can use their REC memberships as a mechanism for locking-in trade reforms.
- At the national level, governments can use commitments to AfCFTA to defend against domestic producers' lobbying for maintaining or increasing domestic protection.

These gains would be major determinants of the interests and positions of key stakeholders and they have implications for building the interface between REC-FTAs and AfCFTA.

► **Table 7.1**

## Trade creation and trade diversion effects of the AfCFTA on RECs

REC	Scenario 1	Scenario 2	Scenario 3						
	TC <sup>a</sup>	TD	NE	TC	TD	NE	TC	TD	NE
<b>UMA</b>	1.02	-1.41	-0.39	1.64	-1.01	0.53	2.64	0.67	0.97
<b>CEN-SAD</b>	0.75	-0.41	0.34	0.48	0.57	-0.13	0.83	0.52	0.29
<b>COMESA</b>	1.41	0.12	1.29	1.57	-0.49	0.06	1.19	0.08	1.11
<b>EAC</b>	0.98	0.42	0.56	1.83	0.14	1.69	1.91	0.98	0.93
<b>ECCAS</b>	0.42	-0.20	0.22	0.42	-1.22	-0.80	0.72	-0.42	0.30
<b>ECOWAS</b>	0.73	0.25	0.48	0.95	-0.49	0.36	0.98	-0.57	0.41
<b>IGAD</b>	0.83	0.91	-0.83	0.83	0.91	-0.08	0.49	-0.23	0.26
<b>SADC</b>	1.98	-0.42	1.56	2.08	0.42	1.66	2.91	0.60	1.31

*a* Trade diversion (TD), trade creation (TC) and net effects (NE).

Source: Computed by ECA.

Note: Coefficients are estimates of weighted average tariff on intermediate exports significant at the 1% and 5% level.

Based on this analysis, the AfCFTA can be welfare enhancing to all RECs if the trade-creation effect is larger than the trade-diversion effect and if there is a mechanism for preventing trade deflection. If the AfCFTA is welfare-enhancing in the aggregate, there is no guarantee that every REC will derive an equally beneficial effect from it. So, to move from theory to practice, an empirical analysis is needed of the likely effects of the AfCFTA on REC trade performance. The empirical analysis used here is based on a gravity model developed to assess the trade liberalization effect of the AfCFTA and its impact on the intra-African trade of RECs under three phases.<sup>113</sup> The three trade indices—TD, TC and net effects (NE)—are used to evaluate the potential economic effects of the AfCFTA.

The result shows that the AfCFTA generated both trade creation and trade diversion effects in all RECs (table 7.1). The analysis of scenario 1, which represents a standstill period when no liberalisation is required except tariff lines that are 0 per cent, shows minimal changes. In scenario 2, the analysis of 50 per cent reduction in intermediate tariffs of different product categories shows that the implementation of the AfCFTA would lead to the generation of trade creation in CEN-SAD, COMESA,

EAC, ECOWAS and SADC, commodities and trade diversion in ECCAS, UMA and IGAD products. In the light of the differential impacts, it is reasonable to suggest that trade creation effects are restrained due to initial high levels of weighted average tariffs on intermediate exports in some RECs. When RECs with very high tariffs join a bigger FTA, their bilateral trade is likely to increase at the expense of their trade with non-members of other RECs.

Analysis of scenario 3, where all intermediate tariffs are liberalized expect sensitive products of various RECs, shows that all RECs would witness a trade creation effect and a minimal trade diversion effect. This indicates that the AfCFTA has the potential to increase African trade with the rest of the world, mainly because the trade diversion effect is relatively small. The economic implication is that the scope for trade diversion is small when membership is limited, and it gets larger with an increasing number of members. The likely effects of the AfCFTA would be determined by the RECs' level of trade development and diversification. Compared with scenario 3, the trade creation effect in scenarios 1 and 2 for SADC and EAC are larger than for ECOWAS and COMESA. This is because the weighted average tariffs of ECOWAS and COMESA were higher compared with



► **Table 7.2**

## Import–Export Correspondence Index of African Union-recognised RECs in Africa, 2010–2017 (%)

RECs	UMA	CEN–SAD	COMESA	EAC	ECCAS	ECOWAS	IGAD	SADC
UMA			40	50		10		
CEN–SAD						50		25
COMESA		40		54				
EAC	50		54			35		
ECCAS						40		
ECOWAS	10	54		35	50		5	54
IGAD				25		5		
SADC	35	54	50	40	5	54	5	

Source: ECA computation using weighted average data of 2010–2017.

Note: Interpret with caution and subject to change as the analysis is based on standstill period when no liberalisation is required except tariff lines that are already 0 per cent tariffs.

the weighted average tariffs of SADC and EAC. However, in scenario 3, COMESA, ECOWAS and UMA would enjoy a trade creation effect because of the drastic reduction in intermediate tariffs.

This result also suggests that the trade creation effect could be caused by other factors, such as the potential demand of would-be-importers and the productivity of the exporter, rather than just by tariff reduction and elimination. REC expansion with the AfCFTA would result in trade creation towards other RECs, while the expansion may not lead to a trade diversion within the REC. This is because the AfCFTA may result in relatively weak trade creation among REC member States that have higher intermediate import tariffs before the implementation of the agreement. RECs with lower tariffs, on the other hand, appear to be more trade creating than trade diverting, implying that expanding coverage to other RECs with higher tariffs might lead to trade creation and welfare gain. This potential expansion, nevertheless, raises questions about trade similarities and weak ability for trade diversification.

Comparing the results of import–export similarity measures for AU recognized RECs using the Import–Export Correspondence Index indicates that the exports of ECOWAS, SADC and UMA fit well with the imports of other AU-recognized RECs (table 7.2). These RECs have the potential to supply exports to others given their high values on the Import–Export Correspondence Index compared with other RECs.

The SADC trade pattern is set by South Africa’s industrial exports. SADC’s exports are dominated by South Africa’s concentration in minerals, precious metals, iron and steel and some manufactured goods. Algeria and Nigeria’s oil and gas exports are the major determinants of trade patterns in UMA and ECOWAS. Because of the dominance of Nigeria’s exports, ECOWAS’s exports are determined by mineral fuels limited supply and by industrial and agricultural products. The AfCFTA’s implementation would also affect RECs like EAC and IGAD that have major export commodities like copper, cotton, edible fruit and nuts, citrus fruit or melon peel, coffee, tea and spices, and oil seed. While these export products are major import commodities

► **Table 7.3**

## Export–Import Similarities Index for intermediate, consumer and agricultural and raw material products of African Union-recognised RECs, 2017

RECs	UMA	COMESA	EAC	ECOWAS	ECCAS	SADC	CEN–SAD	IGAD
UMA		0.82	0.90	0.55	0.87	0.82	0.77	0.95
COMESA			0.92	0.71	0.73	0.94	0.92	0.79
EAC				0.62	0.81	0.91	0.84	0.87
ECOWAS					0.43	0.72	0.78	0.51
ECCAS						0.72	0.64	0.92
SADC							0.93	0.79
CEN–SAD								0.72
IGAD								

Source: ECA computation using weighted average data.

for almost all the REC member States, only a few RECs have the potential to supply or export commodities that match the demand of other RECs. As the composition of exports from RECs is not well diversified, there is limited matching with the demand of other REC member States.

In 2017, there was some export similarity between RECs in Africa and the values ranged from 0.43 and 0.95 on the Export–Import Similarities Index (table 7.3). The highest value of 0.95 was between UMA and IGAD, both with similar export structures in intermediate and consumer goods. In UMA, the top exporters were Algeria, Morocco and Tunisia, while Kenya and Uganda were the top exporters in IGAD. In UMA, Algeria had petroleum products as one of the highest export commodities. Other commodities common to both UMA and IGAD were fish products.

ECOWAS tends to have the lowest export similarity with other RECs in intermediate, consumer and agricultural and raw material goods. Intermediate export share is higher in ECOWAS than in consumer and agricultural and raw material goods. Hence, other RECs trading with ECOWAS member States are likely to face lower competition with ECOWAS member States if they concentrate more on consumer, agricultural and raw material exports. After ECOWAS, CEN–SAD and SADC have higher shares of intermediates in their exports. As expected, ECOWAS had the highest competition with CEN–SAD (a value of 0.78 for 2016 and 2017) as a result of multiple memberships. COMESA had the strongest export similarity with SADC as more than half of SADC members were also members of COMESA. In relative terms, COMESA, EAC and ECCAS had more shares of agriculture and raw materials than other RECs and may derive more gains in exports in this sector relative to other RECs.

The implications of these findings is that the interests and positions of stakeholders in the various RECs will be determined by the resulting trade patterns and welfare gains from implementing the AfCFTA.

## **SUGGESTIONS FOR BUILDING RELATIONSHIPS BETWEEN REC-FTAs AND THE AfCFTA**

To offer suggestions for building relationships between REC-FTAs and the AfCFTA, a basic understanding of the inter-linkages between them is required.<sup>114</sup> The starting point is the February 1998 Protocol on Relations between the AEC and the RECs. The key respondents were of the opinion that the Protocol can serve as an instrument and framework for close cooperation. To build the relationship, they suggested programme harmonisation and coordination, as well as integration among the REC-FTAs. To find a legal basis for the RECs to work effectively within the AfCFTA framework, it is necessary to reference the AfCFTA's negotiation history to ascertain what the drafters and negotiators had in mind.<sup>115</sup>

The common understanding and definition of REC-FTAs as the building blocks of AfCFTA implementation should be discussed from four perspectives. First, there is the need to recognize that countries joined the RECs to maximize both economic and political gains. Second, the presence of the AfCFTA's provisions on continental preferences and MFN treatment makes the trade-liberalising instrument the platform of choice, and provides member States the opportunity to select and choose what preferences to share. The third relates to the implications of the AfCFTA MFN clauses that require access be granted only on the basis of reciprocity, while also still being non-discriminatory. The fourth relates to differential effects of the agreement on RECs that could vary the speed of implementation.

The political economy analysis of the relationship between the AfCFTA and RECs will require institution building by all stakeholders to fully realize the gains from the AfCFTA. Institutions go beyond norms and procedures. They should also incorporate policy connectedness and networks. For effective relationships to form:

- RECs should align various trade policies to the strategic focus areas of the AfCFTA. This will require careful coordination and administration of the regional FTA provisions, as well as a commitment to implementing agreement provisions.
- There should be a connectedness between policy decisions in the AU and RECs, as intergovernmental decisionmaking rests within the same political centres at regional and continental levels.
- If the relationship involves RECs with one country dominant, an asymmetry is introduced, and this should require a special decisionmaking arrangement.
- Since member countries of RECs are not all equal in all respects, decisions based on one-country-one-vote or on consensus may not work well. Although decisions on trade matters within the AfCFTA and within RECs can be by consensus, the AU should propose qualified majority voting that weights country votes at REC level by relative size—with population or GDP or both as the weight.
- The implementation mechanism of the AfCFTA will require operationalising the task force and early warning system. All these mechanisms require coordination and capacity requirements from RECs. For these not to be a stumbling block for AfCFTA implementation, all RECs should be financially empowered and there should be adequate and continuous capacity building.
- The AfCFTA secretariat should focus on creating accountable and transparent leadership based on the broad participation of relevant stakeholders in policymaking.

## CONCLUDING REMARKS

The political analysis of the relationship between the REC-FTAs and the AfCFTA has shown that articles 5 and 19 of the AfCFTA should not be given interpretations of convenience by REC stakeholders and by member States. To avoid this, calls for institutional building and mainstreaming legal provisions of the AfCFTA into RECs. The implementation of the AfCFTA will require the efficient and effective management of regional institutions to overcome challenges of weak institutions, poor harmonisation and coordination of policies, and financial dependency. Implementing the AfCFTA will change the pattern and direction of trade on the continent and, because of welfare loss, this may be a source of rivalry and competition among RECs. The policy implications are that this will generate different interests and positions and it may determine how different REC member States implement the agreement.

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# Chapter 8

## An analysis of scenarios for the interface of AfCFTA, RECs and REC-FTAs

### INTRODUCTION



he research issue in this chapter deals with the appropriate policy options to build interface among RECs, REC-FTAs and the AfCFTA. The objectives are:

- To explore political economy options for the interface.
- To make suggestions for a coherent, coordinated and fully responsive interface.

The preconditions for a smooth, rapid and successful integration process and interface can be grouped into political and economic dimensions.

For the political preconditions, the economic integration process tends to be enhanced by the existence of domestic peace and security in the participating countries. The process also benefits from strong political and civic commitment, as well as mutual trust among the stakeholders. These elements are linked to the extent that, in the absence of peace and security, mutual trust may be difficult to build.

The economic preconditions include a high degree of trade complementarity among member countries and a low degree of diversity in terms of economic size, resource abundance and geography. In the context of open regionalism, both national and regional agendas are based on an outward-oriented, market-driven and private sector-led development philosophy.

### AN ANALYSIS OF DIFFERENT SCENARIOS FOR THE INTERFACE

Once the AfCFTA negotiations are completed, the focus will shift to identifying stakeholders and developing mechanisms for implementation. RECs are one of the major stakeholders. Based on principle of subsidiarity,<sup>116</sup> regional institutions should only be responsible for activities that can be efficiently and effectively handled at the regional level. There may be different options for engagement. First, RECs can play a facilitator rather than a political role. Second, in the long run, as integration deepens the trade-related functions of RECs can be consolidated at the



continental level. Third, RECs can perform the role of monitoring and reporting on implementation and collecting and disseminating regional data. Key respondents to the survey who work in government roles were of the opinion that RECs should focus on deepening their integration to the point where they become an integral part of the continental framework. To these respondents, the interface of RECs, REC-FTAs and the AfCFTA should be built around functions and responsibilities. Their suggested options are:

- REC trade divisions or departments can become sub-secretariats of the AfCFTA Secretariat.
- REC trade divisions or departments can have their roles centred on coordinating AfCFTA activities.
- REC-FTAs can be integrated into the AfCFTA.

Given these options, the subsidiarity principle can help to achieve two objectives. First, it should help avoid overloading scarce regional management capacity. Second, it should help promote confidence in regional agencies and ensure they are given

adequate authority and the means to implement collectively agreed continental policies and programmes. Also, the principle of programmatic gradualism suggests that successful economic integration is built on programmatic and gradual steps that work by reinforcing trust and commitment, thus making the process self-perpetuating. This calls for the right modality and choice of instruments for implementing options.

A SWOT analysis (table 8.1) is used to assess these interface options and role assignments.<sup>117</sup> The analysis examines four elements:


- Strengths—internal attributes and resources that support a successful outcome.
- Weaknesses—internal attributes and resources that work against a successful outcome.
- Opportunities—external factors that can be capitalised on or used to advantage.
- Threats—external factors that could jeopardise the outcome.

► **Table 8.1**

## SWOT analysis of the interface of AfCFTA, RECs and REC-FTAs

Options	SWOT				Remarks
	Strengths	Weaknesses	Opportunities	Threats	
REC trade divisions and departments as sub-secretariats	Supported by the treaties Fit perfectly into REC institutional architecture	Weak institutional capacity Limited financial and human resources Structural bottlenecks Institutional bottlenecks	AU support Support of development partners Provision of the AfCFTA article 12(5)	Unpredictability of foreign support	Immediate Development of AfCFTA Consolidated Strategic Action Plan Development of Communication and Coordination Plan Development of Monitoring and Evaluation Framework Development of AfCFTA Observatory
REC role can be centred on the coordination of AfCFTA activities	Supported by treaties Subsidiarity principle Complementarity Existing work programmes and activities can be streamlined Experience in FTA implementation	Weak capacity Limited resources Mutual mistrust and absence of sincerity of purpose RECs are not at the same level of integration	AU support Development partners support	Unpredictability of foreign support	Immediate Coordination role must be legally crafted and accepted by member States or State Parties to the AfCFTA Agreement
REC-FTAs can be integrated into the AfCFTA	Supported by treaties Experience in FTA implementation Compatibility of REC FTA and AfCFTA provisions Available trade facilitation programme Available supporting policies	Harmonization of some provisions Some RECs have no FTA or have FTA outside of Africa Low trade complementarity Competing interests of member States Conflicting views of RECs Domestication issues	Technical supports of UNECA WTO TFA Availability of the AfCFTA platform for negotiation and harmonisation	Limited financial resources Difficulties in the operations of customs unions in some RECs	Medium term and long term

Source: UNECA, compiled from the analyses of previous chapters and responses from key informant interviews.



The economic integration process tends to be enhanced by the existence of domestic peace and security in the participating countries.

Once the SWOT factors are identified, decisions can be made about which options are worth pursuing and what will be required to make the chosen options successful. For the analysis, the research findings of chapter 2 and 7 and key informant interview findings are used to develop the criteria to measure both the economic and political pre-conditions for an effective interface. These criteria are the basis for assessing the feasibility of the different options for the interface.

***REC trade divisions and departments can become sub-secretariats of the AfCFTA Secretariat***

Various RECs trade divisions and departments can contribute to the institutional structure of the AfCFTA through implementing and coordinating at the regional level. RECs can also play advisory roles through their seats on the AfCFTA Committee of Senior Trade Officials as indicated in the AfCFTA's article 12(5). To be sustainable, their role should anchor on the management of the Internal Technical Committee (ITC) and the Joint Technical Secretariat (JTS) and on the AfCFTA issues at REC level. The ITC can be used to coordinate the activities of all departments that have roles to play in the implementation of the AfCFTA. The JTS can also be used to deepen the institutional dialogue on AfCFTA issues of common interest with other non-AU-recognised RECs within the region. Both ITC and JTS should provide the platform to facilitate developing and implementing the AfCFTA Consolidated Strategic Action Plan, Communication

and Coordination Plan, Monitoring and Evaluation Framework and the AfCFTA Observatory. Using the RECs as a clearinghouse for policy harmonisation and experience sharing will be an advantage. A successful and speedy implementation of this option will require that RECs have information dissemination and follow up capabilities.

***The role of REC trade departments and divisions can centre on coordinating AfCFTA activities***

RECs trade departments and divisions can be given the responsibility of coordinating REC programmes with member States. Some key respondents of the survey said RECs should serve as a decentralised regional platforms to formally engage member States on AfCFTA implementation. They should coordinate activities to ensure that all facets of the signed agreements are taken into account. This coordinating role should also include assistance to members who are yet to ratify the agreement. RECs should be responsible for monitoring and evaluation, engagement of the private sector, and documenting all bilateral trade agreements and evaluating their compatibility with the AfCFTA (table 8.2).

The integrative option is feasible because RECs have mandates from their member States to organise and implement regional integration. They will therefore be guarantors of the coherent implementation of the provisions of the AfCFTA. To do this, RECs need to be involved in coordinating implementation actions,



► **Table 8.2**

## Activities of regional economic communities as coordinators of African Continental Free Trade Agreement provisions

Issue	Action	Remarks
Coordinate REC programmes with member State activities	Coordinate activities to ensure that all facets of signed agreements are taken into account	AU to take the lead and RECs to implement
Ratify outstanding legal instruments	Assist countries that have yet to ratify the AfCFTA	REC to take the lead
Monitor and evaluate progress regularly	Monitor and evaluate progress: <ul style="list-style-type: none"> <li>• Compliance monitoring</li> <li>• Output monitoring</li> <li>• Outcome monitoring</li> </ul>	Must be consistent and compatible to AU Trade Observatory
Engage the private sector by making information available	Distribute information on AfCFTA regulations for trade and transport through public awareness campaigns and by placing signs along corridors and borders	RECs to development the plan
Keep track of existing bilateral agreements and ensure fairness	Ensure REC coexistence in the least disruptive manner with regional or international conventions	RECs to take the lead

Source: UNECA, compiled from the analyses of previous chapters and responses from key informant interviews.

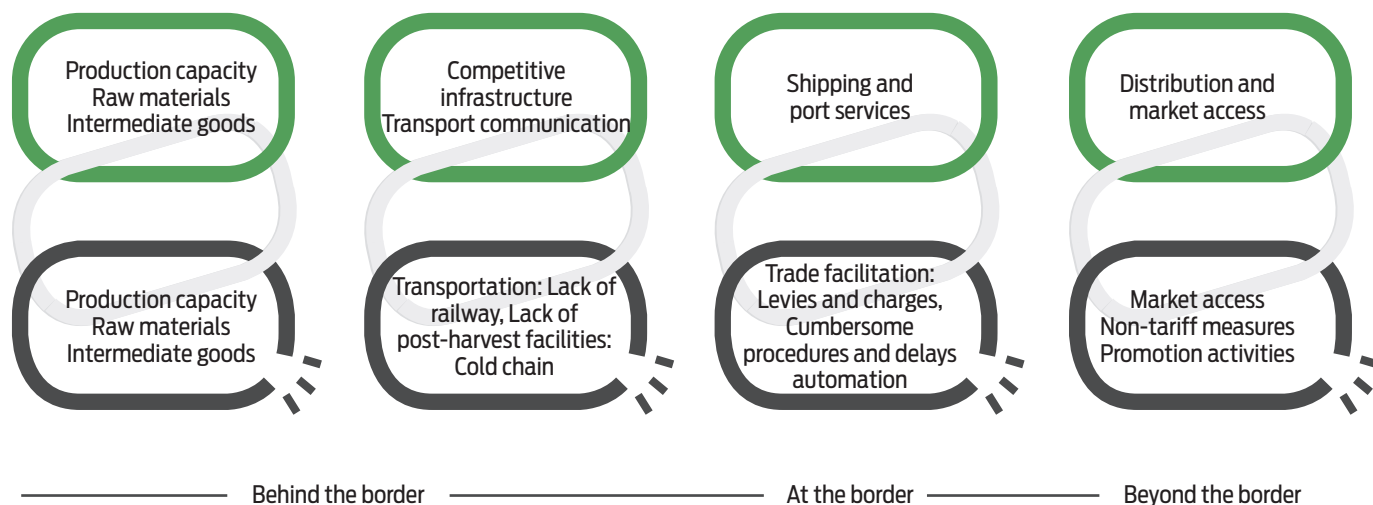
programmes and projects at the regional level. To a respondent of the survey, this role would allow RECs to concentrate on deepening integration. From a legal point of view, an explicit obligation would be required. At the moment, the AfCFTA is a self-contained agreement, as are the RECs. Without a legal obligation, it may not be feasible and RECs may not fit within the institutional architecture of the AfCFTA. Moreover, the RECs should enter into a cooperation agreement with the AfCFTA Secretariat with modalities for partnership frameworks.

### ***The REC-FTAs can be integrated into the AfCFTA***

The option of integrating REC-FTAs into the AfCFTA generated conflicting views among key stakeholders. To key respondents of the survey who represent RECs, they noted that RECs are at different levels with their existing mechanisms and policy frameworks. This makes the integration option impractical. However, the AfCFTA “acquis” principle provides a way out. EAC, ECCAS and SADC need this option to harmonise similar regional provisions and to avoid costly duplication.

► **Figure 8.1**

## Supply and value chains of exports and the potential pitfalls



Source: Compiled by ECA.

Key respondents from the private sector had conflicting opinions. Some agreed that article 6 of the Abuja Treaty provided the basis for integrating REC-FTAs into the AfCFTA. Others were against the option because RECs cover a much broader agenda than the agreement. To others, integrating REC-FTAs into the AfCFTA is a medium-term option because, given the extent of overlaps, it would take time to harmonise many REC FTA provisions.

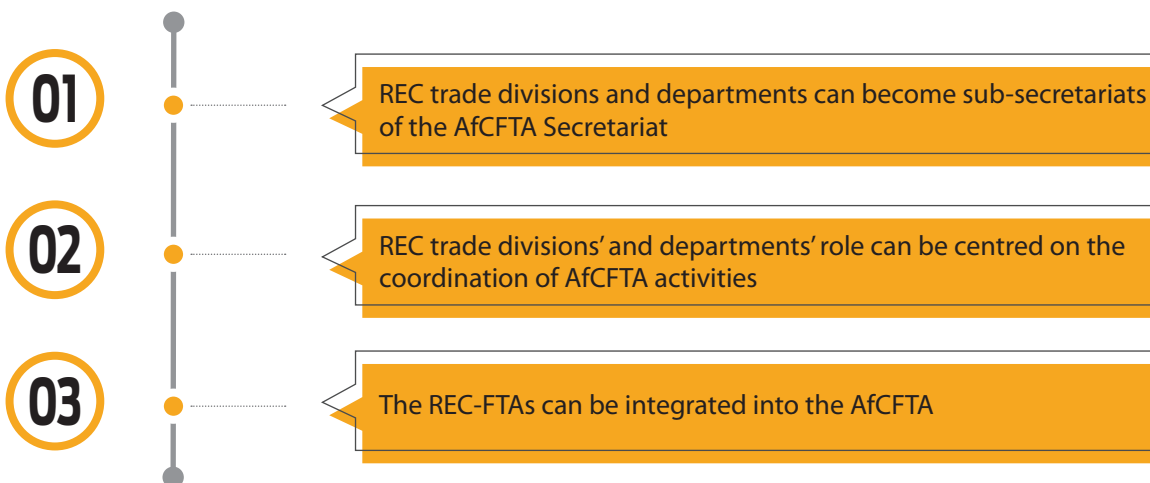
There is also the challenge of some RECs that have no FTA or have an FTA that covers more than just Africa. The strength of the integrative option is that it can be supported by various REC treaties. The availability of AfCFTA platforms for negotiating and harmonising outstanding issues presents an opportunity. The integration of REC-FTAs should be a platform for the continuous existence of RECs and an avenue for having RECs focus on facilitating trade, an area in which they have competency. There should be a coordinating framework in the AfCFTA to monitor this option along with other REC activities.

The integrative option also needs to recognise deeper continental integration and the place of a continental customs union in the Abuja Treaty. At the same time, it should recognise the difficulties RECs have in operating customs unions (see chapter 6.) AfCFTA implementation could provide a platform that allows all AU-recognised RECs to attain the full status of a customs union. As a long-term option, all RECs should be given the opportunity to continue implementing customs union arrangements. Nevertheless, their operations must not distract from implementing the AfCFTA, and their operations should be managed so that they do not delay implementing the agreement. In the long run, after the full implementation of the AfCFTA, the various customs union arrangements can be consolidated into an African Customs Union.

The main focus of this interface option should be promoting trade complementarity and preventing trade deflection in Africa. It should be used as the platform for addressing potential pitfalls in the supply and value chains of exports behind, at, and beyond borders (figure 8.1).

► **Figure 8.2**

## **A proposed model for building the interface among regional economic community free trade agreements, regional economic communities and the African Continental Free Trade Agreement**



Source: Compiled by ECA.

### **POLICY RECOMMENDATIONS FOR A COHERENT, COORDINATED AND RESPONSIVE INTERFACE**

To a key respondent “REC-FTAs likened to building blocks are neither well moulded nor well dried. To make a durable house out of the AfCFTA, the blocks need to be arranged on a solid foundation and supported with strong pillars.” The implication of this statement is that in building and managing the interface options, gradual steps should be taken, and the sequencing of the steps should be determined by the complexity of the activities involved. The interface should be developed through a gradual process and anchored on particular programmes. The process will then provide opportunities to monitor progress and access stakeholder performance.

A proposed model for building the interface gives suggested arrangements for different options given the different levels of activity involved and the complexity of each option (figure 8.2). A good starting

point to building relationships with RECs is to give their trade departments and divisions responsibility for serving as sub-secretariats of the AfCFTA. This would be followed by a coordination role for AfCFTA activities. The use of available AfCFTA platforms—such as the schedules of tariff concession, trade in services negotiation, and the AfCFTA Rules of Origin and cross-border e-commerce trade framework—can be used as a preparatory stage for integrating REC-FTAs. The AfCFTA implementation can be used by some RECs to achieve the free circulation of community goods through effective management of the customs union.

The interface options can be managed through a combination of policy, institutions and legal perspectives. The policy perspective should entail the complementarity of existing regional treaties and trade agreements. There is the need for policy harmonisation in the platform for the continental arrangement. The available instruments for doing this are the Boosting Intra-African Trade Action Plan (BIAT-AP), the Continental Value Chain, and the AU Trade Facilitation Strategies. All interface options should be anchored in implementing these

► **Table 8.3**

## An approach to the seven priority clusters of the Boosting Intra-African Trade Action Plan

Summary of the seven priority clusters of the Boosting Intra-African Trade Action Plan		National strategy	Regional approach and strategies	Continental approach
Cluster	Activities			
<b>Trade policy</b>	Mainstream intra-African trade in national strategies; enhance participation by the private sector, women and the informal sector; liberalise trade-related services	Implementation of Consolidated Strategic Action Plan (CSAP) of Regional Common Trade Policy (RCTP)	Development of RCTP	Coordination and Monitoring of CSAP
<b>Trade facilitation</b>	Reduce roadblocks; harmonise and simplify customs and transit procedures and documentation; establish one-stop border posts; adopt integrated border management processes	Domestication of WTO TFA Implementation of WTO TFA	Development of Regional Committee on Trade Facilitation Domestication of WTO TFA in member States Regional Customs Modernization Programme Joint border posts Rollback and standstill commitments on NTBs by member States	Trade facilitation implementation strategies by AU
<b>Productive capacity</b>	Implement the programme for the African Agribusiness and Agro-industries Development Initiative (3ADI), establish integrated trade information systems, encourage investment	Identification of national industries for the continental and regional value chains	Development of regional value and supply chains Development of regional MNCs	Accelerated industrial development of Africa
<b>Trade-related infrastructure</b>	Implement and mobilize resources for multi-country projects	Identification of projects that have continental effects	Regional approach to development of trade-related infrastructure Regional joint provision of infrastructure	Programme for Infrastructure Development in Africa (PIDA) Accelerated Industrial Development for Africa (AIDA)
<b>Trade finance</b>	Improve payment systems; set the enabling environment for financial services to provide report credit and guarantees; speed up the establishment and strengthening of regional and continental financial institutions	Provision of enabling environment for financial integration	Regional guaranty system Regional payments and settlements system	Development of continental financial institutions Pan-African Payment and Settlement System (PAPSS)
<b>Trade information</b>	Create interconnected centres of trade information exchange	Set up national trade and business information system	Regional trade information portal	Continental trade information system
<b>Factor market integration</b>	Operationalise existing protocols and policies, facilitate movement of businesspeople	Guarantee free movement of businesses and enterprises	Regional business development plan and strategy	Protocol on Free Movement of People

Source: Adapted from ECA (2017)

instruments. With the principles of subsidiarity and programmatic gradualism as guidance, the AfCFTA Secretariat should conduct a study on how to involve and encourage RECs to develop the programmes and projects (table 8.3). Effectively implementing these will go a long way in assisting AfCFTA implementation.

In addition, the interface should be anchored to the continental value chain. There are some REC regional value chains that can be leveraged by the AfCFTA and expanded to other RECs. The SADC Regional Industrialization Roadmap 2015–2063, for instance, can be integrated into other regional initiatives through global value chains. Also, there is a regional value chain initiative in the Regional Indicative Strategic Development Plan, with identified areas in agro-processing, mineral beneficiation and pharmaceutical manufacturing. The EAC Community Industrialization Policy 2012–2032 focuses on agroprocessing through backward and forward linkages. The regional SACU–EAC motor vehicle strategy, the ECOWAS Automotive Industry Policy Framework (AIPF) and West Africa Competitiveness Programme are other platforms that can be leveraged. These will all provide opportunities for enhancing the implementation of other provisions. The AfCFTA platform should be used to create hub-and-spoke trade relationships between RECs, with large regions the hubs and small regions the spokes. The elimination of NTBs should be an important component of the interface and of the negotiating process.

The institutional perspective can entail close collaboration between REC and AfCFTA Secretariats. The future negotiations of the agreement should collectively engage RECs and member States. There should be collaborative frameworks within the strategic platforms of the AUC, RECs and other institutions. The interface can learn from other continental initiatives. For instance, the engagement, consultative and participative approaches of the Programme for Infrastructure Development in Africa (PIDA) led to the ownership of the PIDA process and development of the priority list. The initiative includes:

- A continental steering committee that includes RECs.
- An institutional architecture for decision making.
- An advisory group.
- A council for development.
- Experts for project selection.

The member States, RECs and continental institutions meet through the PIDA platform of Continental Technical Validation Workshops and Annual Briefings.

The framework of the integrated corridor approach, a part of the PIDA, is a strategy designed to provide a high-level overview of project development and financing. PIDA also has a monitoring and evaluation framework to monitor project implementation. The framework uses a participatory process that integrates the contributions of all PIDA member States, RECs, AUC, AfDB, UNECA and other development partners. The framework is built on the African Infrastructure Database (AID) and PIDA uses the Virtual PIDA Information Centre (VPIC) web portal as a data management tool. The contents of AID are managed by RECs and member States with primary data on infrastructure projects. VPIC is an online knowledge portal that provides content on PIDA activities at the New Partnership for African Development Agency, AUC, AfDB, RECs and all other institutions and member States.

The Comprehensive Africa Agriculture Development Programme (CAADP) has four pillar institutions supporting the achievement of its goals<sup>118</sup> The pillars are:

- Sustainable land and water management.
- Market access.
- Food supply and hunger.
- Agricultural research.

The pillars provide expertise and technical guidance in the form of economic analysis, reviews of public expenditure and studies of available options on decisions. They have three core elements. The first is stocktaking, a process whereby stakeholders analyze pillar issues. The second is roundtable discussions in which a broad array of actors explore and agree on the development agenda. The third is preparing and implementing country investment plans, which then put the CAADP compact into effect. CAADP defines the roles of stakeholders, estimates the costs of executing certain actions and identifies sources of funding.

CAADP also requires that country-level activities are replicated on a regional basis, with each REC undertaking stocktaking processes and executing compacts and investment plans for agricultural development priorities in their member States. RECs interact with and address the needs of member States participating in the process. In particular, they have monitoring and evaluation duties where they conduct reviews of CAADP's streamlining of member States' policy processes. They raise awareness of the programme and encourage political leadership to engage with it. RECs coordinate implementation of the regional compacts and investment plans, which deal with issues that are trans-national in nature. Apart from these processes, there are other opportunities in the CAADP–Africa Forum, which brings together non-state actors to review CAADP progress, and the Partnership Platform, which is a formal body for CAADP implementers for coordinating responsibilities.

Based on these comparative analyses, the interface options can involve establishing institutions and organising statutory meetings, joint projects and consultations. Governance infrastructure to manage strategic objectives of the interface is also needed.

The framework can entail establishing a Committee of Directors of Trade of member States, RECs, the AfCFTA Secretariat and the AU Commission. There can also be a link to other AU institutions, African Ministries of Trade, and REC secretariats. The operational interface can also involve transparency, monitoring, a notification role of the AfCFTA Secretariat and a division of responsibilities and costs amongst RECs, the AfCFTA secretariat, AU Commission, member States and development partners. As an added advantage, the interface needs to recognise the political goodwill of member States and the willingness of development partners and international organisations to have an effective interface between the AfCFTA Secretariat and RECs.

The regulatory framework should be built around legal integration. To highlight how the AfCFTA may lead to changes in regional and broader international trade law, there is a need for comparative analyses of African national and regional trade laws and regulations, international trade law and regulation, and other relevant practices and approaches. The harmonisation of existing regional rules should be considered, as the effective implementation of the AfCFTA will depend on national laws and the domestication of harmonised rules and regulations. The AfCFTA should also balance the agreement's objectives on industrial, economic and agricultural development with a degree of regulation. The agreement should reflect best practices drawn from a range of member States, drawing on developed legal systems but also drawing on smaller nations. Some smaller economies' rules and regulations have flexibilities for smaller producers and informal actors that will be important for achieving broader development goals. Priority should be given to identifying and preserving legal practices that give rights to vulnerable groups, such as small businesses, farming communities and informal economic actors.

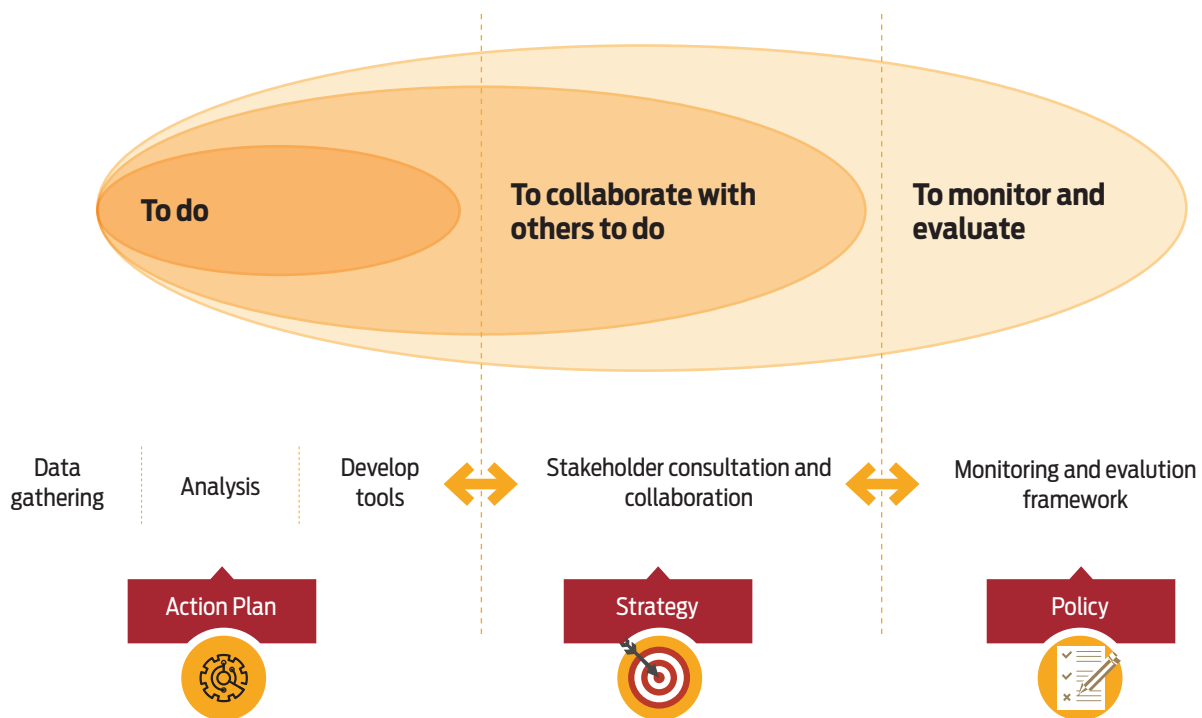
## CONCLUDING REMARKS

Building and managing the interface should address the issue of the REC–AU relationship as a variable approach and RECs as variable tools. This is necessary because most RECs developed independently of and prior to various continental instruments. The idea of RECs in continental integration is to harmonise policies, programmes and projects, and not to fully departmentalise the continental programmes and policies for regional convenience. Consequently, the differing goals and tempo of regional integration imply a fundamental variable component that may work in competition to the building-block role. Given all these issues, political and economic considerations should determine the chain of responsibility among RECs, the AfCFTA secretariat and the AU. Each of the institutions

should be able to develop action plans, strategies and policies for all interface options (see figure 8.3). In addition, there should be a close correspondence among national, regional and continental strategies for implementing the AfCFTA provisions.

To realise the objectives of the AfCFTA through building the interface, it will be essential to depart from the main understanding of international law and adopt a supranational authority. The AfCFTA protocols and international law can never be divorced from each other. This raises the issue of domestication of the AfCFTA provisions. The method and procedures of domestication are determined by the constitution of each member State and not

► **Figure 8.3**  
**The chain of responsibility**



Source: Compiled by ECA.

by the RECs. Moreover, AfCFTA ratification alone is insufficient and will not give the agreement and its provisions the force of law at the member State level. It is legislative approval by member States—in the form of enabling statutes—that opens the door for implementation. All interface options should put RECs in positions that facilitate and expedite AfCFTA domestication in the member States.

In the context of Vienna Convention Law of Treaties, there should be a mutual understanding of the interface to ensure beneficial coexistence. To address conflicting laws and treaties, a study is needed to determine how to create continental law out of fragmented regional legal agreements. Although RECs have made significant progress, their challenges with fragmentation and incomplete implementation are well documented. Because of the number of member States involved and the diversity of legal systems, implementation issues should be anticipated. The AfCFTA can build on these lessons to pursue deeper integration. This may call for a separate legal entity to ensure cooperation of RECs and the AfCFTA.

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# Chapter 9

## Advocacy and sensitization strategies for the interface of the African Continental Free Trade Area, Regional Economic Communities and Regional Economic Community Free Trade Areas

### INTRODUCTION

Building the interface between RECs, REC-FTAs and the AfCFTA will involve many stakeholders, generate new interests and positions and encompass many activities (see chapters 7 and 8). Managing the interface will be complex and the five key stakeholders—RECs, consumers, the African private sector, the foreign private sector, and African and foreign governments (see chapter 5)—will all have diverse powers, interests and incentives. As the agreement and the interface will also generate costs and benefits for stakeholders, this calls for strong advocacy and sensitisation strategies. Thus, diverse rules of engagement are needed to create strategies that will be fair to all. This chapter's focus is to propose appropriate strategies for advocacy and sensitisation for implementing the AfCFTA and developing strategies for a coordinated and responsive interface.

### POSITIONING THE PRIVATE SECTOR IN THE IMPLEMENTATION OF THE AFRICAN CONTINENTAL FREE TRADE AREA

The numerous objectives of the AfCFTA—and the free movement of businesspeople and investments—can only be achieved with the support of a vibrant private sector. By mobilising and allocating economic resources efficiently, the private sector stimulates productivity, creates wealth, catalyses job creation and enhances the welfare of citizens. In Africa, the private sector accounts for 80 per cent of total production, two thirds of investment and three quarters of credit and employs 90 per cent of the working age population. In addition, 90 per cent of the firms within the African private sector are small and medium enterprises (SMEs).<sup>119</sup>

► **Table 9.1**

## Objectives and expected outcomes of AfCFTA Business Forum

Objectives	Expected outcomes
Furthering the agenda to effectively implement AfCFTA and Boosting Intra Africa Trade (BIAT)	Develop a clear understanding of AfCFTA and the role it will play as a vehicle for increasing intra-African trade, eradicating poverty and deepening integration
Building synergies, linkages and complementarities between stakeholder groups with interests in AfCFTA	Establish a symbiotic linkage between AfCFTA and trade facilitation and emphasise trade facilitation as a key tool for ensuring successful AfCFTA implementation
Ensuring the private sector, civil society and parliamentarians have a better understanding of AfCFTA and its coherence with the African structural transformation agenda	Mobilize the power of the private sector to drive Africa's integration
Strengthening the development of a Pan-African platform that facilitates capacity development and harnesses private sector, civil society and parliamentary contributions to the AfCFTA process	Develop an enduring partnership between African policymakers and business leaders in Africa's integration

Source: AU (2019)

Any acceptable interface option will be a balancing act between different groups and interests who, through national or regional channels, exercise various levels of pressure. The involvement of private sector stakeholders is important to successful AfCFTA implementation. To some key respondents of the survey, the private sector's role is not clearly defined in the agreement and the sector was somewhat passive during the AfCFTA negotiations. So, providing traders and businesses with the opportunity to share views and make suggestions during implementation and evaluation is critical to achieving the objectives of the AfCFTA.

The private sector occupies a strategic position in implementing the agreement as well as in integrating REC-FTAs into the AfCFTA. The basic issues around positioning the private sector in implementation are determining what the best approach to involvement and participation is, and designing appropriate advocacy and sensitisation strategies to fit the approach. The relevance of private sector made

was underscored by the organization of the AfCFTA Business Forum at the AU Extraordinary Summit in Kigali in 2018. The objectives and the expected outcomes of the Forum are documented in table 9.1. African leaders expressed their political will to engage the private sector in the implementation at the forum.

The AfroChampions Initiative was developed as a platform of exchange between the private and public sectors. The Initiative involves several advocacy and awareness campaigns—private sector members donated \$1 million for the AfCFTA campaigns—and it is expected to carry out more of these for the agreement's implementation. To sustain the Initiative, it is important to ensure that civil society, micro and small enterprises, and the informal sector participate effectively in it.

In SADC, one of the most important principles guiding the Action Plan Framework of Regional Indicative Strategic Development Plan (RISDP) is

acknowledging the private sector's central role in implementing the industrialisation strategy. The sector is fundamental to promoting investment, participation and positioning in value chains. The private sector is also involved in setting up institutional structures to drive, monitor, assess and govern the industrialisation strategy. Initiatives such as the Southern African Business Forum (SABF) Operating Model include accounting, legal and engineering services as an important subset of business services. In ECOWAS, the Federation of West African Chambers of Commerce (FEWAC) is one of the founding multinational proprietors of institutions such as Asky and ECOWAS Bank Transnational. Governments and regional authorities rely partly on the economic activities of the private sector in the region for revenue generation and for planning. Implementing and financing regional integration programmes are made possible by the ECOWAS community levy, which is a tax on import trade.<sup>120</sup>

One of the challenges for Africa is that of underinvestment. Despite being home to 17 per cent of the world's population, Africa accounts for just 2.8 per cent of world investment stock.<sup>121</sup> To qualify for the preferences and benefits under the AfCFTA, international investors' production should involve sufficient value-addition in an AfCFTA member State. When it comes to investors in the services sector, their presence should be sufficiently established when they supply services to others. As long as sufficient value-addition occurs, foreign-based businesses can also benefit from the AfCFTA by linking up with African businesses.

The private sector's role is to mobilise their members and sensitise them to the relevance and importance of the AfCFTA regarding wider market access at the continental level. The sector should also engage and participate in implementing the AfCFTA by adopting positions on the practicality of the agreement, the relevance and selection of priority sectors, and on the business implications of increased competition. With respect to compliance and implementation, the sector is in the position to provide member States with reliable market data for decisionmaking.

The private sector will be at the forefront of the innovation, trade and investment needed to boost economic growth and job creation on the continent.

To a key respondent from an REC, private sector establishments are the ultimate beneficiaries of regional and continental policies and programmes. The framework is also the implementer of the programmes as it promotes trade relations among member States through exchanges, provides mechanisms to strengthen value chains, and encourages industrial investment and the transfer of know-how through flexible rules.

Although issues like gender, youth and SMEs are mentioned in the AfCFTA's principles, the agreement must chart a new path that requires more than just affirmations of support. Incorporating gender equality into the rules and recognising vulnerable groups will be a notable innovation. As the global COVID-19 pandemic has highlighted, a robust approach to trade and public health is critical. To ensure the delivery of needed medicines and supplies, the AfCFTA's "building block" approach to continental integration could leverage regional value chains to connect net exporting with net importing countries.

## **AN ANALYSIS OF ADVOCACY AND SENSITISATION STRATEGIES**

Developing a responsive interface requires formidable advocacy and sensitisation strategies. A proposed framework for stakeholder engagement (figure 9.1) has five steps for developing strategies for managing the interface.

The first step is stakeholder identification and mapping. This involves accurate and comprehensive assessments of the needs, priorities and relevance of vulnerable groups like youth, women and people with disabilities. The assessments should take into account the operating environment, administrative competencies and resource availability.

► **Figure 9.1**

## A proposed framework for stakeholder engagement



Source: Adapted from WCO (2015).

The second step is planning and developing strategies to keep stakeholders informed of initiations, progress, difficulties and measures that contribute to programme success. These should foster trust and guarantee participation and ownership. This step can also involve campaigns to create awareness of the rights and benefits of the AfCFTA among stakeholders and the public. The campaigns should regularly disseminate accurate information on trading opportunities within the continent.

The third step is developing strategies to build partnerships through advocacy and sensitisation. To determine the appropriate strategies, several lessons can be learnt from the experiences of REC parliaments and business councils.

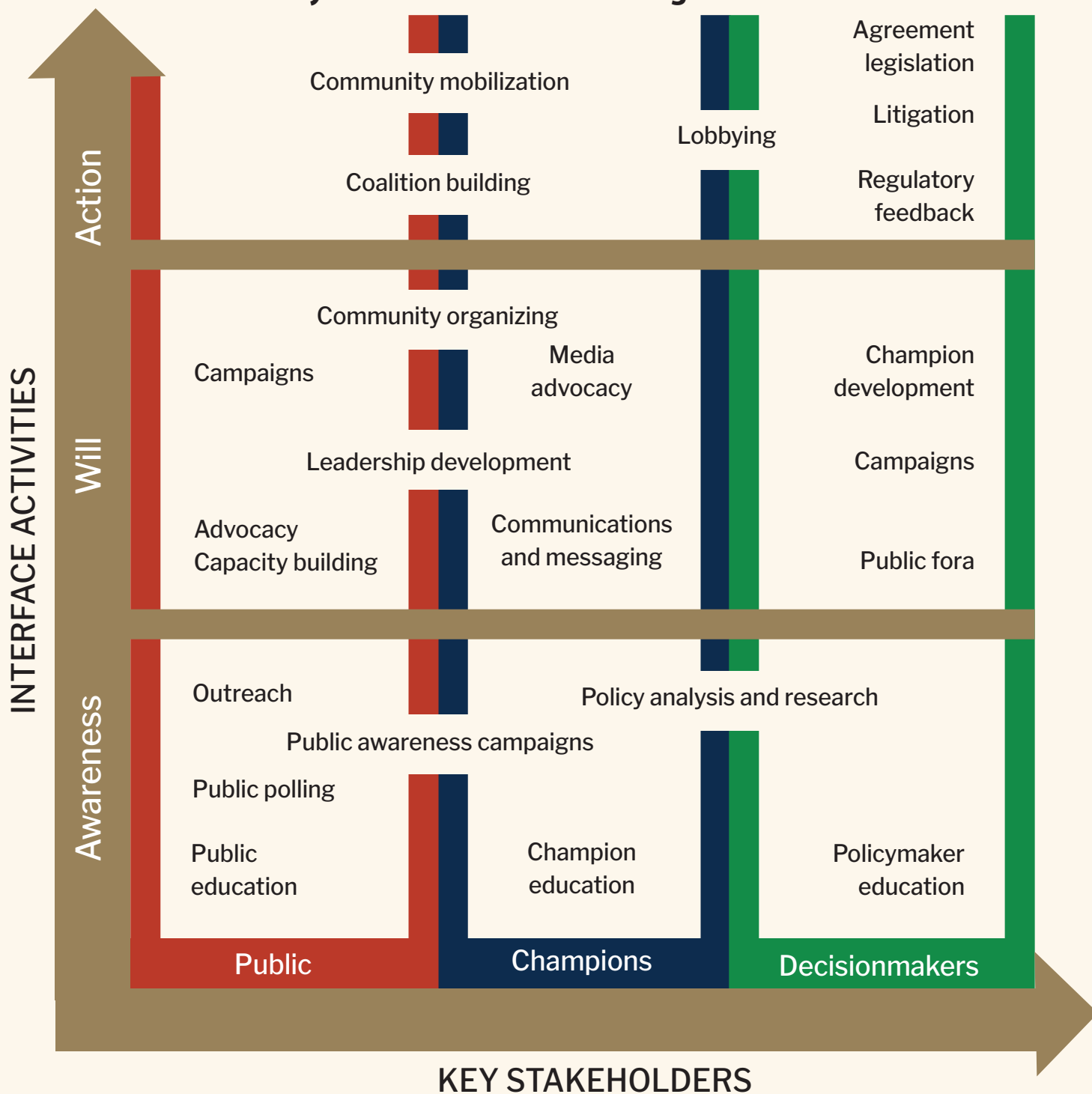
The fourth step is implementing engagement activities for managing the interface. Advocacy and sensitisation strategies should create or change policies, laws, regulations and measures that affect the benefits derived from implementing the AfCFTA. However, as policy change rarely happens overnight, effective advocacy will require both short- and long-term efforts using different techniques—policy dialogue, campaigns for policy change and capacity building.

Policy dialogue must guarantee a process where all stakeholders are deeply involved in all processes and regularly consulted by the public sector using public–private dialogue (PPD). Policy campaigns are goal-oriented mechanisms in which relevant stakeholders set the policy agenda and monitor and respond to decisionmaking. Campaigns draw on a wide range of tools and tactics, including letter writing, lobbying, legal action and use of the media and internet. To maintain clarity in communications, it is essential that goals are clear and achievable, messages are compelling, and calls to action are specific and concise. Effective advocacy requires stakeholder capacity development, and the right to information will help achieve this. Lastly, leading by example is one of the ways to achieve effective advocacy.

For the management of the interface, institutionalisation and monitoring are the last mechanisms of advocacy and sensitisation strategies. These involve creating a governance structure acceptable by relevant stakeholders, and creating institutions for managing the strategies. This may involve developing policy documents and implementation action plans for the institutions. For the monitoring mechanism, Assessing Regional Integration in Africa (ARIA) is an existing instrument to help those interested in African regional integration.

▶ **Figure 9.2**

## The Advocacy and Sensitisation Strategic Framework



Source: Adapted from Coffman and Beer (2015).

## THE ADVOCACY AND SENSITISATION STRATEGIC FRAMEWORK

There are a number of steps involved in developing successful advocacy and sensitisation strategies. The first step involves identifying policy issues, defining goals, building stakeholder relationships and establishing advocates and champions. The second step involves analyzing the policy environment to identify the policies, laws and regulations that need change. The third step involves setting specific and realistic objectives, identifying target audiences (including allies and opponents), selecting advocacy and sensitisation approaches, and identifying key messages. The fourth step focuses on organisational planning with activities—preparing an action plan, budgeting, and assessing risk. The final step is using the media to get the message across, building partnerships and coalitions, employing tactics and negotiating, and monitoring and evaluating.

The Advocacy and Sensitisation Strategic Framework (figure 9.2) for managing the interface is structured around two main dimensions—key stakeholders (x-axis) and interface activities (y-axis). Key stakeholders are the main actors in managing the interface—the public sector, private sector, RECs and the AU. Interface activities involve change management and actions to sustain the interface. These activities are continuous in nature, starting with awareness or knowledge building, moving to generate political will and then to a willingness to take action.

For advocacy and sensitisation, the forms of engagement include consultation, dialogues, meetings, joint events and regional conferences. Based on their areas of expertise, private sector councils and organisations can be invited to meetings as observers. The following existing platforms can be explored as possibilities:

- The African Business Round Table (ABRT).
- Corporative Affairs Council on Africa (CACA).
- ECA AfCFTA Forum.
- Consultative Dialogue Framework.<sup>122</sup>
- REC-to-REC consultative forum, when established.
- Inter-RECs and civil society platforms.
- The African Business Council and other REC business councils.
- Coordination meeting of the Bureau of the Assembly of the Union.
- Private sector and civil society consultative platforms.

The private sector occupies a strategic position in implementing the agreement as well as in integrating REC-FTAs into the AfCFTA

All these platforms can be strengthened by implementing core programmes and projects, and by developing and implementing the continental plan. Developing the Continental Business Information System will also provide an online mechanism for stakeholders to share information on available products and market opportunities. The AfCFTA Stakeholders Forum should be used as a platform for communicating, consulting, exchanging and disseminating information. The REC-to-REC forum is equally important as a platform for knowledge sharing. In terms of advocacy, civil society organisations, social media and media are effective means of communication.

The implementation of phase two of the AfCFTA will require innovation and leveraging technology. African Alliance for e-Commerce (AAEC), a gathering of 18 member States that shares information on trade facilitation, will need to be involved. AAEC has guidelines for a single window implementation in Africa that will be useful for implementing the AfCFTA.<sup>123</sup> The Pan-African Chamber of Commerce and Industry (PACCI), which promotes continental economic integration, competitiveness and sustainable growth, will be a useful focal point for the many chambers of commerce and industry on the continent.<sup>124</sup>

Sensitisation can be organised through three main strategies:

- Enhance public-private dialogue around the AfCFTA and the interface.
- Research and knowledge sharing.
- Trade and investment promotion.

Sensitisation can be done through print and electronic media, trade fairs and exhibitions, and having business-to-business and business-to-consumer platforms exchange information. Social media platforms are equally important, particularly for targeting youth. Interface activities can be streamlined through existing communication channels at the REC and member States levels. Using these mode of communication AfCFTA implementation can be tracked through accessible, relevant and timely information. This can also be achieved through the periodic publication of policy briefs, newsletters and infographics.

## CONCLUDING REMARKS

The advocacy and sensitisation strategies should account for the interests of all key stakeholders. Best practice principles dictate that the process be inclusive, transparent and enduring, with concrete input from stakeholders. Another criterion is the effective participation and commitment of key stakeholders in each phase of the AfCFTA implementation and the interface. For advocacy and sensitisation strategies to work, rules of procedure for key stakeholders must be in place. The criteria for these are:

- Mutual respect, tolerance, and understanding of roles, strengths and constraints.
- Constructive dialogue, positive thinking and goodwill in cooperation.
- Focus on common issues of interest.
- Collaborative work towards the common interest of Africans.

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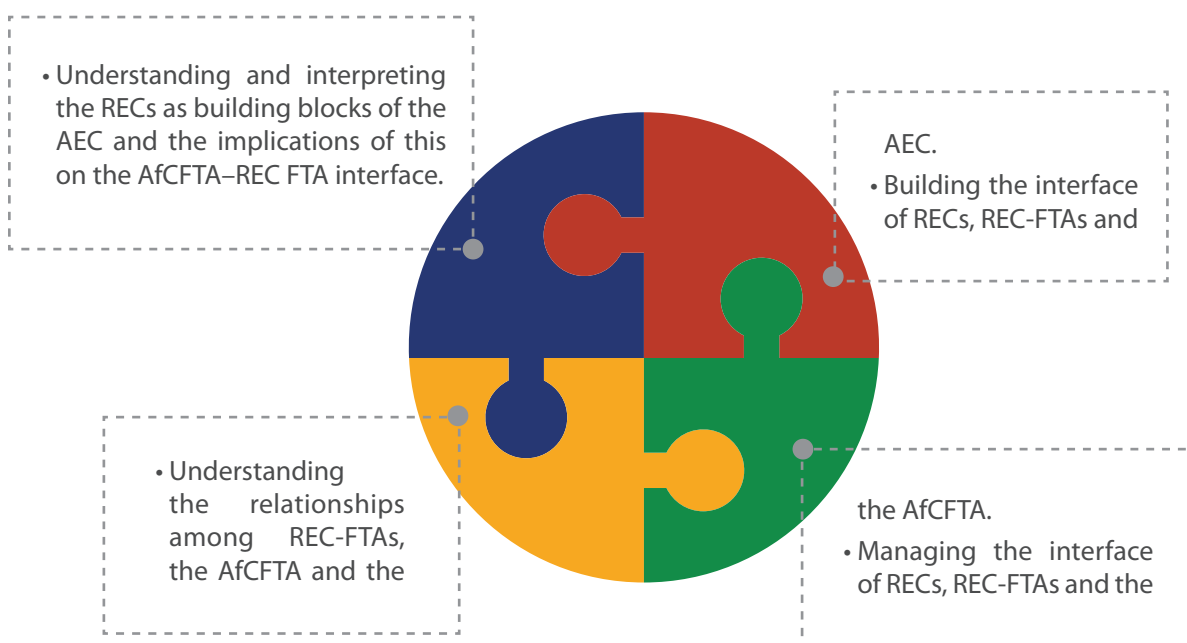
# Chapter 10

## Conclusion and policy recommendations

### SUMMARY OF FINDINGS

This report offers actionable policy recommendations to AU member States and RECs to ensure a coherent and responsive interface among the AfCFTA, RECs and REC-FTAs. It also provides strategies to leverage the trade achievements of RECs, and it draws lessons from the successes and failures of REC-FTAs for the AfCFTA's effective implementation.

The key findings and policy recommendations are in four major areas:



AfCFTA.

### ***Understanding and interpreting the RECs as building blocks of the AEC and the implications of this on the AfCFTA–REC FTA interface***

The Abuja Treaty is the bedrock on which REC relationships with the African Union are built. It is also the pillar that holds up the AfCFTA–REC relationship. Various REC mandates are in line with the AEC’s aspirations and they support the implementation of some provisions of the AfCFTA. REC objectives cover more issues than the AfCFTA and their priorities differ. The REC treaties leave big gaps in their operational legal frameworks. There is no common understanding of the AfCFTA treaty’s key provisions—“RECs as building blocks of AEC” and article 5(b) of the AfCFTA. This lack of a common understanding provides room for different interpretations—at the convenience of key stakeholders.

### ***The relationship among REC-FTAs, the AfCFTA and the AEC***

REC-FTAs are not homogenous entities. They were designed and implemented according to the peculiarities of each region, and they have different provisions and implementation modalities. Their contribution to the objectives of AfCFTA starts with their shared and aligned mandates for increasing intra-African trade, and for providing enabling environments for enterprise development and regional value chains. Regional trade costs are lowered by reducing weighted average tariffs, and by managing non-tariff barriers (NTBs) and non-tariff measures (NTMs), and by other supportive initiatives. Thus the RECs and the AfCFTA are stepping stones towards the formation and realisation of the AEC. This is feasible provided all key stakeholders take ownership of the process and make concrete commitments to promoting its success.

### ***Building the interface of RECs, REC-FTAs and the AfCFTA***

AfCFTA articles 5 and 19 should serve as the basic rules for managing the multiple trade regimes created by the REC-FTAs. Adequate legal interpretation of the articles should be the mechanism for fostering

cooperation and orderliness in the relationship and for guaranteeing the uniform application of laws. In some RECs, legal cultures consist of civil and common law, as well as French and British legal systems, leading to dualist systems. These systems are impediments to REC functions as regional institutions are expected to operate in accordance with the whims of member States.

### ***Managing the interface of RECs, REC-FTAs and the AfCFTA***

Stakeholder participation and commitment is vital to managing the interface. The interface should be built around functions and responsibilities. Suggested options are:

- REC trade divisions or departments can become sub-secretariats of the AfCFTA Secretariat.
- RECs trade divisions or departments can be assigned the role of coordinating AfCFTA activities.
- REC-FTAs can be integrated into the AfCFTA.

Interface options can be managed by a combination of legal, policy and institutional perspectives. The close correspondence among national, regional and continental strategies is very important for implementing AfCFTA provisions.

## **POLICY RECOMMENDATIONS**

- All AU recognised RECs should identify the Abuja Treaty as part of their legal obligations and mainstream the treaty provisions into their work programmes. The AU should encourage REC secretariats to develop the operational legal framework and implementation modalities of the AfCFTA provisions, and develop an “interpretative note” for all the relevant texts. The AfCFTA secretariat should formulate supportive measures to address particular needs of RECs, and draw up a roadmap for each of the RECs in terms of the agreement’s implementation and in line with the commonalities of the relevant texts. There is a need for an annual joint AU–REC summit. This will provide an opportunity for evaluating the results of the RECs’ role as building blocks.

- The AfCFTA should operate within the framework of the shared sovereignties of member States and within the coordinating and monitoring mechanisms of RECs. The agreement should have mechanisms to boost production in all member States by developing regional value chain projects and FTA-induced investment. The AfCFTA Secretariat should develop a monitoring and evaluation system at both national and regional levels, consisting of compliance measures and outcome monitoring, as well as impact evaluation. Technical, financial, and normative assistance should be provided to member States and RECs so they understand the agreement's provisions and are able to develop implementation mechanisms. The AfCFTA Secretariat should collaborate with RECs and the private sector to develop a continental standard operating procedure on border agency cooperation. In addition, the relationship should provide an avenue for RECs to encourage member States to roll back all existing NTBs and stop any future ones.
- The AfCFTA should operate at a supranational level for effective implementation. AU member States should cede sovereignty on trade-related matter and allow the AfCFTA provisions to reign supreme over their national laws. The AfCFTA Secretariat should ensure the harmonisation and alignment of the regional regulatory framework. The Secretariat, with support of RECs and the private sector, should develop frameworks and modalities for harmonising all operational trade measures and for addressing unresponsive trade-related policies. The Secretariat, along with the AU, should assist RECs in performing their building-block roles in terms of institution building, policy harmonisation and coordination, and financial independence. RECs should also be charged with responsibility for encouraging member States to domesticate the agreement's provisions.
- The AfCFTA Secretariat should conduct a study of the appropriate mechanisms for enhancing continental value chains, AU trade facilitation strategies, the Pan African Payments and Settlements (PAPSS), Boosting Intra-African Trade (BIAT) Action Plan, and legal integration as an instrument to manage the interface. There should be a coordination platform for monitoring the management of other REC activities. To manage the REC customs union framework, a committee should be established, drawing from the AU Commission, the AfCFTA Secretariat, and the directors of trade of member States and of RECs. The implementation mechanism should involve the operation of the Task Force and the early warning system. In collaboration with the private sector, the AfCFTA Secretariat should develop rules of procedure for advocacy and sensitisation strategies.

## CONCLUSION

There is no doubt that the AfCFTA provides a mechanism that will make African countries more competitive in regional and international markets. However, without effective implementation African markets will remain small and fragmented. The advent of COVID-19 should be regarded as an opportunity for using the agreement's provisions as instruments for economic recovery through trade diversification and for promoting intra-African supply chains. Building the interface of the RECs, REC-FTAs and AfCFTA is an important mechanism for effectively implementing the agreement. The interface should be governed by adequate knowledge of key stakeholder rights and obligations under the agreement. Also, all interface options should strengthen the RECs and make provision for an easier convergence. The integration of REC-FTAs should be a platform for the continuous existence of RECs and an avenue for making them focus on other trade facilitative and supportive roles in which they have competency.

Managing the interface should go beyond trade effects and explicitly include other potential synergies, such as developing infrastructure, regulating intellectual property, setting competition policies and regimes, liberalising access to financial markets, allowing the free movement of people and enterprises, and creating common markets for the free circulation of African goods. The impact of COVID-19, as a public health and economic crisis, must be factored into the interface. The direct and indirect impact of the pandemic could be a recipe for a retreat into protectionism and economic nationalism at a time when a collective effort is needed to make RECs integral partners of the AfCFTA. There is also the need to develop a clear framework for monitoring and evaluation to ensure the effective working of the interface.

# Annex 1

## Method of analysis



The analysis starts with matching of RECs intra-African trade using import–export similarity measures. As proposed by Van Beers and Linneman, and applied by Geda and Seid, it is undertaken using two alternative measures for degree

of commodity correspondence between exports of one region and imports of another region. The index is an indicator that helps verify whether the structures of the products traded of two regional economies or continents are similar or dispersed. The two forms of this index are the Import–Export Correspondence Index (COS) and Export–Import Similarity Index (EIS). If  $i$  represents the exporting region and  $j$  the importing region, these indices are given as:

$$\text{COS}_{ij} = \frac{\sum_k E_{ik} M_{kj}}{\sqrt{\sum_k E_{ik}^2 M_{jk}^2}}$$

$$\text{EIS}_{ij} = \sum_k \min \left\{ \frac{E_{ik}}{\sum_k E_{ik}}; \frac{M_{jk}}{\sum_k M_{jk}} \right\}$$

Where  $E_{ik}$  = export of region  $i$  in commodity class  $k$ .

$M_{jk}$  is the imports of region  $j$  in commodity class  $k$ .

$k$  is commodity class  $1 \dots, n$ .

Both measures range between zero and one. An index of zero indicates no correspondence between exports of region  $i$  and imports of another region  $j$ , while an index of 1 indicates perfect similarity. The COS measure is the cosine of the angle between the vector of region  $i$ 's exports and vector of region  $j$ 's imports in an  $n$ -dimensional commodity space. The EIS measure is obtained by summing over all commodity classes of the share of commodity class  $k$  in region  $i$ 's export or in region  $j$ 's import—whichever of the two is lower. Increasing the number of commodity classes will tend to lower their numerical values. This problem is avoided by considering only the top five import and export commodities of all African countries for which data are available.

The next measure is regions/products dominance in intra-African trade using the share of the respective region or products in total intra-African trade (total products traded). The share of a region or product obtained ranges from 0 to 1. A share of zero indicate that the respective product is not traded, or its share is highly infinitesimal. The closer to one the share is,

the higher the dominance of the particular region or product in intra-African trade.

The share of region *i*'s exports in total intra-African export is obtained as:

$$XS_i = \frac{X_i}{\sum_{k=1}^n X_k}$$

The share of region *i*'s import in total intra-African imports is obtained as:

$$MS_i = \frac{M_i}{\sum_{k=1}^n M_k}$$

The share of product *i* in total intra-African exports is obtained as:

$$XSP_i = \frac{P_i}{\sum_{m=1}^n X_m}$$

The share of product *i* in total intra-African imports is obtained as:

$$MSP_i = \frac{P_i}{\sum_{k=m}^n M_m}$$

Where:

$XS_i$  = Export share of region *i*

$MS_i$  = import share of region *i*

$X_i$  = Export of region *i*

$M_i$  = Import of region *i*

$P_i$  = Product *i*

$XSP_i$  = Export share of product *i*

$MSP_i$  = Import share of product *i*

$k$  = number of region, where  $k$  ranges from 1 to  $n$ , and  $m$  = number of products ranging from 1 to  $n$ . The share of a region or product obtained ranges from 0 to 1. A share of zero indicates that the respective product is not traded, or its share is highly infinitesimal. The closer to one the share is, the higher the dominance of the particular country or product in intra-African trade.

Since international trade is dynamic, the economic analysis adopts sequencing of AfCFTA liberalisation programme in three phases:

- First five years: Standstill period for firms during which no liberalisation is required except tariff lines that are already 0 per cent tariffs.
- Second five years: Liberalise tariffs gradually by 50 per cent such that 5 per cent tariff becomes 2.5 per cent, 10 per cent becomes 5 per cent and 20 per cent becomes 10 per cent.
- Final five years: Liberalise remaining tariffs save the ones under sensitive products of various RECs.

# Annex 2a

## Empirical models for the analysis of determinants of trade in Regional Economic Communities of Africa



fcFTA's impact on the intra-regional trade is analyzed using the augmented gravity model. The model is based on a foundation that draws from theories of international trade, such as comparative advantage (Richardian, Hecsksher-Ohlin), intra-industry trade (Krugman-type differentiated product model) and the firm level heterogeneity (firms differing in productivity

by Melitz). Its applicability as a standard empirical framework for bilateral trade is from Bankole, Olasehinde and Raheem (2012) and Olayiwola et al. (2016).

The gravity model for intra-REC trade (imports) is:

$$\ln(M_{ijt}) = \beta_0 + \beta_t + \beta_{ij} + \beta_1 \ln(TARR_{it}) + \beta_2 \ln(TARR_{jt}) + \beta_3 \ln(GDP_{it}) + \beta_4 \ln(GDP_{jt})$$

Where  $M_{ijt}$  is imports of REC  $i$  from REC  $j$  at time  $t$

$TARR_{it}$  is tariff faced by importer  $i$  at time  $t$

$TARR_{jt}$  is tariff faced by exporter  $j$  at time  $t$

$GDP_{it}$  is importer  $i$ 's gross domestic product (GDP) at time  $t$  and

$GDP_{jt}$  is exporter  $j$ 's GDP at time  $t$ . This is a mass variable used to capture macroeconomic conditions. It is also to test, in line with the gravity trade theory, how close to unity GDP is.

$\beta_0$  is the intercept term.

$\beta_t$  is the time dummy that accounts for other time-varying factors that may affect the dependent variable—that is, the GDP per capita, factor endowments, and so on.

$\beta_{ij}$  are the pair dummies that account for time-invariant factors common to the pair, for example, colony, distance, contiguity and other time-invariant trade costs, and so on.

The time range is 2000 to 2017. The start year (2000) was chosen because all the RECs had been established. The end year (2017) was chosen as this is the most recent year for which most variables, especially tariffs and trade, are available for a reasonable number of countries.

The gravity model for intra-Africa trade is:

$$\ln(M_{ijt}) = \beta_0 + \beta_t + \beta_{ij} + \beta_1 \ln(1 + (TARR_{it} \cdot TARR_{jt})) + \beta_2 \ln(GDP_{it} \cdot GDP_{jt}) + \beta_3(UMA_{ijt}) + \beta_4(COMESA_{ijt}) + \beta_5(CENSAD_{ijt}) + \beta_6(EAC_{ijt}) + \beta_7(ECCAS_{ijt}) + \beta_8(ECOWAS_{ijt}) + \beta_9(IGAD_{ijt}) + \beta_{10}(SADC_{ijt}) + \beta_{11}(NUMRTA_{ijt}) + \varepsilon_{ijt}$$

where  $UMA_{ijt}$  takes the value 1 if  $i$  and  $j$  both belong to UMA at time  $t$ , 0 otherwise

$COMESA_{ijt}$  takes the value 1 if  $i$  and  $j$  both belong to COMESA at time  $t$ , 0 otherwise

$CENSAD_{ijt}$  takes the value 1 if  $i$  and  $j$  both belong to CENSAD at time  $t$ , 0 otherwise

$EAC_{ijt}$  takes the value 1 if  $i$  and  $j$  both belong to EAC at time  $t$ , 0 otherwise

$ECCAS_{ijt}$  takes the value 1 if  $i$  and  $j$  both belong to ECCAS at time  $t$ , 0 otherwise

$ECOWAS_{ijt}$  takes the value 1 if  $i$  and  $j$  both belong to ECOWAS at time  $t$ , 0 otherwise

$IGAD_{ijt}$  takes the value 1 if  $i$  and  $j$  both belong to IGAD at time  $t$ , 0 otherwise

$SADC_{ijt}$  takes the value 1 if  $i$  and  $j$  both belong to SADC at time  $t$ , 0 otherwise

$NUMRTA_{ijt}$  is the number of RTAs (within Africa) that country  $i$  and  $j$  belong to (that is, the sum of RTA memberships of  $i$  and  $j$  at time

$t$ ). This is to account for multiple memberships of RTAs in Africa. Other variables retain their definitions

Scope: 2000 to 2017; 55 African countries.

A static model is analysed to make it easily comparable with other popular static techniques such as the Poisson Pseudo Maximum Likelihood (PPML). A static model also helps reduce the number of instrument counts. PPML reduces loss of observations by not dropping zero values. It is also robust to heteroscedasticity.

<sup>i</sup> Van Beers and Linneman, 1988.

<sup>ii</sup> Geda and Seid, 2015.

<sup>iii</sup> Allen, 1957.

<sup>iv</sup> Melitz, 2003.



# Annex 2b

## Empirical results of determinants of trade in Regional Economic Communities of Africa

Dependent variable: Logged imports	IV-2SLS	IV-GMM(2-STEP)	PPML
<b>LTARIFF</b>	-0.441*** (0.064)	-0.441*** (0.078)	-0.290*** (0.049)
<b>LGDP</b>	0.687*** (0.074)	0.687*** (0.087)	0.299*** (0.046)
<b>UMA</b>	2.509*** (0.563)	2.509*** (0.621)	0.940*** (0.352)
<b>COMESA</b>	-0.163 (0.360)	-0.163 (0.443)	0.395 (0.422)
<b>EAC</b>	2.046*** (0.624)	2.046** (1.016)	2.163*** (0.802)
<b>ECOWAS</b>	2.183*** (0.229)	2.183*** (0.343)	1.708*** (0.451)
<b>ECCAS</b>	0.844 (0.562)	0.844 (0.583)	-0.097 (1.000)
<b>SADC</b>	1.833*** (0.342)	1.833*** (0.453)	1.238*** (0.304)
<b>IGAD</b>	0.128 (0.432)	0.128 (0.528)	0.252 (0.531)
<b>CENSAD</b>	1.159*** (0.148)	1.159*** (0.187)	0.868*** (0.393)
<b>NUMRTA</b>	0.082 (0.143)	0.082 (0.194)	-0.873** (0.410)
<b>CONSTANT</b>	-11.459*** (1.691)	-11.666*** (2.217)	1.899 (1.877)
<b>Year Fixed Effects</b>	Yes	Yes	Yes
<b>F-Stat/Wald Chi squared (p-value)</b>	13.35 (0.000)***	201.46 (0.000)***	-
<b>R-Squared</b>	0.52	-	0.56
<b>Arellano Bond:</b>	-	-	-
<b>AR1</b>	-	0.000	-
<b>AR2</b>	-	0.734	-
<b>Hansen J Stat</b>	-	0.678	-
<b>Instrument count</b>	27	-	-
<b>No. of observations</b>	1023	1023	2500

Note: \* = significant at 10 per cent.

\*\* = significant at 5 per cent.

\*\*\* = significant 1 per cent.

- means not available.

Standard errors are robust to autocorrelation and heteroscedasticity.

The number of instruments are consistently kept lower than the number of cross sections by dropping 2-year dummies while also testing the consistency of the estimates when different sets of year dummies are used. This strategy also helps to obtain an over-identified model in the IV-GMM equation, thus obtaining the Sargan/Hansen statistics. The `xtabond2` command in Stata is used. Although `xtabond2` is mainly designed for dynamic models, it can also be used for static models with the advantage that Arellano and Bond autocorrelation tests are provided. For the IV-2SLS regressions (using `ivreg2` command in Stata), to test for endogeneity each variable was introduced sequentially into the model. That is, the dependent variable was regressed on

each potential endogenous variable. In all, the variables were individually and jointly endogenous. Thus, IV regressions were prioritized. The internal instruments used (that is, the lagged values of the variables) satisfied the necessary conditions. The instrumental variables were strongly correlated with the potentially endogenous variable, as indicated by a significant t-statistic and significant F statistic in the first stage regression, an F statistic that always exceeded 10 (in consonance with the rule of thumb). The instruments were also not weak as confirmed by the Cragg-Donald Wald F statistic (2243.713) and the Kleibergen-Paaprk Wald F statistic (1637.496), both in excess of the Stock-Yogo critical values at 10, 15, 20 and 25 per cent (with values respectively standing at 16.38, 8.96, 6.66 and 5.53).

# Annex 3

## Coverage of the study instruments

Categories	Actors	Focus
Private sector	Manufacturer associations Chambers of commerce and industry, economic operators and consumers Civil society organisations	Operators of regional and continental trade
Public sector	Customs authorities Ministries of trade, agriculture and industry	Border agencies
Regional organisations	8 RECs	Departments of trade and customs Private sector umbrella bodies
Continental organisations	AU ECA	Regional Integration Section of the Regional Integration and Trade Division (RITD) Selected negotiators

Source: ECA, from the key informant interviews.

# Annex 4

## Intra-Africa average non-tariff measure protection on selected products (%)

Countries	Cereals			Vegetables and fruits			Household items and furniture			Electric and electronic devices		
	Min	Ave. NTM	Max	Min	Ave. NTM	Max	Min	Ave. NTM	Max	Min	Ave. NTM	Max
<b>Benin</b>	7	40	80	2	48	112	0	18	48	0	46	117
<b>Burkina Faso</b>	0	33	85	6	22	38	0	25	55	0	39	108
<b>Côte d'Ivoire</b>	0	36	64	0	33	75	0	16	37	5	73	125
<b>Ghana</b>	0	44	63	2	37	19	0	23	43	0	59	115
<b>Guinea</b>	0	35	75	0	25	107	0	18	47	8	69	94
<b>Maghreb and Egypt</b>	16	41	56	4	28	64	0	21	47	25	81	125
<b>Nigeria</b>	0	42	88	21	38	61	0	15	47	17	65	99
<b>Rest of Africa</b>	5	36	59	18	45	79	1	25	56	16	66	95
<b>Senegal</b>	0	26	69	4	23	33	1	22	53	18	58	82
<b>South Africa</b>	8	40	86	25	64	123	1	28	60	25	69	95
<b>Tanzania</b>	1	43	71	28	44	62	0	24	62	4	45	73

Source: Chauvin, Porto and Ramos (2015)

# Annex 5

## Treaties and protocols supporting regional integration of Africa's Regional Economic Communities

RECs	FTA	CU	Single/ common market	Currency union	Trade in goods	Trade in services	Investment	Labour mobility and migration
UMA <sup>a</sup>	47	48	49					
CENSAD <sup>b</sup>								50
COMESA <sup>c</sup>	1993, 1975	14, 18	13, 18, 26	16	15, 17	15, 16, 17, 20, 21, 22, 23	16, 17, 19, 24	15, 17, 25
EAC <sup>d</sup>	1999	2005 (4)	2010 (5)	6	1, 5, 6	1, 5, 6, 8, 9, 10	1, 5, 6, 7	1, 5, 9
ECCAS <sup>e</sup>	31, 32	30, 31, 32	31			30, 34, 35		30, 33
ECOWAS <sup>f</sup>	1993 (37)							
1983	39, 44, 45 2015	37, 40	37, 40	37	37, 38, 41, 42	37, 46, 47	37, 41	
IGAD <sup>g</sup>								
SADC <sup>h</sup>	1992				27, 29	27, 29	27, 29	27
TFTA <sup>i</sup>	51	52						

Note: The numbers refer to the notes below.

a 1989 UMA Treaty: (47) Article 2; (48) Customs union in 1995; and (49) Common market in 2000.

b 1998 CENSAD: Revised treaty (50) Article 1.

c 1993 COMESA Treaty: (12) Article 1.2 Establishment and membership; (13) Chapter 3 Article 3 Aims and objectives of the common market; (14) Chapter 3 Article 4.1 In the field of trade liberalisation and customs co-operation; (15) Chapter 3 Article 4.2 In the field of transport and communications; (16) Chapter 3 Article 4.4a+c In the field of monetary affairs and finance; (17) Chapter 3 Article 4.6e In the field of economic and social development; (18) Chapter 6 Article 45–46, 62; (19) Article 81 Capital movement; (20) Chapter 11 Co-operation in the development of transport and communications, Article 84–98; (21) Chapter 13 Article 106–109; (22) Chapter 19 Article 138 Promotion of tourism; (23) Chapter 22 Article 148 Development of services; (24) Chapter 26 Article 158–159. Investment promotion; (25) Chapter 28 Article 164 Free movement of persons, labour, services; (26) Chapter 34 Article 177 Economic community for ESA.

d 1999 EAC Treaty: (1) Chapter 2 Article 7.1.c Operational principles of the community; (2) Chapter 2 Article 3.1 Membership of the community; (3) Chapter 29 Article 153 Depository and registration; (4) Chapter 11 Article 75 Establishment of a customs union; Article 77 Measures to address imbalances arising from the application of the provisions for the establishment of a customs union and a common market; (5) Chapter 11 Article 76–77; (6) Chapter 14 Monetary and financial co-operation; Article 82.1a+c Scope of co-operation; (7) Chapter 14 Article 86 Movement of capital; (8) Chapter 15 Co-operation in infrastructure and services; Article 89–101; (9) Chapter 17 Free movement of persons, labour, services, right of establishment and residence Article 104; (10) Chapter 20 Article 115 Co-operation in tourism and wildlife management—tourism; (11) Chapter 21 Article 117–119 Health, social and cultural activities.

e 1983 ECCAS Treaty: (30) Chapter 2 Article 4.1–2 Objectives of community; (31) Chapter 2 Article 6 Implementation modalities; (32) Chapter 4 Free Trade, Article 27–39 Customs union; (33) Chapter 5 Free movement, residents and right of establishment, Article 40; (34) Chapter 9 Infrastructure and transport cooperation, Article 47; (35) Chapter 11 Cooperation in energy Article 54–58; (36) Chapter 14 Tourism cooperation Article 64–66.

f 1993 Revised ECOWAS Treaty: (37) Chapter 2 Article 3 Aims and objectives; (38) Chapter 7 Article 32–34; (39) Chapter 8 Article 35 Liberalization of trade; (40) Chapter 9, Article 54–55 Establishment of EMU; (41) Chapter 10 Article 59 Migration; (42) Chapter 11 Article 62 Cultural affairs; (43) ECOWAS Vision 2020; (44) ECOWAS Custom code 2019; (45) ECOWAS–CET 2015; (46) ECOWAS Common investment market; (47) ECOWAS Investment code.

g Article 7 of the Agreement Establishing the IGAD.

h 1992 SADC Treaty: (27) Chapter 3 Article 5.2.d Objectives; (28) Chapter 4 Article 7 Membership; (29) Chapter 7 Article 21 areas of cooperation.

i Draft Tripartite Agreement: (51) Article 4(6); (52) Article 40(1).

Source: ECA, based on review of treaties and protocols.

# Annex 6

## Analysis of rules of origin of ECOWAS and the AfCFTA

Indicators	Reference articles	Complementarity	Differences	Remarks
<b>Origin conferring criteria</b>	Article 5 of the AfCFTA Article 16 of ECOWAS Customs Code, and Articles 4–9 of ETLS	1. Both recognise the following criteria: a) value addition; b) non-originating material content; c) change in tariff heading; or d) specific processes 2. The quantity of local materials is common to both AfCFTA and ETLS	1. Article 15 of ECOWAS Customs Code establishes non-preferential and preferential RoO 2. AfCFTA change of tariff does not indicate level at which the change of position is acquired 3. No exception list in AfCFTA	In addition to the two main criteria of ECOWAS, the criterion on the specific process was explicitly included
<b>Cumulation of origin</b>	Article 10 of AfCFTA Articles 1–2 of ETLS	They recognize provisions of a) tolerance of values; b) the principle of absorption; and c) the calculation of the values	1. The provision on the cumulation rule not explicit shown in ECOWAS but well detailed in AfCFTA Article 10 2. In the AfCFTA, it is necessary to prove the origin of a State Party and also to demonstrate that the transformation is substantial	This is an issue of utmost importance as ECOWAS is now a custom union Need for an agreed formula for calculating cumulation
<b>Special economic arrangements/zones</b>	Article 11 of the AfCFTA Articles 271, 273 and 276 of ECOWAS Customs Code	1. Same special economic arrangements 2. Same administrative controls	AfCFTA refers to Special Economic Arrangements/Zones, while ECOWAS refers to Free Zones	
<b>The terms “their vessels” and “their factory ships”</b>	AfCFTA paragraph 1(h) and 1(i) ECOWAS Customs Code	1. Provision of explicit definition 2. Set criteria for qualification	1. Different criteria and standards 2. AfCFTA recognises African State Party, but ECOWAS recognises only its member States	There is a need for harmonising definition, criteria and scope

Indicators	Reference articles	Complementarity	Differences	Remarks
<b>Method for calculating the percentage of added value</b>	Article 1 of the Regulation C/ Reg.5/4/02 ETLS			The method for calculating the percentage of added value as well as the threshold is yet to be determined by the AfCFTA
<b>Preservation of proof of origin and supporting documents</b>	Article 20 of RoOs of ETLS Article 34 of Annex 2 of AfCFTA	Both recognise preservation for at least 5 years after the completion of the application	Preservation of records of AfCFTA makes provision for an importer to keep documentation for 5 years, but not explicitly stated in ECOWAS	Needs harmonisation with respect to importers
<b>Administrative cooperation and mutual assistance</b> <b>Verification of proofs of origin</b> <b>Penalties</b>	Article 23 of RoOs of ETLS Article 37 of Annex 2 of AfCFTA Article 24 of RoOs of ETLS Article 38 of Annex 2 of AfCFTA Article 26 of RoOs of ETLS Article 39 of Annex 2 of AfCFTA	The same wording in both ETLS and the AfCFTA	Difference in scope	
<b>Transitional provision for goods in transit or storage</b>	Articles 179,180 and 181 of ECOWAS customs code ECOWAS ISRT Convention Article 26 of Annex 2 of AfCFTA	Transit is covered by conventional bilateral, community, or international provisions which are of two regimes: community transit and international transit		Well harmonised
<b>Exemption from proof of origin</b>	Article 21 of RoOs of ETLS Article 30 of Annex 2 of AfCFTA	Both set the criteria involving small packages and personal use	1. ECOWAS include criterion for agricultural and livestock products as well as objects made by hand, but not in AfCFTA 2. While ECOWAS wants national regulation set at a minimum amount, the AfCFTA sets limits of \$500 and \$1,200	Needs harmonisation

Indicators	Reference articles	Complementarity	Differences	Remarks
<b>Dispute settlement</b>	Article 25 of RoOs of ETLS Article 43 of Annex 2 of AfCFTA	Both recognises the Protocol on Rules and Procedures Governing Dispute Settlement In AfCFTA, the provision of the legislation of the importing country will prevail	ECOWAS Community Court of Justice for final settlement while mediation by the Commission.	The modus operandi for dispute settlement needs to be harmonised and explicitly stated with different time bound
<b>Amendment and review</b>	Article 27 of RoOs of ETLS Article 41 of Annex 2 of AfCFTA	Both make provision for review and possible amendment	1. Different review process 2. Time bound of 3 years for AfCFTA, but none for ECOWAS	The provisions and procedures for amendment and review need to be harmonised
<b>Fairs and exhibitions</b>	Article 31 of Annex 2 of AfCFTA		No provision in ECOWAS	Needs harmonisation

Source: Compiled by ECA.



# Annex 7

## List of other charges on imported and exported cargos in Nigeria

Imports	Unit price (naira)	Exports	Unit price (naira)
<b>Documentation fee</b>	5,000	Export processing fee	5,000
<b>Stamp fee</b>	50	Bill of lading fee	5,000
<b>CBN stamp duty</b>	50	Delivery charge expenses (terminal)	4,000
<b>Shipping agency fee</b>	22,000	Line agency fee (SLAC)	13,500–19,500
<b>CTOC charge</b>	Lump sum	Terminal export storage laden	Lump sum
<b>VAT</b>	5% of import duty	Stamp duty charge	50
<b>Quarantine fee</b>	5,000	VAT	5%
<b>SON fee</b>	3,675	Renomination charges	Lump sum
<b>Port expansion fee</b>	7% of import duty		
<b>Valuation alert settlement fee</b>	Varies depending on negotiation		
<b>Compromise</b>	Varies depending on negotiation		
<b>CIU alert</b>	Varies depending on negotiation		

Source: CDTi (2018)

# Annex 8

## Summary of trade in service liberalization in the EAC

REC Treaty (revised)	Treaty services chapters	Protocols	Recent progress/ implementation	Challenges/bottlenecks
1999	Chapter 11 Article 74 East African Trade Regime	Common market free movement...	<ul style="list-style-type: none"> <li>• 20 November 2009 entered into common market</li> <li>• Ratified by all members</li> <li>• 1 July 2010 EAC common market launched</li> <li>• 7 freedoms and rights</li> <li>• Sensitise the stakeholders</li> <li>• Identify opportunities as well as barriers to invest in trade in services</li> <li>• Abolished fees for work permits</li> <li>• Free movement</li> <li>• Development of mutual recognition of academic and professional qualifications (MRAs)</li> <li>• Significant cross-border services intensify</li> </ul>	<ul style="list-style-type: none"> <li>• Relevant legislation and institutional framework not yet in place</li> <li>• Limited follow-up</li> <li>• Absence of coordination of the schedules</li> <li>• Inadequate resources</li> <li>• Inadequate consultations with stakeholders</li> <li>• Broad 7 sector with no commitments</li> <li>• Many issues to address:               <ul style="list-style-type: none"> <li>- Domestic law and regulations and institutional reform.</li> <li>- Implementation of commitments</li> <li>- Harmonisation of domestic regulations</li> </ul> </li> </ul>
	Chapter 15 Co-operation in infrastructure and services		<ul style="list-style-type: none"> <li>• Signing of a memorandum of understanding (MoU)</li> <li>• The MoU identifies 12 areas of cooperation</li> <li>• The development of harmonised regulations</li> </ul>	<ul style="list-style-type: none"> <li>• Air transport has yet to be fully liberalised</li> <li>• Deeper liberalisation of air transport operations</li> <li>• Assist the five member States in re-certification</li> </ul>
	Chapter 17 Free movement of persons, labour, services...		<ul style="list-style-type: none"> <li>• Free movement of labour</li> <li>• MRAs</li> <li>• East African passport travel documents are accepted</li> </ul>	<ul style="list-style-type: none"> <li>• Modalities for enabling freedom</li> <li>• Introduction of third generation identity cards</li> <li>• Schedules on free movement of services and workers linkages</li> <li>• Delinking of the schedule</li> <li>• Harmonising immigration laws</li> </ul>
	Chapter 20 Co-operation in tourism...	Harmonisation and mutual recognition	<ul style="list-style-type: none"> <li>• Annex on mutual recognition of academic (MRA) and professional qualifications</li> </ul>	<ul style="list-style-type: none"> <li>• Tuition fees have yet to be harmonised</li> <li>• Delayed conclusion of the annex on MRA and professional qualifications</li> <li>• Expedite process of developing MRAs</li> </ul>

Source: ECA, based on review of treaties and protocols.

# Annex 9

## Summary of trade in service liberalization in SADC

REC Treaty (revised)	Treaty services chapters	Protocols	Tangible progress/ implementation	Challenges/bottlenecks
1992	Chapter 7 Article 21.b Infrastructure and services	Transport, communications... (TCM) (1996)		• Wide scope of protocol
	Chapter 7 Article 21.c Trade, industry, finance, investment...	Trade, finance and investment (1998)		
	Chapter 7. Article 21.d Social and human development and special programmes...	Education and training (1998)		• Difficult process of equivalence, harmonisation and standardization of the education and training system
		Energy (1996)		• Difficult provision of sustainable energy services
		Development of tourism (1998)	• Entered into force on 26 November 2002 • Regional Tourism Organization of Southern Africa (RETOSA) was established in 1998	
		Culture, information and sports		• Harmonise their policies, strategies and programmes in these fields
	Article 5(2)(d)	Facilitation of the movement of persons		• Difficulty of Free movement of person and business
		Finance and investment (FIP)	• Approved by the SADC Summit in August 2006	• Legal basis for regional cooperation and promotion of region as an attractive investment destination
	Trade—Other trade related issues Article 23 Trade in services (1996)	• Came into force in January 2000 • Protocol on Trade in Services modelled on the GATS • 6 specific services sectors identified for priority negotiation • Support to SADC Regional Integration and Multilateral Trading System ended in 2007	• Diverging position on specific schedule of commitment • Funding challenges • Weak coordination with regulators and private sector • Limited political will • Risk SADC FTA overtaken by EPA • Consistency between liberalisation of trade in services and the various protocols	

Source: ECA, based on review of treaties and protocols.

# Annex 10

## Summary of trade in service liberalization in COMESA

REC Treaty (revised)	Treaty services chapters	Protocols	Recent progress/implementation	Challenges/bottlenecks
1994	Chapter 11 Transport and communications		<ul style="list-style-type: none"> <li>• Air transport liberalisation</li> <li>• COMESA carriers license</li> <li>• Harmonised road transit charges</li> <li>• Establishment of a regional telecommunications network<sup>a</sup></li> <li>• Infrastructure programme tied to the COMESA–EAC–SADC tripartite agenda.</li> </ul>	
	Ch.28 Free movement of persons, labour and services...	Free Movement of Persons, labour, services, right of establishment...	<ul style="list-style-type: none"> <li>• Adopted and entered into force</li> <li>• Gradual removal of visa requirements</li> <li>• Movement of skilled labour and services</li> <li>• Freedom to provide services</li> <li>• 2006–2010: Right of establishment</li> <li>• COMESA yellow card scheme</li> <li>• Relaxation of visa requirement</li> <li>• 2014: Right of residence<sup>b</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Implemented in several stages</li> </ul>
	Chapter 19 Co-operate in tourism			
	Chapter 13 Co-operate in the development of energy		The COMESA energy programme <sup>c</sup>	
	Chapter 20 Development of services		<ul style="list-style-type: none"> <li>• Bond guarantee scheme</li> <li>• PTA reinsurance company;</li> <li>• Trade and project financing by PTA Bank</li> <li>• African Trade Insurance Agency</li> <li>• COMESA Framework for trade in services</li> <li>• Framework for liberalizing trade in services</li> <li>• Meetings of the Committee on Trade in Services.</li> <li>• Services negotiating guidelines</li> <li>• 4 priority sectors agreed on</li> <li>• 3 additional sectors identified</li> <li>• 7 member States revised and validated schedules in 4 priority sectors</li> <li>• Complementary process with specificities of each sector/sub-sector<sup>d</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Intra-COMESA concentrated among few members</li> <li>• Strict and cumbersome RoO</li> <li>• Political tensions</li> <li>• Inadequate capacity</li> <li>• Inadequate policy coherence and coordination</li> <li>• Low prioritisation of integration programs</li> <li>• Inadequate political will from member States</li> <li>• Overlapping membership in the COMESA/SADC/EAC/IGAD region</li> </ul>

<sup>a</sup> [http://programmes.comesa.int/index.php?option=com\\_content&view=article&id=42&Itemid=52&lang=en](http://programmes.comesa.int/index.php?option=com_content&view=article&id=42&Itemid=52&lang=en).

<sup>b</sup> [http://programmes.comesa.int/index.php?option=com\\_content&view=article&id=199&Itemid=125&lang=en](http://programmes.comesa.int/index.php?option=com_content&view=article&id=199&Itemid=125&lang=en).

<sup>c</sup> [http://programmes.comesa.int/index.php?option=com\\_content&view=article&id=43&Itemid=53&lang=en](http://programmes.comesa.int/index.php?option=com_content&view=article&id=43&Itemid=53&lang=en).

<sup>d</sup> Insurance services are considered part of the broader financial services sector, which is one of the priority sectors identified by member States. Payments, insurance and other financial requirements that affect cross-border movement of goods and natural persons in international trade are considered major constraints to intra-African trade (Mburu, 2011).

Source: ECA, based on review of treaties and protocols.

# Annex 11

## Summary of trade in service liberalization in ECCAS

Treaty (revised)	Treaty services chapters	Protocols	Recent progress / implementation	Challenges/bottlenecks
1983	Chapter 5 Freedom of movement...	Freedom of movement		<ul style="list-style-type: none"> <li>• Difficult economic geography and low population density</li> </ul>
	Chapter 9 Cooperation in infrastructure and transport...	Cooperation in transport and communications	<ul style="list-style-type: none"> <li>• Consensual Transport Master Plan for Central Africa (PDCT-AC)</li> <li>• Transport–transit facilitation project</li> <li>• Binational railways concessions</li> <li>• Liberalisation of air transport</li> <li>• Regional fibre-optic Central Africa backbone project</li> </ul>	<ul style="list-style-type: none"> <li>• Surface transportation is slow and expensive due to cartels and restrictive regulations</li> <li>• Limited road connectivity between CEMAC and ECCAS</li> <li>• Long dwell times</li> <li>• Low levels of passenger and freight traffic</li> <li>• Poor operational performance of railways</li> <li>• Air transport market dwindled</li> <li>• Levels of air connectivity low</li> <li>• ICT backbone in its early stages</li> <li>• ICT access rates are low and prices the highest in Africa</li> <li>• Use of new ICT is still modest</li> <li>• Roaming far less developed</li> </ul>
	Chapter 11 Cooperation in energy...	Energy cooperation		<ul style="list-style-type: none"> <li>• Least developed power sector</li> <li>• Inefficient utilities in terms of distribution losses and revenue</li> </ul>
	Chapter 14 Cooperation in tourism	Cooperation in tourism	<ul style="list-style-type: none"> <li>• Development of national parks for tourism</li> </ul>	

Source: ECA, based on review of treaties and protocols.

# Annex 12

## Summary of trade in service liberalization in ECOWAS

REC Treaty (revised)	Treaty services chapters	Protocols	Recent progress/implementation	Challenges/bottlenecks
ECOWAS 1975 (1993)	Chapter 5 Energy ECOWAS Trade in Services Agreement (ETISA) ECOWAS Supplementary Competition Act Chapter 7 Transport, communication and tourism Chapter 10 Cooperation in immigration Coordinating Committee on Trade in Services ECOWAS Qualifications Reference Framework (EQRF) ECOWAS Mutual Recognition Arrangements in Services	Trade, trade-related	<ul style="list-style-type: none"> <li>• Institutional arrangement promotes divergence in policy implementation</li> <li>• The free movement of persons without visa</li> <li>• Adoption of ECOWAS passport</li> <li>• Harmonisation of trade policy</li> <li>• Implementation far from complete</li> <li>• Not effective in all services areas</li> <li>• Introducing new regulatory framework</li> </ul>	<ul style="list-style-type: none"> <li>• A variable-speed approach</li> <li>• Multiplicity of regional groupings</li> <li>• Weak political support and poor coordination</li> <li>• Heterogenous community</li> <li>• Poor funding</li> <li>• The non-ratification and non-implementation.</li> <li>• Lapses that result in challenges</li> <li>• Compliance with the provisions Poor regulatory framework</li> <li>• Involvement of professional associations in regulatory audit</li> </ul>

Source: ECA, based on review of treaties and protocols.

# Annex 13

## Number of Nigeria's tariff lines affected by the import prohibition list

Description	Product description	Total tariff lines	Exceptions <sup>a</sup>	Total violations
<b>Band 1: Essential social goods (CET 0%)</b>	Medicaments	16	2	14
	Waste pharmaceuticals	1	1	0
	<b>Band 1 subtotal</b>	<b>14</b>		
<b>Band 2: Basic raw materials and capital goods (CET 5%)</b>	Poultry	5	-	5
	Bird eggs	2		2
	Used compressors	10	10	0
	Used motor vehicles*	7	7	0
	Ballpoint pens	1	-	1
	<b>Band 2 subtotal</b>	<b>8</b>		
<b>Band 3: Intermediate products (CET 10%)</b>	Refined vegetable oil	20	-	20
	Poultry*	7	-	7
	Cocoa butter	6	-	6
	Fruit juice	20	-	20
	Soap and detergents	11	-	11
	Corrugated paper	1	-	1
	Used compressors	2	2	0
	Used furniture	3	-	3
	Glass bottles	2	-	2
	Footwear	20	-	20
	Ballpoint pens	1	-	1
	<b>Band 3 subtotal</b>	<b>91</b>		

Description	Product description	Total tariff lines	Exceptions <sup>a</sup>	Total violations
<b>Band 4: Final consumer goods (CET 20%)</b>	Refined vegetable oil	13	-	13
	Poultry*	1	-	1
	Pork and beef	3	-	3
	Waters	5	-	5
	Soap and detergents	5	-	5
	Used compressors	11	11	0
	Ballpoint pen	7	-	7
	Sanitary wares	6	-	6
	Rethreaded tyres	6	6	0
	Fruit juice	20	-	20
	Footwear	42	-	42
	Corrugated paper	6	-	6
	Used motor vehicles	16	16	0
	Used furniture	26	-	26
	Sugar	4	-	4
	Spaghetti and noodles	4	-	4
	Bagged cement	1	-	1
	Mosquito coils	1	1	0
	Phone recharge cards	1	-	1
	Carpets	21	-	21
	<b>Band 4 subtotal</b>	<b>165</b>		
<b>Band 5: Specific goods for economic development (CET 35%)</b>	Poultry*	7		7
	Bird eggs	3		3
	Pork and beef	28		28
	Refined vegetable oil	6		6
	Cocoa butter	7		7
	Waters	3		3
	Soap and detergents	11		11
		<b>Band 5 subtotal</b>		
<b>Total</b>		<b>399</b>	<b>56</b>	<b>343</b>

<sup>a</sup> Exceptions based on WTO and national standards.  
Source: Olayiwola and Okodua (2020).



# Annex 14

## A selection of articles from the protocol on the relationship between the African Union and the regional economic councils

<b>Article 3 (g)</b>	Establishes a coordinating mechanism for regional and continental efforts for developing common positions by members in negotiations at multilateral level.
<b>Article 3 (h)</b>	Encourages sharing regional integration experiences in all fields among RECs.
<b>Article 4 (d)</b>	Calls for parties to support each other in their integration endeavours and agree to attend and participate effectively in all meetings with each other and in the activities required to implement the Protocol.
<b>Article 5 (d)</b>	AU undertakes to fully discharge its responsibility of strengthening the RECs as well as coordinate and harmonise their activities. The institutional framework for the implementation of the Protocol is laid out in chapter 2 of the Protocol.
<b>Article 6</b>	Establishes the institutional organs to facilitate implementation.
<b>Article 7 to 10</b>	Lists the roles and functions of participants in the relationship of the AU and the RECs.
<b>Article 15</b>	Deals with joint programmes and closer cooperation between the two entities.
<b>Article 18</b>	Establishes status of RECs at AU meetings.
<b>Article 20</b>	Deals with the status of the Commission at meetings of the RECs.
<b>Article 22</b>	Empowers the AU to make decisions that are binding on the RECs.

Source: ECA, based on review of treaties and protocols.



# Annex 15

## African Union trade facilitation implementation strategies

### Adoption of AU trade facilitation strategy

Simplify and harmonise custom and transit procedures among member countries

Formation of one-stop border posts

Regional approach to compliance for security of the supply chain

Customs administrations need to modernize ICT systems to streamline border trade

AU in collaboration with World Customs Organization (WCO), UNCTAD and development partners should engage in capacity building, especially in risk analysis

member States to terminate pre-shipment inspection to reduce time to export as per Niamey Declaration

Facilitate SMEs to participate in global value chains and improve compliance with rules and regulations

Identification, categorization, resolution and elimination of non-tariff barriers

Political will as a major concern

Combatting corruption—reviewing success stories from Botswana, Cabo Verde and Seychelles

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*Source: Forum for National Trade Facilitation Committees, 2018.*

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## African Union trade facilitation implementation strategies

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<sup>1</sup> Olayiwola, 2015.

<sup>2</sup> AU, 2020.

<sup>3</sup> Chauvin, Porto and Ramos, 2015.

<sup>4</sup> Report of the 1st Meeting of African Union Ministers of Trade, 24 May 2016, annex III: "Definitions for the Continental Free Trade Area (CFTA) Negotiating Guiding Principles."

<sup>5</sup> Rule 15.4, annex II, 1st African Ministers of Trade report.

<sup>6</sup> Kotcho, 2017.

<sup>7</sup> AU, AfDB and ECA, 2019.

<sup>8</sup> Geda and Seid, 2015.

<sup>9</sup> AU, 2019.

<sup>10</sup> Other flagship projects are an integrated high speed train network, formulation of an African commodities strategy, the African passport and free movement of people, silencing the guns by 2020, implementation of the grand Inga Dam project, establishment of a single African air transport market (SAATM), establishment of an annual African Economic forum, establishment of the African financial institutions, the pan-African E-Network, Africa outer space strategy, an African virtual and e-university, cyber security, a great African museum and Encyclopaedia Africana.

<sup>11</sup> UNCTAD, 2018.

<sup>12</sup> Mevel and Karingi, 2012.

<sup>13</sup> Conde, Heinrigs and O'Sullivan, 2015; Obasaju et al., 2019.

<sup>14</sup> Chauvin, Porto and Ramos, 2015.

<sup>15</sup> Cadot, Himbert and Jouanjean, 2015.

<sup>16</sup> Okafor and Aniche, 2017.

<sup>17</sup> Burkina Faso, Comoros, Eritrea, Eswatini, Guinea, Guinea Bissau, Lesotho, Liberia, Malawi, Mali, Namibia, Senegal, Togo, Uganda and Zambia.

<sup>18</sup> Cameroon, Equatorial Guinea, Ethiopia, Ghana, Morocco, Mozambique, Seychelles, Tanzania and Tunisia.

<sup>19</sup> The Tripartite free trade area joins the Southern African Development Community (SADC), the East African Community (EAC) and the Common Market for Eastern and Southern Africa (COMESA).

<sup>20</sup> Abuja Treaty, article 4(2).

<sup>21</sup> Algeria, Libya, Mauritania, Morocco and Tunisia.

- <sup>22</sup> The members of CEMAC are Burundi, Kenya, Rwanda, South Sudan, Tanzania and Uganda.
- <sup>23</sup> ECCAS, 1983: chapter 2, article 4(1).
- <sup>24</sup> Gabon, Cameroon, the Central African Republic, Chad, Republic of Congo and Equatorial Guinea.
- <sup>25</sup> Liberia, Sierra Leone, Côte d'Ivoire and Guinea.
- <sup>26</sup> AU, 2006.
- <sup>27</sup> Burundi, Djibouti, Democratic Republic of Congo, Ethiopia, Madagascar, Malawi, Kenya, Rwanda, South Sudan, Sudan, Tanzania, Uganda and Zimbabwe.
- <sup>28</sup> ECA, 2019.
- <sup>29</sup> (1) The goods should be wholly produced. (2) The cost insurance and freight (CIF) value of any non-originating material should not exceed 60 per cent of the ex-work price of the goods. (3) Goods must attain the value added of at least 35 per cent of the ex-factory cost of the goods. (4) Goods should fulfil the change in tariff heading (CTH) rule. (5) Goods must have importance to the economic development of the member States and should contain not less than 25 per cent of value added.
- <sup>30</sup> Elumaro and Olayiwola, 2020.
- <sup>31</sup> The task force is led by the former president of Niger, one private sector representative, one former police representative, one former Nigerian customs representative, the honorary president of Réseau des organisations paysannes et de producteurs de l'Afrique de l'Ouest, the director of the National Association of Nigerian Traders and a permanent secretary.
- <sup>32</sup> Karaki and Verhaeghe, 2016.
- <sup>33</sup> Botswana, Eswatini, Lesotho, Namibia, and South Africa.
- <sup>34</sup> ECA, 2019.
- <sup>35</sup> Algeria, Bahrain, Egypt, Iraq, Kuwait, Lebanon, Libya, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, the United Arab Emirates and Yemen.
- <sup>36</sup> The SPFS operates in all countries but Libya, Tunisia, and Somalia
- <sup>37</sup> AUC and OECD, 2019.
- <sup>38</sup> AUC and OECD, 2019.
- <sup>39</sup> AUC and OECD, 2019.
- <sup>40</sup> AUC and OECD, 2019.
- <sup>41</sup> Monism holds that international law and domestic law form part of a single universal legal system and there is hierarchical relationship in which international law is superior to domestic law and prevail in any conflict between the two laws.
- <sup>42</sup> A dualist system treats the international and domestic systems of law as separate and independent. The validity of international law in a dualist domestic system is determined by a rule of domestic law authorizing the application of that international norm.
- <sup>43</sup> The results of gravity models: see annex 2.

- <sup>44</sup> Geda and Seid, 2015.
- <sup>45</sup> OECD, 2018.
- <sup>46</sup> Fessehaie and Rustomjee, 2018.
- <sup>47</sup> See EAC Common Market Scorecard 2016.
- <sup>48</sup> Keane, Cali and Kennan, 2010.
- <sup>49</sup> See annex 7 on additional charges in Nigerian ports.
- <sup>50</sup> Estevadeordal and Suominen, 2006. The restrictiveness index was developed from 11 criteria measured by identifying the variants by which each criterion is applied and then subjectively assigning restrictiveness scores to each item, according to the likely restrictiveness of the variant. The criteria are: change in tariff classification, regional value content or percentage criterion, specified manufacturing process test and/or sector-specific rules, type of cumulation, provisions that go beyond cumulation, duty drawback, territoriality or outward processing, geographic location of manufacturing process, other effects of rules of origin, degree of certainty, compliance, administration costs and rigidity.
- <sup>51</sup> CDTi, 2018.
- <sup>52</sup> UNCTAD, 2019.
- <sup>53</sup> Simo, 2020.
- <sup>54</sup> Sauve and Ward, 2014.
- <sup>55</sup> Kigombe, 2012.
- <sup>56</sup> <http://www.unctadxi.org/sections/DITC/SADC/docs/SADC%20Regional/SADCProtocolonCulture.pdf>. [Link is broken, cannot access website]
- <sup>57</sup> [http://programmes.comesa.int/index.php?option=com\\_content&view=article&id=42&Itemid=52&lang=en](http://programmes.comesa.int/index.php?option=com_content&view=article&id=42&Itemid=52&lang=en).
- <sup>58</sup> Burundi, Kenya, Rwanda and Zimbabwe.
- <sup>59</sup> These countries are in Western and Central of Africa. They are Benin, Burkina Faso, Cameroon, Central African Republic, Chad Republic, Comoros, Democratic Republic of Congo, Republic of Congo, Côte d'Ivoire, Gabon, Guinea, Guinea Bissau, Equatorial Guinea, Mali, Niger, Senegal and Togo.
- <sup>60</sup> Sawere, 2019.
- <sup>61</sup> Sawere, 2019.
- <sup>62</sup> Proparco, 2016.
- <sup>63</sup> InterVISTAS, 2014.
- <sup>64</sup> Heinz and O'Connell, 2013.
- <sup>65</sup> Proparco, 2016.
- <sup>66</sup> AUC and OECD, 2019.
- <sup>67</sup> AUC, AfDB and ECA, 2016.

<sup>68</sup> Olayiwola, 2020a. [Specify which one, 2020a or 2020b?]

<sup>69</sup> ECA, 2006.

<sup>70</sup> Gathii, 2009.

<sup>71</sup> Most members reported that they have joined more than one REC because of political reasons. Economic and geographical reasons, as envisioned in the Abuja Treaty, was not high on the list of reasons (ECA, 2006).

<sup>72</sup> Oyejide, 2000.

<sup>73</sup> AfCFTA Article 3(h).

<sup>74</sup> Agreement Establishing the African Continental Free Trade Area, Article 19: “(1) In the event of any conflict and inconsistency between this Agreement and any regional agreement, this Agreement shall prevail to the extent of the specific inconsistency, except as otherwise provided in this Agreement. (2) Notwithstanding the provisions of Paragraph 1 of this Article, State Parties that are members of other regional economic communities, regional trading arrangements and custom unions, which have attained among themselves higher levels of regional integration than under this Agreement, shall maintain such higher levels among themselves.”

<sup>75</sup> Garner, 2009.

<sup>76</sup> Balassa highlights forms of economic integration, these being: free-trade area, a customs union, a common market, an economic union and complete economic integration.

<sup>77</sup> Republic of South Africa Government Gazette, 1964.

<sup>78</sup> It noteworthy that the preamble of the AfCFTA provides that, “Acknowledging the Regional Economic Communities (RECs) Free Trade Areas as building blocs towards the establishment of the African Continental Free Trade Area (AfCFTA).”

<sup>79</sup> Oppong, 2015.

<sup>80</sup> Decision 635 (XXVIII) of January 2017.

<sup>81</sup> TRALAC, 2019.

<sup>82</sup> ECA, 2019.

<sup>83</sup> The Tripartite Task Force comprises a committee of CEOs of COMESA, EAC and SADC Secretariats. It is assisted in discharging its responsibilities and mandate by two subcommittees which provided technical expertise.

<sup>84</sup> [www.tradebarriers.org](http://www.tradebarriers.org).

<sup>85</sup> The Tripartite NTB reporting, monitoring and resolution mechanism was developed in 2014.

<sup>86</sup> [www.tradebarrierswa.org](http://www.tradebarrierswa.org).

<sup>87</sup> [www.tradeobstacles.org/uemoa](http://www.tradeobstacles.org/uemoa).

<sup>88</sup> EAC Elimination of NTBs Act 2017, Section 11(2).

<sup>89</sup> [www.tradebarriers.org](http://www.tradebarriers.org).

<sup>90</sup> AfCFTA Protocol on Rules and Procedures on the Settlement of Disputes, article 3(4): “A State Party which has invoked the rules and procedures of this Protocol with regards to a specific matter, shall not invoke another forum for dispute settlement on the same matter.”

<sup>91</sup> WTO, 1994.

<sup>92</sup> Understanding on Rules and Procedures Governing the Settlement of Disputes, annex 2 to the WTO Marrakesh Agreement (WTO, 1994).

<sup>93</sup> Article 76 of the ECOWAS Revised Treaty.

<sup>94</sup> Ramírez Robles, 2012.

<sup>95</sup> Oyejide and Olayiwola, 2020a.

<sup>96</sup> Abuja Treaty, article 6 (2).

<sup>97</sup> AU, 2019.

<sup>98</sup> ECA, 2013, 2019.

<sup>99</sup> Nigeria Federal Ministry of Finance, 2015.

<sup>100</sup> See appendix 13.

<sup>101</sup> Exceptions based on WTO GATT articles XX and XXI and Nigeria’s security/safety/environmental standards.

<sup>102</sup> Bunder, 2018.

<sup>103</sup> Oyejide and Olayiwola, 2020a.

<sup>104</sup> Oyejide and Olayiwola, 2020b.

<sup>105</sup> Article 88 para 1 and 3 of the AEC Treaty 1991. The article details cooperation among RECs through the coordination of their policies, measures, programmes and activities in all fields and sectors.

<sup>106</sup> MYCM/AU/4(1)Rev.2.

<sup>107</sup> Draper, 2010.

<sup>108</sup> Enujekor, 2011.

<sup>109</sup> ECA, 2019.

<sup>110</sup> The Protocols on Trade in Goods, Trade in Services, Investment, IPRs, Competition Policy, Rules and Procedures on the Settlement of Disputes and their associated Annexes and Appendices shall form part of the single undertaking subject to entry into force.



<sup>111</sup> Viner, 1950.

<sup>112</sup> Olayiwola and Osei Assibey, 2020.

<sup>113</sup> See annex 13.

<sup>114</sup> AUDA–NEPAD, 2020.

<sup>115</sup> 8 The basic documentary evidence for this can be found in UNCTAD (2015a, 2015b, 2015c, 2016a, 2016b).

<sup>116</sup> 18th Ordinary Session of the Assembly of the African Union Decision for “consolidation of the Tripartite and other regional FTAs into a Continental Free Trade Area.”

<sup>117</sup> A SWOT analysis is a framework for identifying and analyzing internal and external factors that can have an impact on the viability of any option.

<sup>118</sup> The four pillars are sustainable land and water management; market access; food supply and hunger; and agricultural research.

<sup>119</sup> ECA, AU and African Business Group, 2018.

<sup>120</sup> Nzue, Olayiwola and Jalloh, 2012.

<sup>121</sup> UNSD 2019; UNCTAD 2020.

<sup>122</sup> EAC, n.d.

<sup>123</sup> <https://www.african-alliance.org/index.php/en/projets-3>.

<sup>124</sup> <https://www.pacci.org/>.

<sup>125</sup> Van Beers and Linneman, 1988.

<sup>126</sup> Geda and Seid, 2015.

<sup>127</sup> Allen, 1957.

<sup>128</sup> Melitz, 2003.

<sup>129</sup> Roodman, 2009.

<sup>130</sup> Roodman, 2009.

Published by



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