REPORT

Negotiating institutions: putting in place the right foundations

Under the project
“Capacity-building for inclusive and equitable African trade arrangements”
(FED/2019/405-346)
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Executive summary

“No form of government is perfect. All governments make mistakes, and all political institutions have the capacity to subvert the prosperity engine. Still, governments with broad-based representative institutions tend to make fewer mistakes than those with narrow ones”.

It is with those opening remarks that Professor Daniel W. Drezner introduced the central piece of his lecture on the political foundations of prosperity (2013).

He argued that, with more checks and balances, inclusive political systems tend to have more lasting and reliable judicial systems to protect individual interests and more transparency in public life. These two elements, in turn, contribute to the establishment of an environment that enables private initiatives to innovate and seek reward through the operation of market forces, provides some degree of public oversight over the use of State-owned resources, and limits the power of governing bodies to use those resources with confiscatory discretion.

Carrying this idea into the field of international relations and economic cooperation, one can ask whether a similar observation can be made about the decision-making process leading to the conclusion of preferential trade instruments.

This question seems to be of timely relevance for the African continent – at a stage where negotiation under the Agreement Establishing the African Continental Free Trade Area is ongoing – as political and opinion leaders call for greater participation of civil society to act as gatekeepers, advocates, mobilizers, educators, researchers and policy analysts.

Indeed, whereas the process of creating a legal instrument establishing the pan-African trade area has been driven by the African Union member States and purely governed at the intergovernmental level, the success of the initiative primarily depends on the private sector’s ownership of it. It is for this reason that, on the occasion of a trade policy experts meeting held in May 2019 at the African Union Commission headquarters in Addis Ababa, the former African Union Commission Director for Trade and Industry, Treasure Maphanga, called for re-emphasizing the importance of involving the private sector in the whole cycle, from preparation through negotiations up to implementation.

If the Agreement Establishing the African Continental Free Trade Area – or any other preferential trade instrument – is to create opportunities for businesses, the negotiating interests of the private sector and of civil society at large must be accurately understood by negotiators and policymakers. That in turn requires that negotiators have access to working mechanisms for consulting with and soliciting the views of those national constituencies.

Well-functioning participatory forums allow the needed discussions to take place between policymakers and civil society, thereby supplying channels for negotiators and businesses to reach consensus on national negotiating objectives, concessions and trade-offs. Such communication channels, coupled with adequate negotiating capabilities, lay the ground for impactful participation in the trade negotiation arena.

Despite widespread understanding of the above-mentioned prerequisites, there remains an impression that many countries have poorly established negotiating institutions, which leaves their negotiators to enter negotiations with an impaired understanding of, or even blind to, the interests of their private sector, and makes those countries prone to trade policy incoherence. This impression seems to hold firm, both anecdotally in the reported experiences of African trade negotiators and trade negotiation observers, and in more thoroughly documented research.
It is thus in this light that the Economic Commission for Africa has undertaken a comparative analysis to draw from the experiences of various trade ministries to identify what works well and less well as mechanisms for engaging civil society (with a focus on the organizations representing the private sector) and coordinating the public sector in international trade negotiations.

Rather than the substance of preferential trade agreements, the present study focuses on the procedures in place to facilitate the public-private dialogue that constitutes the basis for Governments to negotiate regional trade agreements with international partners.

Across the countries featured in this study, a few large organizations representing the private sector are very capable of participating in the public-private dialogue on regional trade agreements; however, one could ask how representative of the private sector those organizations are. Furthermore, outside such organizations, it would seem that small groups are not as able to participate in the dialogue. Civil society organizations in particular appear to be underrepresented in the public-private dialogue on regional trade agreements. Given that a common element among Central African economies is that their economic fabric is mostly composed of small-scale – or even informal – businesses, the institutions that negotiate regional trade agreement should endeavour first and foremost to ensure representation of a wider range of interests.

Quick wins: easily and quickly implementable steps for improving negotiating institutions

The results of the study indicate that measures could fairly easily be taken to enhance negotiating institutions on the level of openness and transparency, and participation. Consequently, the following suggestions are offered:

(i) To enhance openness and transparency

To negotiating teams:

- Actively communicate on trade policy objectives through the publication of event calendars, and written and oral briefings and debriefings. The communication channels used should be easily accessible and continuously open. In that regard, publication on websites, coupled with dissemination through social media and specialized press outlets, would be effective means of communication; however, online platforms must be maintained and kept up-to-date, with access facilitated for all social groups. The existence of an appropriate regulatory framework that sets the rules and procedures and outlines the rights and obligations of providers and users of information for transparency purposes is key to establishing predictable and reliable communication channels.

- With an appropriate framework in place, in addition to regular and continuous consultations through policy dialogue events and calls for written or oral contributions, clear guidelines on the consultation processes, deadlines and conditions for participation can help ensure that adequate information is made available in line with transparency best practice.

(ii) To enhance participation

To negotiating teams:

- Ensure a balanced representation of the interests of companies of all sizes, including micro-, small and medium-sized enterprises, when calling for contributions or arranging dialogue events. There are two prerequisites for achieving this balanced representation: (i) making a resolute effort to identify all key stakeholders; and (ii) giving all key stakeholders the opportunity to participate. Notably, special attention should be paid to the asymmetry of influence between companies, even within business organizations, where some influential companies and interest groups may skew the representation towards overstating their own interests, to the detriment of other members.
Furthermore, the same recommendation is applicable to business size, sector coverage (notably of emerging sectors such as digital services or green technologies) and demographic-specific organizations (such as groups dedicated to the economic empowerment of women or young people).

- Endowing a government body with responsibility for issues affecting women, young people and small and medium-sized enterprises, or for economic development more broadly (not only trade), can foster policy coherence and facilitate outreach to all relevant stakeholders, including those that might not be known to negotiating teams from a trade background, thus providing a platform for broad-based consultations.

To the private sector:

- Personalities matter. Ensure that representatives are duly mandated and that their guidelines are neither too strict to preclude any positive negotiating outcome nor so loose as to leave room for personal interpretation on committal matters. While coalitions may constitute an opportunity to have weight in the discussion, the larger the number of organizations represented, the more diluted and general the coverage of the assigned mandate. Beyond the issue of the extent to which the participants are representative, the issue of coalition or sectoral group creation lies at the intersection of participation, openness and transparency; such groups might not be constituted in the first place if there were a lack of information pertaining to an issue of interest to them. More research may be useful to allow a strong conclusion to be formulated on this point. This may also be true for civil society organizations.

To civil society organizations:

- Actively engage with government and parastatal agencies to ensure that interests are well conveyed. This can be achieved through unsolicited contributions, open letters distributed through widely consulted outlets and the organization of civil society organization events in which public officials are invited to participate. This will contribute to wider participation and foster better accountability, including on topics related to social inclusivity (e.g. universal coverage of basic services within the context of negotiations to liberalize commitments in the communications, education or health sector).

- Use trade negotiation monitoring strategies to ensure an up-to-date overview of the discussions, as well as a clear understanding of the actors and the issues. This allows timely contribution to the public-private dialogue, even in the event of insufficient information dissemination through official channels. It is worth highlighting, however, that without an appropriate transparency framework that requires the public sector to share substantive and procedural information, such participation may prove difficult. This point is therefore linked to the previous point, as ensuring that the interests of civil society organizations are conveyed is one area where active engagement may be required.

**Implications for women, young people and micro-, small and medium-sized enterprises**

Upstream participation in trade negotiations through national-level institutions and downstream participation in the implementation of negotiation outcomes may constitute opportunities for overcoming the path dependencies and embedded inequalities associated with underrepresentation and the defence of traditional interests.

Notably, the identification of sectors and products with the potential to achieve a high level of exports and to make a positive socioeconomic contribution, coupled with complementary measures that support beneficiaries in effectively tapping into those opportunities, has the potential to catalyse the economic empowerment and participation of marginalized groups, including women and young people. The identification of such high potential sectors and products, along with potential risks (such as that of
occupational segregation being leveraged for competitiveness purposes), can be better achieved through increased participation of civil society organizations.

Trade negotiators are generally in a tenuous position, between a rock and hard place, when negotiating at the international level, and, when not properly mandated or guided, are usually pressured into seeking safe outcomes through rather conservative stands. Nevertheless, negotiating teams should be provided with training in conducting broad consultations to achieve more inclusive outcomes. For this reason, early participation through solicited or unsolicited contributions can enhance the economic benefit of trade negotiations for underrepresented groups. This can notably be achieved by reinforcing the trade advocacy capacity of interest group associations, including those representing women, young people and cross-border traders.
1. **Introduction**

1.1. **Context**

While multilateral liberalization – with sufficient flexibility for developing countries – has long been considered an efficient solution "to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development", the lack of progress in concluding the Doha Development Round of international trade negotiations has prompted many countries to pursue regional trade agreements as an alternative avenue to open new markets, fast-track their inclusion in the global economy and foster structural transformation.

This phenomenon is likely to continue, even if the existential challenges that the World Trade Organization (WTO) is currently facing generates a renewed impetus for multilateralism in trade negotiations. It is therefore of paramount importance that developing – and especially the least developed – countries have the capacity to identify the potential benefits and costs of regional trade agreements, effectively negotiate such agreements with a focus on development, utilize already negotiated concessions, take the measures necessary to overcome burdensome trade costs, and make the most of the linkages between the agreements and the multilateral trading system by using the former as a stepping stone to improve and enhance trade liberalization measures under the latter.

1.2. **Purpose and design**

The present study was aimed at reviewing and analysing the institutional mechanisms that allow the private sector in the Central African region to better engage in the negotiation and implementation of preferential trade agreements and arrangements, in particular those relating to trade in services, through evidence-based research and technical assistance.

It was intended to draw from the experiences of various Central African countries to identify best practices and possible areas for improvement in terms of institutional mechanisms for engaging civil society (with a focus on the organizations representing the private sector) and coordinating public sector involvement in international trade negotiations.

Two countries of the region, namely Cameroon and Chad, were chosen as pilot countries for data collection, with a third country, namely Mauritius, chosen to serve as an African comparator. These choices were motivated by the following considerations:

- At the time of the launch of the study, cases of coronavirus disease (COVID-19) were on the rise in Africa. The situation forced the project management team to revise the data collection strategy, owing to the impossibility of on-site interviews and data collection.

- The Economic Commission for Africa (ECA) had, the year prior to the present study, provided technical support to several countries of the region in view of preparing a national strategy for the implementation of the Agreement Establishing the African Continental Free Trade Area (AfCFTA Agreement). The revised data collection strategy was therefore redesigned to build on the pre-existing ECA networks. The two countries of the Economic Community of Central African States (ECCAS) that had benefitted from technical assistance from the ECA in 2019 were Cameroon and Chad.

- During the literature review for the study, Mauritius was identified as “one of the few exceptions among small developing countries, as key actors in the private sector consistently engage with

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1 Second preambular paragraph of the Marrakesh Agreement Establishing the World Trade Organization.
government on trade policy and assist with preparing negotiating positions. This in turn is cited as a key factor in explaining the country’s negotiating success” (Jones, Deere-Birkbeck, and Woods, 2010, p. 35).

1.3. Scope

Rather than the substance of regional trade agreements, the present study focuses on the procedures in place to facilitate the public-private dialogue that constitutes the basis for the Government to negotiate regional trade agreements with international partners.

As the public-private dialogue is the main focus of the study, attention was put on the mechanisms that allow for consultation with all stakeholders, including seeking the private sector’s views on concessions and trade-offs while ensuring the appropriate representation of vulnerable groups, women and young people. Emphasis was also put on the economic, social and environmental sustainability of trade programme implementation.

The scope was initially limited to negotiated trade agreements, referred to as “regional trade agreements” by WTO; however, it became evident during the data collection phase of the study that strict delineation between influence strategies pertaining to preferential and non-preferential trade, and between unilateral and reciprocal trade preferences, was not always possible.

There were two main reasons identified for this: (i) the evolving mandates and portfolios of the relevant public organizations (due, for instance, to the merger or separation of regional integration and multilateral affairs portfolios or of international cooperation and external trade portfolios following the installation of a new government), called for flexibility during interviews; and (ii) the capacity available in civil society organizations to deal with trade policy issues is scarce, generally consisting of one individual or just a few people for whom the responsibility pertaining to influence and advocacy is one of many.

Some limitations to African regional trade agreements

In Africa, regional trade agreements have been considered as rather ineffectively implemented (African Union and ECA, 2006; African Union Commission, 2009). One explanation given for their perceived failure to boost intra-regional trade is the structure of the parties’ productive capacities rather than the agreements themselves. Nevertheless, even though trade and economic liberalization have not generated the expected results in terms of boosting intra-African trade, observers estimate that the political economics of certain regions have benefitted from the creation of those regional trade agreements (Barnekow and Kulkarni, 2017).

Another possible explanation for the under-performance of African regional trade agreements is that they have been poorly implemented (Swinnen and Janssen, 2016; African Development Bank, African Union and ECA, 2017). Analysts see several main reasons for this, including: the cost associated with overlapping trade regimes, resulting in inefficient allocation and use of scarce resources in regional economic communities; the structural bottlenecks to trade, including poor infrastructure; and the high concentration of a few exports, which generates continued dependency on exports of raw materials and traditional trading partners. On the other hand, some other observers argue that flexibility is a cornerstone

2 “The share of intra-African exports as a percentage of total African exports has increased from about 10 per cent in 1995 to around 17 per cent in 2017, but it remains low compared to levels in Europe (69 per cent), Asia (59 per cent), and North America (31 per cent). This is an important reason to expect that trade will be a key driver of growth in Africa” (Songwe, 2019). Note also the 2012 African Union decision on boosting intra-African trade and fast-tracking the Continental Free Trade Area aimed at increasing intra-African trade by 50 per cent within a decade (see paragraph 3 of the decision (Assembly/AU/Dec.394(XVIII)) and paragraph 5 (iii) of annex I to “Report of the Chairperson of the High-level African Trade Committee”).
of African regional trade agreements. Indeed, the agreements are seen as emerging from highly consensual decision-making processes and as incorporating many flexibilities and differentiated treatments to address national sensitivities and interests. Furthermore, this leniency also explains overlapping trade regimes, which provide a choice between trade regimes that may offer different, tailor-made trade rules and provide for complementary spillovers in relation to non-trade issues, such as river basin management or cross-border security (Gathii, 2010).

Although the previous elements are not negotiating institutions as defined below, the political economy of African regional trade agreements (Vanheukelom, Byiers, Bilal, and Woolfrey, 2016) might be a noteworthy parameter when considering the effectiveness of negotiating institutions, as the agreements influence the environment of such institutions.

2. Conceptual framework

As an introduction to the concepts, this section highlights the defining features of regional trade agreements (section 2.1) and explains how they are negotiated (section 2.2), with a view to providing the background to the definition of negotiating institutions to be used for the purposes of this study (section 2.3).

2.1. What are regional trade agreements?

Trade agreements are international agreements specifically designed to regulate international trade matters (section 2.1.1). Beyond this mere tautology, however, the definition becomes relevant to the present study insofar as not all agreements covering trade matters are necessarily regional trade agreements (section 2.1.2).

2.1.1. Defining a treaty

A common definition of an international agreement is given in the Encyclopedia Britannica, as follows:

“an instrument by which states and other subjects of international law, such as certain international organizations, regulate matters of concern to them. The agreements assume a variety of form and style, but they are all governed by the law of treaties, which is part of customary international law.”

Similarly, the Encyclopedia Britannica defines a treaty as:

“a binding formal agreement, contract, or other written instrument that establishes obligations between two or more subjects of international law (primarily states and international organizations). The rules concerning treaties between states are contained in the Vienna Convention on the Law of Treaties (1969), and those between states and international organizations appear in the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (1986).”

Going forward with reference to the conventions, the following are definitions applicable under the law of treaties for subjects of international law:

(a) Under the Vienna Convention on the Law of Treaties, “treaty” means “an international agreement concluded between States in written form and governed by international law,

3 https://www.britannica.com/topic/international-agreement.
whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”.

(b) Under the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, “treaty” means “an international agreement governed by international law and concluded in written form: (i) between one or more States and one or more international organizations; or (ii) between international organizations, whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation”.

In all those definitions, several matters emerge:

(a) The subjects of international treaties are States or international organizations.

(b) Form and style do not modify the nature of an international agreement.

(c) International agreements are all governed by the following treaty-related conventions: the Vienna Convention on the Law of Treaties, for treaties concluded between States only; and the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, for treaties concluded between States and international organizations as parties.

The present paper will thus define a treaty (or an international trade agreement⁶) as a mutually accepted instrument between subjects of international law whose specific purpose is to govern international relations based on rules in the field of trade relations between the parties to the said treaty. Moreover, the typology of the instrument (e.g. convention, agreement, treaty, partnership, protocol) is irrelevant to our study (see box 1).

<table>
<thead>
<tr>
<th>Box 1</th>
<th>Examples of treaties</th>
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<tbody>
<tr>
<td>The United Nations database on multilateral treaties deposited with the Secretary-General lists 668 treaties,² whose participants include:</td>
<td></td>
</tr>
<tr>
<td>(a) Cameroon, in 240 treaties. Those of potential interest for the present study include the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the 2005 United Nations Convention on the Use of Electronic Communications in International Contracts and the 2010 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity.</td>
<td></td>
</tr>
<tr>
<td>(b) Chad, in 108 treaties. Those of potential interest for the present study include the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, the 1992 International Sugar Agreement and the 2012 Protocol to Eliminate Illicit Trade in Tobacco Products.</td>
<td></td>
</tr>
<tr>
<td>Although some of these treaties may aim to regulate aspects of international trade, they are not necessarily trade agreements. For our purpose, this means that, where relevant, protocols to the treaties establishing ECCAS and the Central African Economic and Monetary Community (CEMAC), although not notified as such,⁶ may be treated here as regional trade agreements.</td>
<td></td>
</tr>
</tbody>
</table>


⁶ The terms will be used interchangeably.
2.1.2. Attributes of international trade agreements

WTO considers regional trade agreements as “reciprocal trade agreements between two or more partners to liberalize tariffs and services. They include free trade areas and customs unions and economic integration agreements on services.”

Regional trade agreements thus refer to regional-integration-based departures from article I of the General Agreement on Tariffs and Trade (GATT), on most-favoured-nation treatment. More specifically, WTO texts (e.g. GATT and GATS) provide for free trade areas (FTAs), customs unions and economic integration agreements, in accordance with GATT article XXIV or paragraph 2 (c) of the Decision of the Contracting Parties on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries of 29 November 1979 (the “Enabling Clause”) in the case of trade in goods, and, in the case of trade in services, in accordance with article V of the General Agreement on Trade in Services (GATS) with regard to economic integration agreements and article V bis with regard to labour market integration.

Agreements that establish preferential margins to an extent that does not qualify for FTAs in the sense of GATT article XXIV, also referred to by WTO as “partial scope agreements”, are also accounted for as regional trade agreements. According to the WTO glossary, “partial scope”, which is not defined or referred to in the WTO Agreement, means that the agreement covers only certain products. “Partial scope agreements are notified under paragraph 4(a) of the Enabling Clause.”

The key feature here is that regional trade agreements are international agreements in the sense of the Vienna Convention on the Law of Treaties, whose main focus is trade relations between States (see box 2 for examples of regional trade agreements). The goal is to liberalize trade, in accordance with the rules laid down under the Enabling Clause for agreements between developing countries and in accordance with GATT article XXIV for trade in goods agreements and GATS article V for trade in services agreements.

Regional trade agreements – i.e. agreements contracted in an intergovernmental context – therefore govern matters that directly affect the interests of private beings, thus requiring an acceptable degree of consensus to assert their legitimacy.

Box 2
Examples of regional trade agreements

The WTO regional trade agreements database accounts for 305 regional trade agreements in force, whose participants include:

(i) Cameroon, in three regional trade agreements: the 1994 treaty for the establishment of CEMAC, the 2009 European Union-Central Africa (Cameroon) Economic Partnership Agreement and the 1988 Agreement on the Global System of Trade Preferences among Developing Countries. The two first agreements are regional trade agreements notified to WTO under the Enabling Clause and article XXIV of the General Agreement on Tariffs and

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8 The Agreement establishing the World Trade Organization.
Trade, respectively, and the third is a partial scope agreement notified under the Enabling Clause.

(ii) Chad, in the 1994 treaty for the establishment of CEMAC.

Beyond the WTO-notified regional trade agreements, other regional trade agreements may also be in force even though not notified as such. For instance, the treaty establishing ECCAS is not notified under the WTO regional trade agreements information system and the treaty for the establishment of CEMAC is only notified under the Enabling Clause (i.e. covering trade in goods), even though numerous service liberalization protocols to the CEMAC treaty have been adopted in various sectors.


2.2. How are regional trade agreements negotiated?

As regional trade agreements are specialized instruments of international law, they are created in accordance with international trade law-making procedures (section 2.2.1). Nevertheless, as States represent their constituencies on the international scene, the regional trade agreement-making process is infused with subnational preferences, and the intergovernmental negotiation process is a game of give and take that responds to the subnational preferences as expressed by a mandated intermediary (section 2.2.2).

2.2.1. Description of the intergovernmental negotiation process

“In a survey of negotiators from small developing countries conducted by the author, more than half of the 93 respondents expected to have ‘low influence’ over the outcomes [of a negotiation process], while a fifth expected to have ‘no influence’ at all. Yet, more revealingly, interviews suggest that when negotiators from small developing countries have low expectations of success, they do not use leverage that they do have to the fullest extent.” (Jones, 2013, p. 3).

Whereas bargaining power, or influence, directly results from one’s country’s ability to secure its national interests, it must be acknowledged that unequal power relations are a matter of fact on the international scene. Recognizing one’s structural limitations does not, however, constitute an immutable state of powerlessness for the smallest, less endowed countries.

International rules, coalitions and transnational actions are only some of the means that can yield significant results in a context of asymmetrical power negotiations (Tussie and Saguier, 2011). Nevertheless, government actions in international forums must be guided by coherent, strategic, inclusive policy objectives to generate sustainable outcomes. Negotiating institutions provide the framework for such guidance.

The intergovernmental negotiation process obeys some procedural and substantive rules (section 2.2.1.1) that allow each country to participate according to its respective motivations and interests (section 2.2.1.2).

2.2.1.1. Rules of the game

The conditions for a given State to participate in any given round of international trade negotiations are grounded deep in the mutually agreeable terms that the participating countries set for themselves at the early stages of the negotiations, as well as in the various configurations applicable at the national level within the jurisdiction of each participating States, with the very specific credentials, terms and mandate given to the negotiating team. Some of those may have a crucial role in defining what will be negotiated, how and by whom.
• Guiding references

At the higher level of the negotiation process, overarching principles are defined to frame the substance and the procedural aspects of how a negotiation will be conducted.

The determination of modalities is a crucial element of the negotiation life cycle, as it defines the content, objectives and targets, benchmarks for assessment and all other substantive elements that should guide the negotiation process. Those modality negotiations also take place at the intergovernmental level, although negotiators need particularly clear instructions from their respective capitals on how to navigate such a decisive matter.

For instance, prior to the effective start of the African Continental Free Trade Area (AfCFTA) negotiations – for which the inaugural meeting took place in February 2016 – the African Union Assembly adopted a certain number of documents to guide the negotiation process: (i) “Objectives and Guiding Principles for Negotiating the Continental Free Trade Area (CFTA)” (see box 3); (ii) “Indicative Road Map for the Negotiation and Establishment of the Continental Free Trade Area”; (iii) “Terms of Reference for the Continental Free Trade Area-Negotiating Forum”; and (iv) “Institutional Arrangements for the Negotiation of the Continental Free Trade Area (CFTA)”.

Box 3

Excerpts from “Objectives and Guiding Principles for Negotiating the Continental Free Trade Area (CFTA)”

Scope of the CFTA negotiations

8. The scope of the CFTA negotiations shall cover Trade in Goods, Trade in Services, Investment, Intellectual Property Rights and Competition Policy.

Sequence of negotiations

9. CFTA negotiations shall be conducted in two phases. The first phase shall cover negotiations on trade in goods and trade in services. There shall be two separate legal instruments for Trade in Goods and Trade in Services to be negotiated in two separate tracks. The second phase shall cover negotiations on the following areas: investment, intellectual property rights and competition policy. Negotiations in these areas shall be undertaken by dedicated structures.

Guiding principles

10. The Continental Free Trade Area negotiation process shall be guided by the following overarching principles:

(i) The CFTA negotiations shall be AU Member States/RECs/Customs Territories driven with support of the African Union Commission and its structures.

(ii) RECs FTAs as building blocks for the CFTA

(iii) Reservation of Acquis

(iv) Variable geometry

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10 “CFTA” refers to the AfCFTA prior to the Thirtieth Ordinary Session of the Assembly of Heads of State and Government of the African Union, held in January 2018 in Addis Ababa, where the Assembly decided that the agreement establishing the pan-African FTA would be called the “Agreement on the African Continental Free Trade Area (AfCFTA)” (see paragraph 5 of the decision on the African Continental Free Trade Area (Assembly/AU/Dec.666(XXX)).

11 See the decision on the launch of the Continental Free Trade Area negotiations (Assembly/AU/Dec.569(XXV)) and “Report of the Chairperson of the High-level African Trade Committee” (Assembly/AU/11(XXV)).
Flexibility and Special and Differential Treatment
Transparency and disclosure of information
Substantial liberalization
MFN treatment
National Treatment
Reciprocity
Decisions shall be taken by consensus
Adoption of Best Practices

**Source**: Assembly/AU/Dec. 569(XXV).

**Abbreviations**: AU, African Union; MFN, most-favoured nation; RECs, regional economic communities.

### Rules of procedure

At the intergovernmental level of the negotiation, the participating countries usually agree, before starting the substantive discussion, to set procedural guidelines to frame their interactions (see box 4). This step in the negotiation process is especially important, as it constitutes the rule book of the negotiation itself. Indeed, the rules of procedure set detailed guidance on many elements, such as who is allowed to participate in the negotiations; how the allowed participants are designated and recognized as such; what they allowed to do; how they are allowed to do it; how the things done are designated and recognized by the rest of the negotiating forum; who else can attend; and the rights and obligations of such other attendees.

At this stage of the negotiation process, such rules of procedures can constitute a precious asset for negotiating delegations, as knowing the boundaries of what is acceptable and what is not, or when a proposal is receivable and when it is not, can be a safeguard against unruly, cunning or even deceptive negotiating tactics (Jones, 2013, pp. 105–109; Kotcho Bongkwaha, 2017, pp. 336–338); however, those same rules of procedure can also be used as a negotiating tactic.

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**Box 4**

**Excerpts from the rules of procedure of the Continental Free Trade Area**

**Rule 2 – Definitions**

- “**Negotiating institution**” means the institutions specified in the institutional arrangements for the negotiations of the CFTA, including the African Union Ministers of Trade, Committee of Senior Officials and the CFTA-NF, as adopted by the Assembly in Decision 596(XXV).

**Rule 5 – Composition and Function of the CFTA-NF**

1. The CFTA-NF shall be composed of Chief Trade Negotiators from governments of Member States, regional economic communities or Customs Unions duly accredited by the Member States.

**Rule 9 – Quorum**

1. The quorum for meetings of the negotiating institutions shall be two-thirds majority of the Member States.

**Rule 15 – Attendance and participation**

3. The duly accredited members of the CFTA-NF from the member States shall attend and participate in the sessions of the CFTA-NF [...]. Each accredited representative of the
member States to the session of the CFTA-NF may be accompanied by Experts and Advisers as the representative may deem fit.

4. Representatives of REC/Customs Unions Secretariats can attend the sessions of the negotiating institutions and may provide written or oral presentations upon the request of the negotiating institution.

5. Each negotiating institution may invite any person or institution relevant to the issues under consideration to make written or oral presentations.

**Rule 18 – Decision**

1. Decisions of the negotiating institutions on substantive issues shall be taken by consensus.

2. Decisions on questions of procedure shall be taken by a simple majority of Member States eligible to vote.

**Rule 21 – List of speakers and use of the floor**

1. The Chairperson shall, […] during the debate, grant the use of the floor in order in which the speakers indicate their intention.

**Rule 29 – Authentication of reports**

3. Issues concluded at a negotiation session of a negotiating institution shall not be re-opened by the same institution unless decided upon by consensus or a higher structure.

*Source:* Annex II to the report of the first meeting of the CFTA-African Union Ministers of Trade.

*Abbreviations:* CFTA-NF, Continental Free Trade Area Negotiating Forum; REC, regional economic community.

- **Modalities**

Similarly to the guiding principle, the modalities are more specific guidelines for target points of discussion. For instance, modalities aiming at laying a common ground for the preparation of negotiating offers were drafted at WTO to agree on the level of commitment each category of participating country would need to make. In other words, “modalities could be defined as guidelines on how WTO Members will prepare and implement their new commitments. In the context of the non-agricultural market access negotiations, the ultimate objective is for Member Governments to reduce their tariffs and to reflect those new binding commitments in their new schedules of concessions. The “modalities” will tell them the conditions, requirements and flexibilities to do this.”

Box 5 provides examples of the modalities that apply for the AfCFTA negotiations.

**Box 5**

**Excerpts from “Guidelines for services negotiations under the AfCFTA protocol on trade in services”**

**IV. SCOPE**

10. There shall be no *a priori* exclusion of any service sector or mode of supply.

The first round of negotiations shall cover the five services sectors, namely: business services, communication services, financial services, tourism and travel related services, and transport services. Subsequent negotiations will cover all other services sectors.

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12 Module 3 of the WTO training on “Market access for goods and non-agricultural market access (NAMA) negotiations”, p. 25.
V. APPROACH AND PROCEDURES

12. The method of negotiation of specific commitments shall be the request-offer approach.

13. Member States shall exchange offers and requests on the basis of which schedules of specific commitments will be developed by member States.

VI. SCHEDULES OF SPECIFIC COMMITMENTS

22. The positive list approach shall be used for the scheduling of commitments. Member States shall to the extent possible not maintain limitations or restrictions.

23. For the member States that are WTO members, the starting point for negotiations of trade in services would be GATS plus, based on reciprocity.

24. For those that are non-WTO members, the starting point for negotiations of trade in services would be the autonomous liberalisation at the national level, based on reciprocity.

25. Each member State would be required to commit to a minimum threshold of sectors, sub-sectors and sub-sub-sectors of the priority sectors, based on reciprocity. Such threshold should reflect the following:
   i. Substantial liberalisation of sectors/sub-sectors, on reciprocal basis; and
   ii. Effective elimination of barriers to trade in services.

30. Where a member State undertakes a commitment in a specific sector it should indicate for each mode of supply that it binds in that sector:
   a. what limitations, if any, it maintains on market access;
   b. what limitations, if any, it maintains on national treatment; and
   c. what additional commitments, if any, relating to measures affecting trade in services not subject to scheduling under Articles 19 and 20 of the Protocol, it may decide to undertake.

37. The AfCFTA schedule will take a similar format to GATS schedules (horizontal and sector specific commitments).

39. The services sectors covered under the negotiations will be those sectors set out in GATS W/120 Services Sectoral Classification List (W/120) and those elaborated in the latest version of UN Central Product Classification (CPC).


Abbreviations: UN, United Nations.

*a “GATS plus” (also “GATS-Plus” and “GATS+”) refers to going beyond GATS provisions.

2.2.1.2. A multi-level game

As explained above, the negotiation round is only the tip of the iceberg in the grander scheme of crafting an international deal that suits the interests of each participating party.

In the negotiating guide entitled “Negotiating at the United Nations: A Practitioner’s Guide”, the authors highlight the fact that skilful negotiators know how to read the setting they are involved in (in the chapter focusing on the important personalities one should acknowledge and take into account), including the layers that are not present at the stage in question. An adaption of the simplified diagram in the document (Figure I) illustrates the environment in which negotiating institutions take place. In such a configuration, the negotiator is interacting (and negotiating) at multiple levels: with the other delegations in the intergovernmental forum; with national stakeholders at the national and international levels; and with
their home ministry, themselves interacting with other ministries and government agencies at the national level. While not represented here, there may also be additional interaction between other actors, within and across different levels.

Figure I
Simplified multilevel negotiating configuration

Furthermore, such a representation constitutes a snapshot of the stakeholder mapping, which may evolve throughout time and through the various phases of the negotiation cycle. Figure II shows a multi-stakeholder engagement process in national policymaking (Njie and Yocarini, 2006) that has been adapted to the international negotiation context, assuming iterations in the process either during the round-to-round sessions of the negotiation itself, or during the implementation review session of the negotiated agreement – which can be assimilated to a subnational negotiation round.

Whereas in practice the implementation stage can be considered separate from the negotiation stage, regional trade agreements are living instruments that call for ongoing negotiation, usually through implementation committees (regardless of what they are called), either for implementation adjustment purposes or for review and rendezvous clause purposes.

For instance, the Interim Economic Partnership Agreement between Eastern and Southern Africa States and the European Union was concluded and signed in 2009 and entered into force in 2012. Nevertheless, following negotiation during previous meetings, at its eighth meeting, in January 2020, the implementation committee adopted a decision to amend the protocol on rules of origin.\(^{13}\)

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Figure II

Multi-stakeholder engagement process

Participatory assessment
- e.g. Field research

Analysis and diagnosis
- e.g. New scenario
- e.g. Objectives and proposals

Participatory analysis
- e.g. Sectoral consultation
- e.g. Information dissemination

Assessment
- e.g. Negotiating team debriefing

International negotiations
- e.g. Negotiation forum

Policy formulation
- e.g. Negotiation strategy

Approval
- e.g. Negotiation planning

National level, cross-sectoral negotiation
- e.g. Prioritization of negotiating interests and sought outcomes

International-level, Intergovernmental negotiation
- e.g. Negotiation planning

Consensus-building
- e.g. Negotiation forum
- e.g. National dialogue
Furthermore, the aforementioned levels at which the negotiator is interacting are not limited and may be superposed to reach three, four or five layers (see box 6).

**Box 6**

**Multi-level configuration in the Central African region**

Cameroon and Chad both belong to CEMAC, a subregional configuration within ECCAS, with both CEMAC and ECCAS aimed at establishing economic communities. Policymakers must be mindful of such specificities. Accordingly, African-Union-level AfCFTA negotiations are informed by decisions made at the African-Union-recognized regional economic community level, itself informed by the decisions made by ECCAS member States, which include CEMAC member States that have agreed to act collectively on matters affecting the implementation of the CEMAC common trade policy.a

(Subnational level) ↔ National level ↔ CEMAC level

↓

ECCAS level

↓

African Union level

*a The agreement governing the Central African Economic Union provides that the Union is to establish a common trade policy (article 13 (b)), that international trade agreements with third parties will be negotiated by the CEMAC Commission in consultation with and under the mandate of a designated trade committee (article 20) and that such Convention is integrated to the CEMAC legislative order (article 95). See https://www.cemac.int/sites/default/files/inline-files/Convention_UEAC.pdf.

### 2.2.2. Feeding into the international negotiations

A multitude of actors and possible circumstances can affect the decision process and stakeholder mapping described above. For illustrative purposes only, a few are listed below, including State actors (government agencies) (section 2.2.2.1) and non-State actors (section 2.2.2.2).

#### 2.2.2.1. Government agencies

In *Towards More Inclusive Trade Policy Making: Process and Role of Stakeholders in Select African Countries*, the Consumer Unity and Trust Society (CUTS) proposed to distinguish between government agencies directly involved in the trade policy issue at hand and other relevant government agencies. In the same report, CUTS suggested categorizing the consultative mechanisms – which for our purposes fall under the broader notion of circumstances – as follows, in accordance with their respective mandates: (i) forums that have the mandate to discuss and consult on a particular subset of trade issues; (ii) consultative forums that are mandated to deal with all trade issues; and (iii) consultative forums for stakeholder consultations on multiple issues that can include trade (Kaukab, 2009, p. 23).

There exist multiple possible scenarios in terms of ministerial portfolio allocation for leading trade negotiations. For instance, some Governments may consider international trade agreements as instruments of foreign policy and thus have the ministry in charge of foreign affairs lead the negotiations. Such an approach has its pros and cons: while international trade policy may be well aligned with other foreign affairs and diplomatic goals, trade negotiations may require specific knowledge that diplomats may not have. Alternatively, more specialized government institutions may be tasked to conduct trade negotiations, such as the ministry responsible for trade or the economy. This approach also has its advantages and
disadvantages, such as the advantage of a greater focus on trade and industrial policy complementarities but the disadvantage of an approach to trade as siloed from other international affairs matters (UNCTAD, 2018).

Because of the aforementioned limitations, due consultations with other ministries and agencies is paramount to making the most of the multidimensional nature of trade agreements (Horn, Mavroidis, and Sapir, 2009; Hofmann, Osnago, and Ruta, 2017) (see for example box 7).

Box 7
Role of government agencies in trade policy coherence in Cameroon

The Government of Cameroon is composed of 38 ministerial departments." This large number of ministerial portfolios calls for thorough interministerial coordination to ensure policy coherence in various areas, including trade negotiations.

Prominent ministries whose input would be needed for trade policy coherence include:

(i) Ministry of Trade: This ministry is the lead ministry for the AfCFTA negotiations and a privileged partner to trade negotiators (as all trade negotiations are not led by the trade ministry).

(ii) Ministry of Economy, Planning and Regional Development: This ministry also has three additional organizations operating under its purview, including the “Comité de pilotage de rationalisation des communautés économiques régionales en Afrique centrale”, responsible for policy harmonization between ECCAS, CEMAC and the Economic Community of the Great Lakes Countries (CEPGL).

(iii) Ministry for Small and Medium-sized Enterprises, Social Economy and Handicrafts: This ministry includes three programmes aimed at micro-, small and medium-sized enterprise development and may therefore have a strong interest in Cameroon’s decisions pertaining to negotiating positions.


2.2.2.2. Non-State actors

This subsection does not seek to present an exhaustive list of non-State actors that have the potential to influence regional trade agreement-making processes. Nevertheless, it may serve as a useful illustration of the categories of noteworthy actors and their means of influence:

- Transnational religious actors, such as the World Council of Churches, the Roman Catholic Church and the Organization of the Islamic Conference14 (Madeley and Haynes, 2011). These entities exert soft power influence, including on cross-cutting issues reflecting their values, such as human rights. They also support implementation through donor-funded programmes (Clarke, 2006).

- Transnational corporations, whether individually or through business organizations such as the International Chamber of Commerce (Ronit, 2011). As primary beneficiaries of trade agreements, they are at the forefront of government consultation processes. For instance, in Central Africa, the

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14 The author also acknowledges the shaping of illegitimate, violent transnational actors such as Al-Qaeda.
Network of CEMAC Active Women is a transnational group with consultative activities on trade matters, mostly at the CEMAC and ECCAS levels.\footnote{15} 

- Experts, including civil society organizations, research institutes, think tanks and consultants (Wigger, 2011), but also labour unions (Perez-Esteve, 2010). Such individuals or organizations contribute to influencing the policy negotiation process through programmes funded by government, non-governmental or intergovernmental organizations, with potentially direct or indirect incentives to promote certain interests. Their mode of action in the process can range from direct advice to the negotiator to indirect policy influence, including through lobbying. For instance, the African Regional Organisation of the International Trade Union Confederation has 17 national Central African trade union organizations as members across seven Central African countries, of which five are CEMAC countries.\footnote{16} 

- Parliamentarians, including in regional parliaments or parliamentarian assemblies such as the Pan-African Parliament. Although the power of the regional parliaments or parliamentarian assemblies might be limited, “regional parliaments may help to accomplish other goals such as nurturing a shared regional identity among political elites, strengthening the symbolic presence of the regional organization in the minds of the public and in third countries, and facilitating intra-regional communication”, thereby contribution to regionalization (Malamud and Stavridis, 2011).\footnote{17} For example, the CEMAC Parliament has the power to exercise democratic control over the activities of the other CEMAC organs and institutions.\footnote{18} 

- Autonomous intergovernmental agencies, such as the European Aviation Safety Agency (Groenleer, 2011). That entity has stand-alone legal status within the European Union system but was created under the umbrella of a parent organization to handle tasks of a specific or technical nature, and in that capacity has influence over negotiation processes of matters adjacent to its mandate, like air transport services liberalization. Another example is the Central African Financial Market Surveillance Commission, a specialized institution set up under the Central African Monetary Union with the mandate of ensuring financial market supervisory and control authority in the CEMAC region.\footnote{19} 

It is also important to note here that not only do such actors matter, the personality, charisma and leadership of their representatives – when acting on behalf of a group, organization or institution – also have a significant impact on the process (Gaudosi, Roesch, and Ye-Min, 2019, p. 35; Kotcho Bongkwaha, 2017). 

2.3. Defining the concept of “negotiating institutions”

Building on the aforementioned notions, including regional trade agreements and how they are created and by whom, we can attempt to define what a negotiating institution is for the purpose of this study. An institution is a broad concept (section 2.3.1) that must be qualified for regional trade agreement-making purposes (section 2.3.2). 

\footnote{15} Interview with Secretary-General of \textit{Réseau des femmes actives de la CEMAC} (REFAC) on 2 July 2020. 
\footnote{16} Of the CEMAC countries, only Equatorial Guinea is not a member. The other non-CEMAC Central African countries are the Democratic Republic of the Congo and Sao Tome and Principe. 
\footnote{17} For a discussion on the differences between regionalization and regionalism, see (Gamble and Payne, 2003; Bøås, Marchand, and Shaw, 2003). 
\footnote{18} Article 14 of the CEMAC \textit{Convention régissant le parlement communautaire}. 
\footnote{19} Article 10 of the \textit{Convention régissant l’Union monétaire de l'Afrique centrale}. 

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2.3.1. What is an institution?

Whereas no consensual definition of the concept of “institution” seems to clearly emerge from the literature (Soukup, 2016), all fields of social sciences have incorporated the idea that institutions constitute a type of unit that encapsulates a whole set of norms, rules and behaviours, which serves as a basis in their respective lines of analysis.

Reduced to its most basic form, a clear definition is offered by Berger and Luckmann (1966, p. 72), as follows:

“The institution posits that actions of type X will be performed by actors of type X. For example, the institution of the law posits that heads shall be chopped off in specific ways under specific circumstances, and that specific types of individuals shall do the chopping”.

In Institutions and Organizations. Ideas, Interests, and Identities (2001), Scott suggests three research fields where the concept has been well-defined: (i) sociology uses the term “institution” to frame the notions of “norms” and “value”; (ii) researchers in the economics field tend to use the concept through a rules-based approach, with the purpose of framing social behaviour; and (iii) an anthropological-psychological analysis defines the concept through culture and intersubjectivity.

From an institutional economics perspective, the terms “institution” can be defined as “a special type of social structure with the potential to change agents, including changes to their purposes or preferences” (Hodgson, 2006, p. 2).

This last definition will be used for the purposes of the present study.

2.3.2. How do we understand the term “institution” in the context of regional trade agreement negotiations?

Applying the above to the context of trade negotiation, it is important to first recall that regional trade agreements are treaties, and that the Vienna Convention on the Law of Treaties defines a treaty as “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”.

Regional trade agreements can thus only be concluded between subjects of international law – in our case States –, represented by individuals duly entitled to do so. In this context, and assuming that negotiating teams are lawfully and legitimately representing the interests of the State, the negotiating team will be understood, for the purpose of this study, as an agent representing a nation on the international stage to secure its best interest under a regional trade agreement.

The international representation of the principal (the Government, being itself an agent representing its own principal, the people) by an agent (the negotiating team) is thus a configuration of a multi-layer game, as derived from Putnam’s two-level game theory (Putnam, 1988).

Figure III offers a representation of the dynamics at play. In a context of multi-layered negotiations, the environment (represented in the figure by the red rectangle) is composed of:

- The international-level players (i.e. the representatives of the other negotiating States). Their position is carried at the national level by the negotiating team and official documentation that emanates from the international-level negotiation.
- The domestic players (i.e. the domestic stakeholders, whether from the political, economic or civil society organization spheres). These are the players that seek to exert influence within the context of the negotiating institution (e.g. a national dialogue).

In between those two levels are the Government and government agencies (represented in the figure by the double-headed red arrow), which have the responsibility to act as the agent of the national stakeholders and to also convey the position of the various international level players back to the domestic stakeholders and find a zone of compromise between possibly conflicting interests. In this light, the negotiating team are the players targeted by the influence strategies used by both the international level and the domestic level. At the national level, they arbitrate between various interests, and make the choices pertaining to the negotiating position to be held at international level. At the international level, they convey the preferences of their national stakeholders and defend the negotiating position decided at national level. Their negotiating function at the intergovernmental level is exercised outside the scope of the national negotiating institutions, thus outside the national-level negotiating institution (represented in figure III by the horizontal black arrow).

Figure III
**Negotiating institutions’ environment as a multi-layer game configuration**

As the choice was made to use Hodgson’s definition of institutions for the purposes of the present work (see section 2.3.1), the negotiating team – referred to as the negotiator in the previous sections – is therefore itself considered as a negotiating institution. However, it is to be highlighted that the negotiator is the point of juncture between the domestic and intergovernmental negotiating levels. For this reason, it is both an outward conveyor of the domestic preferences to the governmental level and an inward conveyor of the preferences of the other participating countries at the domestic level.
Thus, for the purpose of this paper, a regional trade agreement negotiating institution will be considered as a special type of social structure with the potential to change agents, including changes to their purposes or preferences, in the context not only of the regional trade agreement negotiation process but also of implementation-related processes, including national- and international-level analysis, diagnostics, policy formulation, approvals, international negotiations and assessment, at both the regional trade agreement negotiation and implementation stages of the multi-stakeholder engagement process.

3. Stakeholder engagement

The inclusiveness of the negotiating institutions is analysed in the light of elements that promote, and allow the evaluation of, good governance in policymaking (section 3.1). Those same elements can guide the analysis of the achievement of specific objectives of the present report (section 3.2).

3.1. Principles of stakeholder engagement

With a view to better framing the stakeholder consultation analysis mechanism used for the present study, this section provides a review of the overarching principles of good governance that underpin the public policy elaboration process (section 3.1.1) and the tools that can be used to analyse stakeholder engagement (section 3.1.2).

3.1.1. Principles of good governance

As explained in the previous sections, several principles emerge from literature as the guiding principles of good governance of regional trade agreements: openness and transparency (section 3.1.1.1), participation (section 3.1.1.2), accountability (section 3.1.1.3), effectiveness (section Error! Reference source not found.) and appropriateness (section 3.1.1.5) (De Lombaerde, Estevadeordal, and Suominen, 2008). These principles guided the analysis of the literature throughout the present study.

3.1.1.1. Openness and transparency

“Public institutions should provide reliable and relevant information on their activities in a timely manner and actively communicate about their activities and decisions to the citizens” (De Lombaerde, Estevadeordal, and Suominen, 2008, p. 4).

In this statement supporting the principle of openness and transparency in governance, the most salient elements lie in:

(a) Information-sharing by public institutions. This information-sharing must occur at a moment that allows stakeholders to act or use the information as they deem appropriate, at the most convenient time for them. This can be considered the transparency aspect of the principle, whose central element appears to be accessibility (Bannister and Connolly, 2011).

(b) Active communication about activities and decisions. This notion, which goes hand in hand with transparency, calls for a more participative approach to governance through engagement in the policy-making process. The Organization for Economic Cooperation and Development (OECD) qualifies the concept as follows: “Openness […] reflects a renewed social contract between citizens and state, where the former contribute […] also by being receptive to public policies and co-operating in their design and implementation.” (OECD, 2017b, p. 23).

With its central element of accessibility of information, transparency has two dimensions: substance and procedure. The former provides stakeholders with access to the right information at the right time and the latter provides stakeholders with the elements and steps needed to find and access the right information at the right time. The latter thus establishes the framework under which the former can be acquired. There
is therefore a need to reemphasize the dual nature of openness and transparency, which calls for shared responsibilities between the public sector and the rest of the national community, as the participatory approach can only exist insofar as there is a positive response to receiving the information (and using it, see section 3.1.1.2).

On the other hand, consensus seems to emerge about the fact that negotiations require a certain degree of confidentiality. This calls for a trade-off between the overall effectiveness of the negotiating process – as the negotiation proceed, full disclosure poses a risk of disturbing the subtle balance found thus far – and transparency – as the negotiation progresses, the agent is expected to report to the principal to ensure alignment of interests and representation of those interests (Abazi and Adriaensen, 2017). This concern was notably addressed in a report of the European Parliament on oversight of international trade negotiations, which found that despite positive development under European Union primary law to improve the transparency mechanisms related to trade negotiations for better oversight by the European Parliament, the current rules still provide the European Commission with extensive discretionary latitude pertaining to disclosure of ongoing negotiation information. Although recognizing the risk of full disclosure, parliamentary access to classified information implies in principle privileged access to specific categories of information, which are justifiably exempt from access by the larger public and third parties (Maurer, 2015).

In light of the above, Bannister and Connolly (2011, pp. 2–4) propose a framework on forces influencing policy on transparency, which can constitute a useful tool for striking a balance between transparency and effectiveness of the negotiation process. Their framework highlights a set of core values that intersect with the principles of accountability and effectiveness.

Box 8 presents a synopsis of selected OECD recommendations on openness and transparency, and box 9 presents a case to illustrate institutions’ discretionary interpretation of openness and transparency.

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**Box 8**

**Selected openness and transparency recommendations of the Organisation for Economic Co-operation and Development**

Governments should establish a clear policy identifying how open and balanced public consultation on the development of rules will take place.

- A policy should exist on how to engage with stakeholders. It should provide for a sufficient level of transparency, predictability and uniformity for the engagement process. It should therefore be a combination of obligatory measures (e.g. setting an obligation to enable public consultations on all developed regulations, compulsory notice and comment periods, etc.) and basic principles. (paragraph 28)

- The policy should set clear objectives for stakeholder engagement. These objectives should also support intrinsic values, such as ensuring accountability, broadening the sphere in which societal actors can make and shape decisions, and building civic capacity and trust. (paragraph 29)

- Leadership and strong commitment to stakeholder engagement in regulation-making are needed at all levels, from politicians, senior managers and public officials. (paragraph 30)

- Capacities in public administration to conduct effective and efficient stakeholder engagement should receive adequate attention. (paragraph 31)
• Governments should create mechanisms ensuring that civil servants adhere to the principles of open government and stakeholder engagement in regulatory policy, including through efficient oversight. (paragraph 32)

Governments should cooperate with stakeholders on reviewing existing and developing new regulations by making available to the public, as far as possible, all relevant material from regulatory dossiers including the supporting analyses, and the reasons for regulatory decisions as well as all relevant data.\(^b\)

• To obtain useful input from the public during stakeholder engagement, it is necessary for the government to provide specific information. Taking into account the perspective of stakeholders and depending on the stage of the consultation process, consultees will be more likely to participate if regulators provide detailed, complete information, rather than general descriptions. (paragraph 67)

• Stakeholder engagement should be closely integrated with Regulatory Impact Assessment. (paragraph 68)

• Regulatory transparency requires that governments effectively communicate the existence and content of all regulations to the public. The public should therefore enjoy unimpeded access to regulation, free of charge. (paragraph 82)

Source: (OECD, 2017a)

\(^b\) Ibid, principle 2.2, paragraph 3.
Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents provides that “in order to bring about greater openness in the work of the institutions [of the European Union], access to documents should be granted by the European Parliament, the Council and the Commission not only to documents drawn up by the institutions, but also to documents received by them.” It also provides that any citizen of the Union and any natural or legal person residing or having its registered office in a member State has a right of such access. This right is subjected to certain limitations, however, relating to, among others, situations where the disclosure of such documents would undermine the protection of the public interest as regards international relations.

It is against this backdrop that the environmental civil society organization ClientEarth was denied access to some Commission’s documents pertaining to the negotiation of provisions related to the Investor-State Dispute Settlement mechanism under the draft text of the Comprehensive Economic and Trade Agreement (CETA) at the time in negotiation between the European Union and Canada.

Indeed, in its request the civil society organization requested access to: “(i) ‘all documents containing legal advice by the Commission’s legal service on the compatibility of [Investor-State Dispute Settlement] … and Investment Court System … in [European Union] trade agreements with the European Union Treaties’; (ii) ‘all documents, including email correspondence, agendas and minutes of meetings, on discussions between the Commission’s legal service and [the Commission’s Directorate-General (DG) for Trade] on the compatibility of [Investor-State Dispute Settlement] and the [Investment Court System] with the European Union Treaties’; (iii) ‘all documents on the assessment of that legal advice of the Commission’s legal service by DG Trade’; and (iv) ‘any other correspondence, documents and reports pertaining to the compatibility of [Investor-State Dispute Settlement] and [Investment Court System] with the European Union treaties … other than those that are publicly available’,” access to some of which was refused on the above-mentioned grounds of the protection of the public interest as regards international relations.

The decision was appealed, and while the appeal was lost in March 2020, the case demonstrates a notable level of transparency by the European Commission.

In the case in question, the transparency-regulation-driven institution that allowed the civil society organization to seek information from the negotiating body is the right to engage through a direct or unsolicited request.

b Ibid., article 2, paragraph 1.
c Ibid., article 4, paragraph 1 (a), third indent.
d Paragraph 3.2 of the judgment of the Court of Justice of the European Union of 19 March 2020 in ClientEarth v European Commission – Appeal — Access to documents of the institutions — Regulation (EC) No 1049/2001 — Article 4 (1) (a), third indent, and (6) — Exceptions to the right of access — Protection of the public interest as regards international relations — Documents drawn up by the European Commission’s legal service concerning investor-State dispute settlement and the investment court system in European Union trade agreements — Partial refusal of access (case C-612/18 P).

Among other things, accessibility of information through online means calls for a gender-sensitive assessment of the digital divide, including digital literacy and access to and affordability of technology, as well as gaps in broadband infrastructure. For instance, in the context of facilitating trade for informal cross-
border – predominantly female – traders, particularly those operating at remote border posts, supplemental communication channels, trade information desks and gender-sensitized, trained customs operational and advisory personnel would help smooth border crossings and alleviate the information gap (Afrika and Ajumbo, 2012; ECA, forthcoming 2021).

3.1.1.2. Participation

“Public institutions should take the opinions, input and feed-back from citizens and businesses into account when designing and implementing public policies; participation should be in place in all phases of the policy cycle” (De Lombaerde, Estevadeordal, and Suominen, 2008, p. 4).

The central elements of the above statement in support of the principle of participation emanate from the opportunity given to stakeholders to express their interests and concerns, in an iterative manner, at every stage of the decision-making process, in order to provide the policymaker with as many inputs and opinions from interested persons and groups as possible. This aspect is all the more relevant in trade in services negotiations, owing to the high number of different actors, and number of different sector-specific implications (Marconini and Sauvé, 2010, pp. 29–35).

Therefore, the objective of the principle of participation is to provide stakeholders with opportunities to express their expectations of the policymaking bodies. From this standpoint, such opportunities should cover as wide an interested audience as possible, which may exceed the consultative reach of solely the agency responsible for trade. For this reason, endowing a government body with the responsibility for women young people and small and medium-sized enterprises, or for economic development more broadly (not only trade), can foster policy coherence and facilitate outreach to all relevant stakeholders, including those that might not be known to negotiating teams from a trade background, thus providing a platform for broad-based consultations.

In its toolkit on trade negotiations, the International Institute for Sustainable Development (IISD) (2017) suggests three options for public participation:

(i) Public participation in the negotiation phase, through an invitation to provide comments on publicly disclosed information such as the negotiating text. Although this method is rarely used. it “[a]llows the negotiating position to be informed by a full range of sustainable development related stakeholders [and] [g]ives greater legitimacy [and] buy-in to [the] final negotiating position”.

(ii) Public access to dispute settlement, through opening dispute settlement proceedings to the public (e.g. live streaming of arbitral proceedings under the North American Free Trade Agreement’s investor-State dispute settlement mechanism, or amicus curia briefs as per the guidelines of the United Nations Commission on International Trade Law rules on transparency);

(iii) Public participation through advisory bodies, such as committees and consultative groups.

As highlighted by the cases referred to in the literature, participation relies on the ability to access information and to engage with the decision-making bodies (see section 3.1.1.1 on openness and transparency). Box 10 provides a synopsis of selected OECD recommendations regarding participation.
Governments should actively engage all relevant stakeholders during the regulation-making process and design consultation processes to maximize the quality of the information received and its effectiveness.\(^a\)

- Governments should try to reach out to those who are usually least represented in the rule-making process, including through publishing information on the Internet. (paragraph 43)
- Potentially affected foreign interests should not be excluded from the engagement process and should have an opportunity to provide their views and arguments as well as data supporting those views. (paragraph 44)
- Governments should avoid overreliance on consulting advisory bodies or expert groups. They should always be used as a complement, not a substitute for broad-based consultations. (paragraph 46)
- Administrations have to provide stakeholders with the most relevant and timely information available concerning the proposal under consideration. In case of consultations on a regulatory draft, this includes all the background analyses, expert papers, description of the problem, the impact assessment studies, etc. (paragraph 47)
- Governments have to provide stakeholders with sufficient time to submit their views. Clear timelines must be set and publicized for stakeholder engagement activities, especially for public consultations. (paragraph 48)
- It is important to choose consultation tools that are suitable for the types of stakeholder engagement and for the right phase of the policy process. (paragraph 49)
- Governments should consider the stakeholders’ perspective and treat them with respect. (paragraph 56)
- It might be necessary to educate stakeholders on the engagement culture; stakeholders need to be well informed on when and why they might have a chance to influence governments’ decisions. (paragraph 57)
- Engaging with stakeholders should start as early as possible in the process. (paragraph 65)

Source: (OECD, 2017a).

The outcome of failing to ensure adequate participation may be an agreement that is not reflective of the end-users’ interests or preferences (see box 11).
Box 11  
**Participation – Failure to fully utilize free trade areas as a result of a participatory deficit in Hong Kong**

In a 2014 survey by the Economic Intelligence Unit (2015), firms in Hong Kong estimated that:

- Regional trade agreements are concluded with unattractive markets, according to 32 per cent of survey respondents. Among those businesses, 89 per cent forgo the available utilization because of marginal market access improvement or no improvement at all. To explain such a high rate, the study suggests that Hong Kong does not have regional trade agreements with its main trading partners and that the agreements have too narrow a scope.

- Over half of the respondents consider that the trade negotiating team is unrepresentative of businesses’ interests and consider that the Government does not take into account their needs when conducting FTA negotiations. Nevertheless, 83 per cent of the respondents hoped for new deals.

- Twelve per cent of the respondents deemed the regional trade agreements concluded so far not beneficial at all.

This example illustrates the risks to effectiveness if sufficient participation is not ensured at every stage in the process leading to the implementation of costly (tariff-revenue impacting) policy changes.

In return for the formal and substantial opportunity to participate, it is paramount that firms and civil society organizations actively engage.

Associations can play an important role in representing groups that face inequalities or require specific policy consideration. There are implications, however: sectoral associations must make specific efforts to reach out and secure the participation and inclusion of women, young people and other marginalized groups; and the participation of such groups should be actively sought in consultations (see for example box 12). By virtue of the public sector seeking to interact with these associations, the confidence of their potential membership in their effectiveness grows, and so in turn does their ability to attract and represent a broad membership.

Box 12  
**Online outreach as a trade policy participatory medium under the African Continental Free Trade Area**

The media, notably social networks, have constituted a tremendous means of mobilization and engagement in relation to the start of trading under the AfCFTA Agreement.

Numerous online events by governmental and intergovernmental organizations, business associations and civil society organization networks have notably sought to raise awareness on the implications of the start of trading.

Nevertheless, despite the potential outreach, social media utilization for trade policy monitoring or advocacy purposes in Africa may require dedicated research for in-depth understanding of its contribution to trade policy as a platform for participation.

**3.1.1.3. Accountability**

“Public authorities should be held responsible for their actions and omissions, not only by those actors and institutions from which they received their mandate (traditional view of accountability) but also from
the citizens in general (stakeholder view of accountability)” (De Lombaerde, Estevadeordal, and Suominen, 2008, p. 4).

The main point here lies in the fact that the executing authority, as the agent, should be answerable to the direct principal, but also to the general public, for any actions or lack thereof. Government actions are thus exposed to the scrutiny of interested stakeholders through the openness and transparency of the action, measured in terms of effectiveness (Bayrakçı, Göküş, and Taşpınar, 2012; Swanson, Bizikova, Thrift, and Roy, 2014).

Box 13 presents a synopsis of selected OECD recommendations on accountability, and box 14 presents an example where a regional body sought corrective measures from an accountable government.

**Box 13**

**Selected accountability recommendations of the Organisation for Economic Co-operation and Development**

Mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy should be established.\(^a\)

- Control and oversight of the quality of engagement activities and compliance with the engagement policy should exist within all administrations. (paragraph 34)
- The engagement policy should assign clear competences for promoting and coordinating stakeholder engagement in regulatory policy across the administration. (paragraph 52)

Reports on the performance of regulatory policy and reform programmes and the public authorities applying the regulations should be regularly published. Such reports should also include information on how regulatory tools such as … public consultation practices … are functioning in practice.\(^b\)

- Evaluation of the performance of the stakeholder engagement policy itself should be carried out. It should be conducted by a body that is not directly involved in implementing the policy. (paragraph 76)
- Governments should regularly evaluate both their stakeholder engagement policy and individual engagement activities towards achieving their goals. (paragraph 77)

*Source*: (OECD, 2017b).


\(^b\) Ibid, principle 6.

**Box 14**

**Accountability: Unilateral suspension of Common Market for Eastern and Southern Africa preferences in Kenya**

Kenya is a member of the Common Market for Eastern and Southern Africa (COMESA) FTA and has been an active beneficiary of the preferential scheme since its implementation in 2000. Nevertheless, on 31 December 2019, prior to the entry into force of the Tripartite Free Trade Area among COMESA, the East African Community (EAC) and the Southern African Development Community (SADC), the legal and administrative basis for enacting the preferential trade scheme in Kenya lapsed. Thus, starting on 8 September 2020, the Kenyan customs administration, citing the lack of legal basis for granting duty-free treatment to COMESA-originating goods, started to levy tariff duties on goods originating from the COMESA FTA. It also announced that preferential...
treatment would resume once the legal instrument enacting the preferences had been published in the official gazette (Onditi, 2020).

In the meantime, the unilateral suspension of tariff preferences by Kenya was unexpected and highly disruptive for the COMESA business community. National and regional stakeholders such as the Kenya National Chamber of Commerce and the COMESA Business Council asked the authorities not to penalize operators while the legislative body sought to address the situation. The statement by the COMESA Business Council included the following recommendation:

“Recommendation 2: COMESA origin goods be exempt from the payment of duty within the time of the perceived lapse (from the eighth of September 2020 to date of gazette on stay of application of the common external tariff) as businesses were not at fault but have been adversely affected by this administrative technical measure.”


### 3.1.1.4. Effectiveness

“The regional institutions should efficiently deliver what is needed on the basis of clear objectives.” (De Lombaerde, Estevadeordal, and Suominen, 2008, p. 4)

The main point here highlights the need for effective action to be undertaken to meet a given objective. In a white paper on good governance in the European Union, the European Commission describes the concept of effectiveness as follows:

“Policies must be effective and timely, delivering what is needed on the basis of clear objectives, an evaluation of future impact and, where available, of past experience. Effectiveness also depends on implementing […] policies in a proportionate manner and on taking decisions at the most appropriate level.” (European Commission, 2001) (see box 15 for selected OECD recommendations on effectiveness and box 16 for an example of how effectiveness can have an impact on regional trade agreements).

**Box 15**  
**Selected effectiveness recommendations of the Organisation for Economic Co-operation and Development**

Governments should actively engage all relevant stakeholders during the regulation-making process and designing consultation processes to maximize the quality of the information received and its effectiveness.

- Governments have an obligation to account for the use they make of citizens’ inputs. It is therefore necessary that the administration explains how stakeholder input has been assessed and incorporated in the decisions reached. (paragraph 60)

- The engagement process cannot be effective if it is captured by vested interests. When processing stakeholders’ input, it is necessary to balance different interests and prevent “regulatory capture” by strong lobby groups and special interests. (paragraph 61)

- There are different mechanisms to involve stakeholders in *ex post* evaluation exercises. In some instances, stakeholders trigger the evaluation process through the Ombudsman or parliamentary committees. In other instances, stakeholders are requested for their comments.
by the responsible ministry or agency. In some countries, stakeholders are embedded into the entire regulatory process and therefore are also part of the *ex post* evaluation system. The use of ICTs through creating a virtual forum for assessing post-implementation impacts can also be applied. (paragraph 74)

- The most common method of verifying public perceptions of regulation is the use of perception surveys, which monitor citizens’ perceptions of regulations by asking them questions about their views on regulatory performance on certain issues. (paragraph 75)

- Planning and conducting evaluation helps government officials to see if their activities were successful: Were the tools effective? Have stakeholders been contacted as planned? Were the resources adequate? Have the objectives been reached? (paragraph 78)

*Source:* (OECD, 2017a).

*Abbreviations:* ICTs, information and communication technologies.


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**Box 16**

**Regional integration policy objectives in Eritrea**

Recalling that their political and development objectives are geared towards securing gradual integration into the immediate regional surrounding, Eritrea declined to acquiesce to seemingly strong peer pressure to sign the AfCFTA Agreement because continental integration did not fit into the current government policy goals, thereby explaining the country’s stand on the participation in the initiative on the basis of a clearly defined prior goal (Meskel, 2020).

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**3.1.1.5. Appropriateness**

“The regional institutions should take the decisions at the most appropriate level, ‘they [should] “match” the real needs of the integration process in a functional perspective [and they should] satisfy legitimacy requirements in ways that “fit” the political context’ (Best, 2006:191–193)20.” (De Lombaerde, Estevadeordal, and Suominen, 2008, p. 5)

Here the main element to consider is the way institutions are crafted to deliver the best results given the respective political constraints on the parties to regional trade agreements (see box 17 for OECD recommendations on appropriateness and box 18 for an example of how subregional-level action can enhance national-level appropriateness).

In the European Commission’s white paper on good governance referred to above, the term appropriateness is equated with “proportionality and subsidiarity”, described as follows:

“From the conception of policy to its implementation, the choice of the level at which action is taken [regional to local] and the selection of the instruments used must be in proportion to the objectives pursued. This means that before launching an initiative, it is essential to check systematically (a) if public action is really necessary; (b) if the [regional] level is the most

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appropriate one; and (c) if the measures chosen are proportionate to those objectives.” (European Commission, 2001)

Box 17
Selected appropriateness recommendations of the Organisation for Economic Co-operation and Development

Governments should cooperate with stakeholders on reviewing existing and developing new regulations. 

- It is important that the engagement policy covers stakeholder engagement at each stage of the regulatory governance cycle. (paragraph 36)
- Stakeholder engagement should be proportionate to the significance and impact of regulations being discussed. (paragraph 38)
- While in some phases of the process administrations might find it more useful to organize consultations only with a limited range of stakeholders, there should always exist an opportunity for every stakeholder to express their opinions and provide inputs. (paragraph 41)
- Transparency and compliance with regulations should be promoted through the use of appropriate instruments such as guidance, toolkits and checklists. (paragraph 90)

Source: (OECD, 2017a).

Box 18
Appropriateness: subregional-level action for national-level results on road harassment in Mali

Acting as a subregional watchdog for transit control in Western Africa, the Improved Road Transport Governance initiative works to enhance dialogue with national authorities to facilitate trade along West African corridors and promote the good implementation of free circulation of goods- and people-related regional instruments.

Notably, further to its fourteenth report on road harassment on primary trade corridors in West Africa, plurilateral talks took place with view of contributing to good governance along those corridors (Borderless Alliance, 2011). As a result of the detailed surveys, advice and subsequent official conferences, measures were taken at the national level in Mali to reduce road harassment (Mali, 2011).

In this case, subregional-level action led to achieving the most effective and appropriate level of action for results at the national level.

3.1.2. Stakeholder engagement tools

There are tools available for assessing stakeholder engagement in the public policymaking process. They can be useful for assessing both the review of the regulatory framework (section 3.1.2.1) and the consultative process that takes place during that review (section 3.1.2.2).
3.1.2.1. Regulatory framework assessment tools

Although the goal is not to provide an exhaustive overview of existing tools for assessing stakeholders’ interest in a regulatory reform process, a few of them are to be acknowledged:

- **Standard cost model.** The standard cost model is a method for measuring the administrative burdens imposed on businesses through legislation, regulations and other requirements (SCM Network, 2004).

- **Guillotine approach.** The guillotine approach consists of counting and then reviewing a large number of regulations against specified criteria. It is based on the principle of reversal of the burden of proof, whereby the regulators must justify the need for a regulation or else eliminate it (Jacobs and Astrakhan, 2006).

- **Business process reengineering.** Business process reengineering is a process whereby businesses review their procedures with view of identifying how to make them more efficient, effective and transparent (Trihajuwidjajani, Marshall, and McKay, 1997). This can notably be part of a conformity assessment and provide input to a stakeholder strategy.

- **Review and sunset clauses.** Regulatory assessments can be programmed by embedding a requirement for a review within a certain timeframe within the regulation itself. By contrast, a sunset clause automatically terminates the regulation at a given date unless otherwise decided through normal rulemaking processes (OECD, 2019).

Some of the largest FTA negotiating countries or groups also tend to conduct *ex ante* assessments of their FTAs, with focus being put on various topics. For instance, in the United States of America assesses the potential impact of each trade agreement negotiated, often using computable general equilibrium-based analyses, while Canada conducts national consultations to ensure inclusive approaches (Coche, Kotschwar, and Salazar-Xirinachs, 2006).

The European Union uses both quantitative and qualitative methods to assess sustainable trade impacts in the European Union and its partner economies, including social impacts, with specific attention paid to the gender dimension, among others. More specifically, on the gender dimension, such assessments include assessment of international conventions of importance to the European Union’s core values, such as International Labour Organization (ILO) conventions or the Convention on the Elimination of All Forms of Discrimination against Women (Viilup, 2015); however, “a lack of systematic gender analysis in the Sustainable Trade Impact Assessments” is recognized . For instance, in the case of the Canada–European Union Comprehensive Economic and Trade Agreement, “review […] from a gender perspective indicates that its treatment of gender is very narrow”, as it neglects income distribution effects despite the high-quality gender-disaggregated data available both in the European Union and in Canada (European Parliament, 2016, p. 31). This might partly be explained by the fact that the European Union guidelines for sustainable trade impact assessments uses a “weak” gender lens and the fact that gender-awareness among civil servants in the European Union institutions and in the administration of the member States is generally relatively low (Viilup, 2015; European Parliament, 2016). Building on those observations, the European Parliament (2018) adopted a resolution that, among other things, is aimed at:

(i) Ensuring that trade agreements are a tool for ensuring compliance with the commitments taken under various international conventions, such as the Convention on the Elimination of All Forms of Discrimination against Women, the Beijing Platform for Action, the core ILO Conventions and the Sustainable Development Goals (paragraph 5);
(ii) Ensuring the systematic conduct of *ex ante* and *ex post* country-specific, sector-specific impact assessments, relying on gender-disaggregated data to ensure adequate impact assessment for all social groups (paragraph 12);

(iii) Highlighting the need for elimination of gender stereotypes, increased market access and facilitated access to finance, marketing formation and networks, and improved capacity building and training for women-owned businesses (paragraph 18);

(iv) Calling for binding and enforceable commitments pertaining to good governance in trade instruments such as FTAs and the Generalised Scheme of Preferences (paragraph 22), and for social and environmental standards to apply throughout the territory of trade partners, particularly in export processing zones (paragraph 32).

### 3.1.2.2. Analysis of the national-level negotiating institutions

Certain tools are proposed to assess the circumstances, as well as the inclusivity, of the consultative process.

- Agents, targets, tactics and context model

From a more theoretical perspective, negotiating institutions can be considered as a situation where the actors seek to influence a target group using various means of action within a given set of circumstances. Such situations are well suited to the use of the ATTiC (agents, targets, tactics and context) model (see box 19) (Brown, 2013). We will thus employ this model to further conceptualize the present argument, although we will replace the term “agents” with the term “actors” to avoid any confusion with the term “agent” as used for the principal-agent model (White, 1992).

Reusing the aforementioned ATTiC configuration, the negotiating institutions are defined in relation to the context (soft and hard structures, including legal framework and organizational setting) – the C of the ATTiC model – in which actors (the stakeholders) – the A of the ATTiC model – are given the opportunity to participate in the decision-making process (convey their ideas), using various tactics – the Ti of the ATTiC model – to win over a particular audience – the T of the ATTiC model.

For the purpose of this study, the negotiating institution themselves will often be the context (C) under the ATTiC model.

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**Box 19**

### Agents, targets, tactics and context model

Under this model, (1) the agent is the entity that seeks to exert influence over (2) the target, defined as the person or group whom the agent is trying to influence. In doing so, the agent uses an array of (3) tactics, which are the means used by the agent to exert an influence. All those three elements take place in (4) the context, meaning the set of circumstances that shape the interaction of the agent and target (Brown, 2013).

Brown uses the following as an example: “In a political speech, ATTiC breaks down as follows: the politician (agent), the crowd of listeners (target), the content and delivery of the speech (tactics), and the setting (context).”

In our context, the same situation is redefined, for the speech – though potentially political in nature – is given by a representative of an administration acting as a domestic factor of influence, or a representative of a private sector or civil society organization, with the aim of influencing the negotiating team. The speech is the tactic displayed in a given setting (e.g. a public-private dialogue), the setting being the institution itself.
Inclusive Trade Policymaking Index

Building on the literature, indicators of regulatory governance can be designed using sophisticated methods (Arndt, Baker, Querbach, and Schultz, 2015). Owing to the limitations faced during the present assignment, alternative methods using simpler means were used, notably the Inclusive Trade Policymaking Index (Kaukab, 2009); however, it must be noted that the results derived using the index should be considered preliminary and further data collection may be required for conclusive findings.

The main steps in the construction of the index are as follows:

(i) Developing the analytical framework – This notably includes the identification of the trade policy objectives, the elements of the ownership aspects of the trade policy by the relevant stakeholders and the linkage between the two, thanks to participatory approaches throughout the policymaking process.

(ii) Constructing initial inclusive trade policymaking indices – Variables are measured against a simple five-point scale, depending on the level of action undertaken (maximum value of 1 (yes), high value of 0.75 (many/most), intermediate value of 0.5 (some), low value of 0.25 (few/little) and minimum value of 0 (no)). Values are assigned to the elements listed for the following stakeholders:

(a) Ministry responsible for the considered public policy reform:
   - Identification of all key stakeholders
   - Creating awareness about the need for trade policy
   - Establishment of formal consultative mechanisms
   - Regular functioning of formal consultative mechanisms
   - Regular information flow to the stakeholders including on the content of trade policy

(b) Other ministries and government agencies, the private sector and other civil society organizations
   - Regular participation in the process and feedback to the relevant authorities
   - Faithful representation of and regular feedback to the represented constituencies
   - Acquiring relevant knowledge and expertise

3.2. Case of trade in services negotiations

As the considered public policy reforms considered under the present study are those related to regional trade agreement negotiation and implementation, with specific focus on trade in services under the AfCFTA Agreement in Central Africa, the above-mentioned tools must reflect the specificities of negotiating institutions of regional trade agreements on services, including through the assigned objectives (section 3.2.1) and scope (section 3.2.2) of each consultation round.

3.2.1. Objectives of the consultations

In relation to the objectives of the consultative process, trade in services negotiations entail some very specific guidelines that need to be taken into account in order to comply with the intergovernmental negotiation modalities (section 3.2.1.1). There are numerous resources to help the negotiating team and stakeholders participate to the greatest possible extent in the process (section 3.2.1.2).
3.2.1.1. Trade in services guidelines

In connection with the AfCFTA, modalities for trade in services negotiations were adopted by the Assembly of the African Union at its Twenty-Ninth Ordinary Session, in July 2017, and reaffirmed at the Tenth Extraordinary Session, in March 2018, the Thirty-First Ordinary Session, in July 2018, and the Thirty-Second Ordinary Session, in February 2019. Further refinements were also agreed by the African Union Ministers of Trade at their seventh meeting, in December 2018.

In this light, and without prejudice to the adopted negotiating guidelines,\(^{21}\) the following are the salient features of the modalities for negotiating the scheduling of specific commitments on trade in services:

- The schedules are to be prepared in accord with a positive list approach, to the extent possible eliminating limitations or restrictions.
- For initial offers of WTO Members, the starting point for the negotiations of specific commitments would be GATS-Plus.
- For initial offers of non-WTO Members, the starting point for negotiations of specific commitments would be the autonomous liberalization at the national level.
- Each Member State would be required to commit to a minimum threshold of sectors and subsectors of the priority sectors.\(^{22}\)
- The AfCFTA schedule will take a similar format to GATS schedules, including horizontal and sector-specific commitments sections.
- The format used will consist of a table which contains the following main types of information:
  - A clear description of the sector or subsector committed, including a reference to the latest United Nations Central Product Classification number;
  - Limitations on market access, in accordance with article 19 of the AfCFTA Protocol on Trade in Services;
  - Limitations on national treatment, in accordance with article 20 of the AfCFTA Protocol on Trade in Services;
  - Additional commitments other than market access and national treatment.
- The services sectors covered under the negotiations will be the sectors set out in the WTO Services Sectoral Classification List (MTN.GNS/W/120) and those elaborated in the latest version of the Central Product Classification.\(^{23}\)

In the light of the above, a review of the existing capacity-building resources for GATS-like scheduling appears to constitute a good basis for the review of draft national AfCFTA services commitments.

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\(^{21}\) See annex 2 of the report on AfCFTA to the thirty-second ordinary session of the Assembly of the African Union, held in February 2019 (available at https://archives.au.int/handle/123456789/6542).

\(^{22}\) The five priority sectors are transport services, communication, tourism, financial services and business services.

\(^{23}\) Central Product Classification version 2.1 is available at https://unstats.un.org/unsd/classifications/Family/Detail/1074.
3.2.1.2. Tools for services negotiation preparations

The first sources to look at are WTO itself and institutions gravitating around it, with mandate to foster the capacities of developing countries in WTO negotiations. Other sources of interest are think tanks and development institutions.

- WTO

To assist its member States and acceding countries, the WTO Secretariat published “Guidelines for the Scheduling of Specific Commitments Under the General Agreement on Trade in Services (GATS)” (2001). The guidelines are the result of a revision of two documents produced and circulated during the Uruguay Round: “Scheduling of initial commitments in trade in services: explanatory note”, of 3 September 1993 (MTN.GNS/W/164) and its November 1993 addendum (MTN.GNS/W/164/Add.1).

The objective of the document was “to explain, in a concise manner, how specific commitments should be set out in schedules in order to achieve precision and clarity”. To this end, the guidelines cover a great number of topics, including: information on the mandatory elements of the schedules, such as limitations to market access and national treatment, as well as additional commitments; general information on what need not be entered in the schedules; and the eventual exceptions to the most-favoured-nation principle that should be registered. In addition, it offers detailed explanations on the services modes of supply and the type of commitment that can be made.

The document also has a number of annexed attachments that address possible difficulties arising from the scheduling of commitments where rules or consensual approaches agreed upon elsewhere may have an impact in the WTO context, such as commitments in the telecommunication sector or the distinction between mode 1 and mode 2 in the financial sector.

For the purposes of our toolkit, the guidelines offer a comprehensive view of important elements to consider when scheduling and provides numerous tips to pre-empt potential scheduling difficulties.

- United Nations Conference on Trade and Development

In 2000, the United Nations Conference on Trade and Development (UNCTAD) published training material on multilateral trade negotiations on trade in services. Two years later, follow-up training on “Advanced Training Tools for Negotiations on Trade in Services” (2002) was developed to provide policymakers with more technical knowledge.

The training document provides a detailed explanation of the WTO services negotiations state of play at the time of the launch of the Doha Round. Thus, with the services-related aspects of the Doha mandate as a point of departure, it offers an overview of the elements of interests for the expected WTO discussions on services. For the purpose of our toolkit, the training material offers interesting insights for developing countries, which might be of high relevance for the AfCFTA negotiations.

Drawing attention to the issue of achieving progressive liberalization, taking into account transparency on issues not submitted to mandatory disciplines under GATS, the document also provides insight on peripheral issues of interest. For instance, reference is made to autonomous liberalization, being liberalization measures already undertaken by countries unilaterally, thus where countries have undertaken deep autonomous liberalization in some sectors, it might be penalizing for them to be requested to liberalize even further. In this light, it introduces the concept of “credit”, exploring the possibility of seeking non-reciprocal commitments from other countries. This concept is discussed together with the concept of “value

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24 As a reminder, the four modes of services delivery are: mode 1 – Cross-border delivery; mode 2 – Consumption abroad; mode 3 – Commercial presence; and, mode 4 – Temporary presence of natural persons.
for liberalization measures taken autonomously” and of the concept of “binding” autonomous liberalization measures into the schedules of commitments.

Similarly to the WTO guidelines, the UNCTAD training tools look at the sectoral issues and implications of services negotiations. In this light, it offers interesting insights on the specificities of each service sector, as well as potential areas of attention for developing countries. Furthermore, it draws attention to some of the requirements for an economic integration agreement to qualify as a GATS article V departure from most-favoured-nation treatment; using the example of SADC services negotiations, with tips for achieving a GATS+ outcome. Such material may be well complemented by cross-cutting aspects of inclusive trade instrument design. In this light, the UNCTAD Trade and Gender Toolbox is a useful resource for taking due account of the gendered implications of trade policies, providing a case study on the impact of the Economic Partnership Agreement between the East African Community and the European Union in Kenya (UNCTAD, 2017).

A year after issuing the advanced training material for negotiating trade in services, UNCTAD published training material on dispute settlement, including a module dedicated to dispute settlement under GATS (2003), providing an overview of all the key rights, obligations, commitments and exemptions/exceptions in GATS, with a specific focus on the legal implications, and illustrating the points with examples drawn from WTO jurisprudence. As a section of the module was dedicated to specific commitments under GATS, for the purpose of our toolkit it provides useful examples of real case difficulties arising from the scheduling of commitments and resulting in disputes, as well as how the WTO dispute settlement mechanism was used to resolved the disputes.

• World Bank

With a view to providing countries with a roadmap “to gain a better sense of the key ‘moments’ in the life cycle of services negotiations”, in 2010 the World Bank developed a practical guide (Sáez, 2010) focusing on the critical aspects of trade in service negotiations.

The report proposes guidelines for the overall negotiation process, including recommendations on the sequencing of the necessary preparations for negotiations. It notably emphasizes the strategic advantage that deriving negotiation positions from national development plans can confer; however, recognizing the difficulties of developing countries, it also provides suggestion for preparation of negotiations in suboptimal conditions, notably in the case where the negotiations take place in the absence of national strategies to guide the policymakers and negotiators.

For the purpose of our toolkit, the guide offers interesting insights on the interplay between the national development strategy documents and schedules of commitments, and suggestions that could prove useful in the context of preliminary steps for scheduling.

3.2.2. Consultation and the formulation of negotiating positions

While consulting to prepare the intergovernmental negotiation rounds, it is of utmost importance to clearly identify the national interests for adequate tactical planning purposes (section 3.2.2.1). In this light, a balanced and informed understanding of implications for the various social groups is needed (section 3.2.2.2).

3.2.2.1. Preparing offensive and defensive interests

The negotiating positions held by the negotiating team at the intergovernmental level reflect policy priorities, economic and social ambitions and sectoral regulations and policies, as well as the positions and

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25 This section draws from (ECA, 2020).
interests of stakeholders within economies. National and regional negotiating positions are organized into offensive and defensive interests:

- Offensive interests are the market access commitments that negotiators seek to secure from the economies of their counterparts in the negotiations.
- Defensive interests are the market access commitments that negotiators seek to pursue or protect within their own economies.

Table 1

<table>
<thead>
<tr>
<th>Offensive interests</th>
<th>Defensive interests</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telecommunications service providers of Country A seek new markets in Country B.</td>
<td>Country B seeks to limit the entry of foreign telecommunications service providers, with a view to prioritizing the development of its own telecommunications sector through the growth of domestic service providers.</td>
</tr>
</tbody>
</table>
| Country B may:  
(a) Limit market access:
  • Not allow participation of foreign suppliers in the telecommunications sector
  • Place restrictions on the number of foreign firms allowed to operate in the sector, or cap the percentage of foreign capital in domestic firms |
| Country B may:  
(a) Grant market access without restriction:  
  • Allow foreign participation without condition or limitations  
(b) Limit market access:  
  • Allow foreign participation in the sector with restrictions or with local content requirements related to the employment of nationals  
(c) Limit national treatment:  
  • Could include restrictions on the number of foreign workers, or the provision of subsidies or tax rebates to domestic businesses only |

See the six types of market access limitations in GATS article XVI.

Determining national interests is not a simple undertaking; stakeholder interests often may diverge, and the impact of liberalization on different groups may vary (see for example box 20). Accordingly, it is necessary to formulate negotiating positions on the basis of wide-ranging consultations.

26 For a discussion on the difference between position and interest, see (Gaudosi, Roesch, and Ye-Min, 2019, pp. 24–30; Fisher, Ury, and Patton, 1991).
Example of differences in the perception and experience of liberalization within national economies

Construction services (services supply mode 3)

- Workers associations and manufacturers in Country A have embraced and endorsed the liberalization of professional and business services as presented by the Ministry of Trade. In the schedule of specific commitments, construction services and professional/business services have been liberalized, in all modes of supply, without restrictions on market access or modes of supply.

- However, professional associations are concerned about an influx of foreign construction service providers, whose presence would stifle opportunity for domestic companies. Professional associations and domestic companies are lobbying the government to make the procedure for obtaining the relevant operating license more stringent and are publishing op-eds in newspapers about predatory foreign services companies, which pose a threat to local businesses. The Construction Services Business Association has convinced the Ministry of Trade that it should undertake a professional pre-screening of foreign companies that seek to invest in the country, in order to maintain national standards of service delivery.

- On that basis, the Ministry of Trade has directed the Companies Registration Agency to require that companies obtain a “certified operator certificate” from the Construction Services Business Association prior to company registration.

- The Construction Services Business Association has not issued certified operator certificates to any foreign companies, claiming that they are unable to meet national standards.

- Businesses originating in several State Parties to the Agreement complain to their governments about the difficulties they face in completing company registration formalities.

- Those State Parties, in turn, take retaliatory action.

In identifying the divergent interests, the negotiating team must be mindful of a wide array of regulations, sectoral agreements and conventions, thereby calling for input from a range of stakeholder groups, such as professional bodies, traders and firms, commodity and industry associations and workers’ groups, as well as civil society organizations and media entities.

It will be crucial to identify the relevant stakeholders in each sector, including:

- The public sector, including other ministries and government agencies: regulators; services trade policymakers; national and regional statistics offices; responsible/supervisory ministries and agencies, including those responsible for women, young people, small and medium-sized enterprises, inclusion and economic development; and ombudsmen at the national and subnational levels;

- The private sector, including sectoral groups: industry associations, including women’s and youth business associations; workers’ groups; education/training providers; financiers; ombudsmen; and providers of support services;

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27 For an inclusivity perspective, see mapping under (ECA, 2019).
- Civil society: media entities; non-governmental organizations; academia; independent experts; women and youth support and empowerment groups.

Through wide-ranging consultations, negotiators will be able to anticipate the potential effect of services liberalization commitments on national and regional economies, and to prepare implementation approaches to maximize opportunities and mitigate losses.

3.2.2.2. Cross-cutting issues of interest in services liberalization

- Informal economy and services liberalization

Informal economic activities are those that occur outside the ambit of formal and official mechanisms. Attempts to quantify the size of the informal economy are inhibited by the very nature of its activities, which are undocumented and unrecorded by formal institutions. In 2018, ILO estimated that up to 85.8 per cent of jobs in Africa were in the informal sector (ILO, 2018). Furthermore, 94.9 per cent of working young people (aged 15–24) are estimated to be in a situation of informal employment, with significant geographical gaps, as 56.4 per cent of the young population in Southern Africa is in such a situation, compared to 97.9 per cent in Western Africa.

The majority of businesses in Africa are micro-, small and medium-sized enterprises, which often encounter barriers to formal trade and work, including requirements for documentation related to identity and residence, formal education and qualifications, as well as requirements related to the registration of capital and formalities associated with obtaining licenses and permits, which can sometimes be onerous. The questions in Table 2 can assist with the assessment of the nature, drivers and dynamics of informality within the five priority services sectors.

Table 2
Assessing informality within national economies

<table>
<thead>
<tr>
<th>Question</th>
<th>Subquestion</th>
</tr>
</thead>
<tbody>
<tr>
<td>What are the nature and causes of informality in the national economy?</td>
<td>For the five priority services sectors, identify:</td>
</tr>
<tr>
<td></td>
<td>- The nature of informality, such as</td>
</tr>
<tr>
<td></td>
<td>o Low levels of business registration</td>
</tr>
<tr>
<td></td>
<td>o Low levels of individual identity registration</td>
</tr>
<tr>
<td></td>
<td>o Low levels of registration with the tax/revenue collection authority</td>
</tr>
<tr>
<td></td>
<td>o Low levels of registration with the certification authority</td>
</tr>
<tr>
<td></td>
<td>o Low levels of registration/compliance with the standards authority</td>
</tr>
<tr>
<td></td>
<td>o Low levels of membership in relevant private sector organizations/associations</td>
</tr>
<tr>
<td></td>
<td>o Low levels of formal transactions</td>
</tr>
<tr>
<td></td>
<td>What are the existing avenues for formalization in the public and private sectors? What are their limitations?</td>
</tr>
</tbody>
</table>

- Gender dimension of services

Although agriculture remains the main source of employment for women in sub-Saharan Africa, the services sectors employ globally the greatest number of women around the world. As a key driver of economic growth, services sectors can support the realization of gender equality under the AfCFTA Agreement.
While liberalization of services trade has the potential to generate further employment and income opportunities for women, it does not automatically lead to improved outcomes for them. Patterns of gender segregation are found in services. In developing countries, women tend to be concentrated in lower-paying jobs in trade, restaurants and hotels and in the provision of community, social and personal services. Only a small percentage are employed in higher-paying subsectors such as finance, insurance and business services. Likewise, women are well-represented in professional and technical jobs, but are heavily concentrated in teaching, nursing and other jobs traditionally considered to be “women’s occupations”. Gender-related concerns have also been raised with respect to the potential impact on women of liberalizing particular services subsectors. In tourism, for example, the vast majority of jobs filled by women were found to be in less stable and lower-paying areas such as housekeeping, food preparation, reception and petty trading (McGill, 2005).

To complement the picture, women generally spend more of their time in non-market (i.e. non-remunerated) activities than men, including reproductive work, which is unrecognized in economic data. This constraint not only affects women in a direct way, reflected in the smaller average share of their time allocated to market activities; it also affects them more than men owing to the greater time constraints imposed on them compared to men related to balancing paid and non-paid work. For this reason, women’s participation in economic activities shows a higher sectoral concentration than men’s. Furthermore, in the sectors within which they tend to work, women are more affected by vertical segregation than men, and, for equal work, wages tend to be lower for women (Coche, Kotschwar, and Salazar-Xirinachs, 2006).

Although the liberalization of services trade can bring important benefits, in particular in terms of its contribution to decent employment opportunities and inclusive economic growth, it can also magnify existing gender gaps and create significant risks for women. It is therefore imperative that gender perspectives be incorporated into the schedules of specific commitments on trade in services. The questions in Table 3 below allow for the assessment of the participation of women in services sectors and support the identification of measures through which women can take maximum advantage of the opportunities arising from the liberalization of services sectors.

Table 3
Reviewing the participation of women in services sectors

<table>
<thead>
<tr>
<th>Question</th>
<th>Subquestion</th>
</tr>
</thead>
<tbody>
<tr>
<td>What is the nature of the participation of women in services sectors?</td>
<td>- What is the proportion of women trading in the five priority services sectors and how much added value do those women generate? What proportion of women are producers? What proportion of women are distributors?</td>
</tr>
<tr>
<td></td>
<td>- What proportion of women are firm owners? What proportion of women are firm managers?</td>
</tr>
<tr>
<td></td>
<td>- What proportion of women are working in the five priority services sectors? Are their jobs of an informal or formal nature?</td>
</tr>
</tbody>
</table>

*a See also Bayat, 2020.

- Trade in services and the movement of people

Trade in services emphasizes the movement of persons; of the four modes of supply, two are explicitly concerned with the movement of persons into countries, whether for short or extended periods. Mode 2 relates to the enjoyment of services in other countries, and mode 4 relates to the temporary movement of workers into other countries. Tourism, which is explicitly concerned with the movement of people, is a priority sector in the first round of services negotiations. It is important to note that the African Union
Protocol on the Free Movement of Persons, which by March 2020 had been signed by 32 countries and ratified by 4 countries, requires 15 ratifications to enter into force.28

Furthermore, mode 3 implicitly considers the movement of persons, since the establishment of services providers in foreign markets through “commercial presence” generally implies the movement of some personnel. That movement is generally of a temporary nature, and often in the form of managerial, technical or expert personnel to set up and run operations for the foreign company. If intellectual property is a component in the production of the services of those companies, then it is also likely that specialized personnel may be required to oversee the provision of those services, which would have a bearing on the duration of stay of foreign personnel, if such qualified personnel cannot be found in the country where the company sets up a commercial presence.

Countries will need to review regulations on visas and residence, to ensure that services liberalization efforts are not impeded by entry/residence barriers. The simplification of licensing and certification systems is crucial to fostering the movement of skilled workers. Accordingly, efforts towards the harmonization of standards, especially for professional and business services, should be deepened, especially through mechanisms such as mutual recognition of qualifications and licensing. Behind borders, the mechanisms to obtain and renew documents, such as passports, licenses and certifications, should be reviewed, to ensure that obstacles are not encountered by individuals and businesses that seek to trade services across borders. Such a review of regulations related to the movement of persons can be supported through the questions in Table 4.

Table 4
Reviewing regulations related to the movement of people

<table>
<thead>
<tr>
<th>Question</th>
<th>Subquestion</th>
</tr>
</thead>
<tbody>
<tr>
<td>To what extent is the movement of people accounted for in the liberalization of services?</td>
<td>What are the commitments undertaken related to modes 2 and 4 across sectors?</td>
</tr>
<tr>
<td></td>
<td>Which services sectors/professions currently record higher levels of inward migration into the national economy?</td>
</tr>
<tr>
<td></td>
<td>Which services sectors/professions currently record higher levels of outward migration from the national economy?</td>
</tr>
<tr>
<td></td>
<td>What are the existing certification, licensing and professional registration requirements for foreign workers in the sectors to be liberalized under the AfCFTA Agreement?</td>
</tr>
<tr>
<td></td>
<td>What are the existing entry and residence requirements for foreign workers?</td>
</tr>
</tbody>
</table>

From a general standpoint, mode 4 commitments usually provide for the movement a skilled labour force. However, pan-African negotiations on movement of people may seek to address skill shortages that contribute to the high levels of youth underemployment and unemployment.

4. Case study

The section is aimed at applying the analytical tools and methods described in the previous sections (section 4.1) to assess the inclusiveness of regional trade agreement negotiating institutions in the Central Africa region (section 4.2).

4.1. Methodology

Recalling the choices made to carry out the analysis (section 4.1.1), the protocol (section 4.1.2) was adapted further to the limitations imposed by the restrictions related to the COVID-19 outbreak (section 4.1.3).

### 4.1.1. Choice of case units

As the public-private dialogue is the main focus of the study, the focus was placed on the mechanisms allowing for consultation with all stakeholders and solicitation of their views, including the private sector’s views on concessions and trade-offs, while ensuring the appropriate representation of vulnerable groups, women and young people, while at the same time allowing for due consideration of economic, social and environmental sustainability aspects during the trade programme implementation.

To that end, the chosen case units were organizations of all sizes in the two pilot countries in the Central African region – with a focus on ECCAS and CEMAC – hence in Cameroon and Chad, as well as in Mauritius, acting as a regional comparator, in the following sectors:

- Government departments and parastatal agencies;
- Private sector organizations;\(^ {29} \)
- Civil society organizations.

The intended scope of the research was initially limited to negotiated trade agreements referred to as regional trade agreements by WTO; however, owing to (i) the changing mandates and portfolios of the relevant public organizations and (ii) the capacity available in civil society organizations to deal with trade policy issues, it was not always possible to make a strict and clear distinction between influence strategies pertaining to preferential trade and non-preferential trade policy.

### 4.1.2. Protocol

The exercise, though primarily based on a semi-guided interview approach (section 4.1.2.1), was complemented by secondary data (section 4.1.2.2) owing to the limitations experienced throughout the life of the project.

#### 4.1.2.1. Primary analysis

The present study was based on the findings in the literature, which notably provided information on the existing methodological tools and possible approaches. Building on that, with a view to analysing the negotiating institutions using the ATTiC model, semi-structured interviews were conducted in line with the guidelines set out in appendix I to the annex to the present report. They comprised questions requiring both quantitative and qualitative responses.

For the interviews, invitations to participate were sent either by the interviewer, to people recommended through referrals, or directly by the recommending people themselves,\(^ {30} \) as well as a list of 75 prospective interviewees whose contact information was gathered through data scraping methods.

The targeted number of interviewees was 10 people per target group – ideally representing different organizations to reflect the diversity of the groups – (i.e. 10 people in three groups in three countries,

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\(^ {29} \) These include all organizations whose members are profit-driven organizations, including chambers of commerce and business associations.

\(^ {30} \) The interviewer was not always copied in the direct exchanges. It is thus difficult to estimate with precision the number of direct recommendations. From the interviewer’s end, the number of direct contacts is estimated at 50.
amounting to a total of 90 people); however, to date, interviews have only been effectively conducted with 7 people.

4.1.2.2. Secondary analysis

Building on the comments and suggestions arising from an experts group meeting held online on 7 October 2020 to review the draft version of the present paper, as well as using the result of the primary analysis, an attempt was made to create an Inclusive Trade Policymaking Index for the Central African region, using the methodology designed by Kaubab (2009, pp. 199–206).

Thanks to close connections between the ATTiC model and the Inclusive Trade Policymaking Index, the data collected provided information that was sufficiently detailed and relevant to be used to construct the index. Nevertheless, owing to the limited number of participants, only a partial index was constructed. It should thus be considered solely as an illustration in the context of pursuing data collection throughout the training sessions scheduled in the programme under which the present study is being undertaken.

The main stages of the methodology are described in box 21 for ease of reference.

Box 21
Methodology used to develop the Inclusive Trade Policymaking Index

As stated in Kaubab (2009):

The methodology to develop the ITPM Index consisted of three stages. In the first stage, an analytical framework was developed which is explained in detail in the next sub-section. Important elements of this analytical framework include: defining main features of an inclusive trade policy that has national ownership, identifying the links of these features with key elements of the trade policy making process and the relevant stakeholders, and developing action variables to assess the performance of all the relevant stakeholders.

In the second stage, the analytical framework was used to construct initial ITPM Indices for all the five project countries. The values assigned to the action variables were based on the feedback from the corresponding and other stakeholders during the conduct of the study. These initial ITPM Indices were included in the first drafts of the country studies.

The third stage focused on the validation of the analytical framework and the initial values assigned to action variables. Two means were utilised to carry out this validation. One, the first drafts of country studies were subject to an extensive review process. The Annexure 200/ Towards More Inclusive Trade Policy Making staff of CUTS International, members of the FEATS Project Advisory Committee (PAC), and members of the respective FEATS country National Reference Groups (NRGs) took part in the review process. This review process resulted in the preparation of the revised drafts of country studies which also included revised ITPM Indices. Two, the revised draft studies were discussed at length during the FEATS national dialogues held in project countries in April-May 2009. Stakeholders participating in these national dialogues provided many useful comments on the ITPM Index. These stakeholders also provided written inputs/feedback through a short survey conducted during the national dialogues. These comments and survey feedback were used to further refine the ITPM analytical framework as well as ITPM country Indices.

Abbreviations: FEATS, Fostering Equity and Accountability in the Trading System; ITPM, Inclusive Trade Policy Making.
4.1.3. Limitations

A certain number of constraints are to be acknowledged and taken into consideration when analysing the results of the present case study:

- The COVID-19 crisis continues to have significantly disrupting effects on the economic and administrative activities in most countries of the world. Although the number of countries under lockdown is now decreasing, social distancing continues to be applied in almost every country and some countries are still under lockdown or are undergoing a second phase of lockdown.

- The cost of communication – either voice or Internet – in the Central Africa region and the burden of responsibility in a context of telecommuting with limited access to everyday work resources, including hierarchical guidance, are considered a possible explanatory factor for the very low response rate. Indeed, during discussions with some of the interviewees (especially in Cameroon), it was suggested that only senior management officials were given the means to work on a remote basis. Mid-level technical staff were therefore less likely to participate in the interviews even though they were more likely to be the appropriate target group in most medium- to large-sized organizations.

- The decision to attempt to construct an Inclusive Trade Policymaking Index for Central Africa was taken after the data were collected. That avenue was nevertheless considered given the substantial overlap in terms of collected data; however, it might be worth collecting additional data at a later stage to consolidate and extend the research to all the countries of the region for a more comprehensive and accurate picture of the regional trade agreement decision-making and consultative process in the region.

4.2. Analysis

As a prelude to construction of both the ATTiC model and the Inclusive Trade Policy Making Index (section 4.2.2), a review of important elements of the political economy of the Central African region is provided (section 4.2.1.1). Owing to data limitations, the analysis has only been done for Cameroon and Mauritius.

4.2.1.1. Overview of the political economy of regional-trade-agreement-making in Central Africa

4.2.1.2. Historical background

Region-building in Central Africa has been driven by economic integration ambitions since the early years of the decolonization movements, notably with the creation of the Equatorial Customs Union, which predated CEMAC and brought together Cameroon, the Central African Republic, Chad, the Republic of the Congo and Gabon in 1962 (ECA, 2004). Those countries also played an important role in the political and diplomatic proceedings leading to the creation of the Organization for African Unity in 1963, showing the region’s leadership in the pan-African construction (Boukari-Yabara, 2014).

Simultaneously a catalyst and a substrate of the African institutional construction, the Central African region, as well as other African regions, followed a track comparable to that of the rest of the continent in terms of the development of its regional economic community apparatus, which can be described through five main periods (Gérout, MacLeod, and Desta, 2019):

- 1889–1979: Refining a vision – attempts at building subregional trading blocks, during which regional economic community creation flourished, to which the Central African region contributed
with the creation of not only the Equatorial Customs Union, but also the Economic Community of the Great Lakes Region.

- 1979–1991: Towards a legally binding treaty for continental economic integration, during which the region contributed along with others, as ECCAS was formed in 1983 with the objective of contributing the subregional structures necessary for “the gradual and progressive establishment of an African common market as a prelude to an African economic community” (p. 20), the latter being established by the 1991 Treaty establishing the African Economic Community (Abuja Treaty).

- 1991–2006: The subregional approach to establishing the African Economic Community, during which “the Union Douanière et Économique de l’Afrique Centrale (UDEAC) countries of Central Africa decided to transform the Union into a monetary Community – the Central African Economic and Monetary Community (CEMAC). In the spirit of continental integration, CEMAC was structured in such a way that any African country was deemed eligible to accede to it” (p. 22), so as to align with the principles and aspirations of the Abuja Treaty.

- 2006–2015: Attempts to rationalize the African economic integration landscape with the Boosting Intra-African Trade initiative. During this period, attempts were made to consolidate efforts at the regional level to meet the converging objectives of both the regional economic communities and the African Union.

- 2015–2018: The run-up to the African Continental Free Trade Area, during which the regional economic communities, including ECCAS and CEMAC, played a crucial role in advancing the negotiation process on multiple occasions, including during the seventh meeting of the African Union Ministers of Trade, which led to the adoption of the “Cairo package” under the leadership of the ECCAS region, and the 2020 discussions on tariff offers, with the early tabling of a regional offer by CEMAC (ECA, forthcoming 2021).

Throughout this historical overview we can perceive the delicate balance of a hierarchy of norms and cascading issues of norm-setting in the African region, with the need to clearly delineate the roles and responsibilities of international organizations with which respective member States have committed to align under various treaties, but with unequal implementation (Desta and Gérout, 2018), although “the consequence of this arrangement is that member States have the obligation to comply with the Abuja Treaty alongside the treaty establishing the relevant regional economic communities in their region” (Amao, 2019).

4.2.1.3. State of trade integration in Central Africa

Like the other regions of the continent, Central Africa is involved in a number of regional and overlapping agreements that tend to complicate the harmonious implementation of trade policy. Notably, although Cameroon and Chad (the countries of interest for this study) participate in a customs union and have agreed to a common trade policy, they also individually participate to different extents in regional initiatives. Those political choices are among the factors contributing to varying economic integration performance.

- International institutions

At the continental level, both Cameroon and Chad participate in the AfCFTA negotiations, with prior strategic consultations under the auspices of the ECCAS secretariat as one of the eight African-Union-recognized regional economic communities. Nevertheless, the decisions made under the common trade policy are coordinated beforehand at the CEMAC level.
At the regional level, Cameroon is a member of one of the eight African-Union-recognized regional economic communities (ECCAS) whereas Chad is member of two of them (ECCAS and the Community of Sahel-Saharan States). Nevertheless, despite ambition to further integrate economically, pursuing the objectives laid down under the Abuja Treaty; however, it has been argued that despite being recognized by the African Union as a regional integration entity, the Community of Sahel-Saharan States is more of a cooperation organization by nature than an integration organization (Aïvo, 2009). While regional economic communities may have a secondary role in the AfCFTA negotiations, in practice, the CFTA negotiations take place between the African Union member States, with the regional economic communities taking on a subsidiary role (Kotcho, 2017). On the other hand, as regional economic community FTAs are the building blocks of AfCFTA, and taking into consideration the harmonization efforts to align ECCAS and CEMAC preferential trade regimes, the ECCAS region has taken regional step to move in a coordinated manner under the AfCFTA negotiations.

Beyond the consideration of regional economic community FTAs, as identified above, the adopted negotiating principles also provide that AfCFTA negotiating countries are to extend the preferences granted to third parties to other AfCFTA negotiating countries (principle of most-favoured-nation treatment). In this light, Cameroon’s participation in a regional trade agreement with the European Union31 is also an element of importance in the preparation of CEMAC commitments in the AfCFTA negotiations.

In addition, Cameroon and Chad belong to organizations aiming to harmonize business law, including the Organization for the Harmonization of Business Law in Africa (OHADA32), that cover various sectors of interest under the AfCFTA negotiations, including business, financial and transport services. Compliance with those organizations may have bearing on the services negotiations in particular. In the field of intellectual property, for instance, the African Intellectual Property Organization may be important for Central African countries to consider when adopting national and regional positions in preparation for regional trade agreement negotiations.

- Integration performance

In 2017, ECCAS imports from African countries accounted for 26 per cent of all imports. A share of those imports from African countries were from countries with which ECCAS countries have preferential trade arrangements, including East African Community countries in the case of Rwanda and Burundi and – prominently, with 18 per cent of all imports – CEMAC countries in the case of Cameroon, Central African Republic, Chad, the Republic of the Congo, Equatorial Guinea and Gabon (African Development Bank, African Union and ECA, 2019b, pp. 10–12).

Whereas overall Central Africa is performing slightly better than Africa on average in terms of global integration (see box 22Error! Reference source not found., trade integration is one of the dimensions where the region scores lowest, falling behind the African average (see Table 5).

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31 Currently, Cameroon is solely participating in the Economic Partnership Agreement with the European Union though its membership in CEMAC. The Economic Partnership Agreement is open for accession by other Central African countries.

32 The acronym OHADA stands for the French version of the name: “Organisation pour l’Harmonisation en Afrique du Droit des Affaires”.

most regional economic communities, ECCAS excels on the macroeconomic dimension; like most regional economic communities, it lags on the productive dimension. The disparities among member States’ overall scores are large.

What are the markers of ECCAS strength in macroeconomic integration? The first observation is that 8 of the 11 ECCAS countries score high (between 0.753 and 0.923) and 2 countries score well (between 0.489 and 0.600). If the lowest performer, Angola (score of zero), were discounted, the performance of ECCAS on this dimension would be stronger still. It should be noted, however, that none of the ECCAS members has bilateral investment treaties in force. For this reason, countries’ macroeconomic integration is only assessed on the basis of the regional convertibility of their currency and their inflation differential.

<table>
<thead>
<tr>
<th>Country</th>
<th>Regional integration</th>
<th>Rank</th>
<th>Trade integration</th>
<th>Rank</th>
<th>Productive integration</th>
<th>Rank</th>
<th>Macroeconomic integration</th>
<th>Rank</th>
<th>Infrastructural integration</th>
<th>Rank</th>
<th>Free movement of people</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Republic of the Congo</td>
<td>0.619</td>
<td>1</td>
<td>0.890</td>
<td>1</td>
<td>0.429</td>
<td>2</td>
<td>0.770</td>
<td>7</td>
<td>0.431</td>
<td>4</td>
<td>0.535</td>
<td>3</td>
</tr>
<tr>
<td>Gabon</td>
<td>0.612</td>
<td>2</td>
<td>0.504</td>
<td>2</td>
<td>0.391</td>
<td>3</td>
<td>0.793</td>
<td>5</td>
<td>0.827</td>
<td>1</td>
<td>0.535</td>
<td>3</td>
</tr>
<tr>
<td>Cameroon</td>
<td>0.599</td>
<td>3</td>
<td>0.383</td>
<td>4</td>
<td>0.871</td>
<td>1</td>
<td>0.813</td>
<td>2</td>
<td>0.793</td>
<td>2</td>
<td>0.156</td>
<td>10</td>
</tr>
<tr>
<td>Rwanda</td>
<td>0.594</td>
<td>4</td>
<td>0.296</td>
<td>8</td>
<td>0.356</td>
<td>5</td>
<td>0.923</td>
<td>1</td>
<td>0.407</td>
<td>5</td>
<td>1.000</td>
<td>1</td>
</tr>
<tr>
<td>Equatorial Guinea</td>
<td>0.453</td>
<td>5</td>
<td>0.372</td>
<td>6</td>
<td>0.322</td>
<td>6</td>
<td>0.804</td>
<td>3</td>
<td>0.373</td>
<td>6</td>
<td>0.380</td>
<td>8</td>
</tr>
<tr>
<td>Sao Tome and Principe</td>
<td>0.422</td>
<td>6</td>
<td>0.192</td>
<td>9</td>
<td>0.130</td>
<td>10</td>
<td>0.803</td>
<td>4</td>
<td>0.507</td>
<td>3</td>
<td>0.473</td>
<td>6</td>
</tr>
<tr>
<td>Central African Republic</td>
<td>0.404</td>
<td>7</td>
<td>0.307</td>
<td>7</td>
<td>0.166</td>
<td>9</td>
<td>0.753</td>
<td>8</td>
<td>0.152</td>
<td>9</td>
<td>0.629</td>
<td>2</td>
</tr>
<tr>
<td>Chad</td>
<td>0.385</td>
<td>8</td>
<td>0.409</td>
<td>3</td>
<td>0.176</td>
<td>8</td>
<td>0.781</td>
<td>6</td>
<td>0.000</td>
<td>11</td>
<td>0.535</td>
<td>3</td>
</tr>
<tr>
<td>Democratic Republic of the Congo</td>
<td>0.304</td>
<td>9</td>
<td>0.080</td>
<td>11</td>
<td>0.270</td>
<td>7</td>
<td>0.600</td>
<td>9</td>
<td>0.111</td>
<td>10</td>
<td>0.473</td>
<td>6</td>
</tr>
<tr>
<td>Angola</td>
<td>0.273</td>
<td>10</td>
<td>0.374</td>
<td>5</td>
<td>0.359</td>
<td>4</td>
<td>0.000</td>
<td>11</td>
<td>0.260</td>
<td>7</td>
<td>0.380</td>
<td>8</td>
</tr>
<tr>
<td>Burundi</td>
<td>0.201</td>
<td>11</td>
<td>0.118</td>
<td>10</td>
<td>0.080</td>
<td>11</td>
<td>0.489</td>
<td>10</td>
<td>0.245</td>
<td>8</td>
<td>0.062</td>
<td>11</td>
</tr>
<tr>
<td><strong>Average (ECCAS)</strong></td>
<td><strong>0.442</strong></td>
<td></td>
<td><strong>0.357</strong></td>
<td></td>
<td><strong>0.323</strong></td>
<td></td>
<td><strong>0.684</strong></td>
<td></td>
<td><strong>0.373</strong></td>
<td></td>
<td><strong>0.469</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Standard deviation (ECCAS)</strong></td>
<td><strong>0.141</strong></td>
<td></td>
<td><strong>0.208</strong></td>
<td></td>
<td><strong>0.205</strong></td>
<td></td>
<td><strong>0.243</strong></td>
<td></td>
<td><strong>0.251</strong></td>
<td></td>
<td><strong>0.234</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Average (Africa)</strong></td>
<td><strong>0.327</strong></td>
<td></td>
<td><strong>0.383</strong></td>
<td></td>
<td><strong>0.201</strong></td>
<td></td>
<td><strong>0.399</strong></td>
<td></td>
<td><strong>0.220</strong></td>
<td></td>
<td><strong>0.441</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Standard deviation (Africa)</strong></td>
<td><strong>0.078</strong></td>
<td></td>
<td><strong>0.123</strong></td>
<td></td>
<td><strong>0.133</strong></td>
<td></td>
<td><strong>0.128</strong></td>
<td></td>
<td><strong>0.166</strong></td>
<td></td>
<td><strong>0.304</strong></td>
<td></td>
</tr>
</tbody>
</table>
4.2.2. Policy objectives: Cameroon

Certain reference policy orientations direct national choices in terms of development strategies (section 4.2.2.1), including at the sectoral level (section 4.2.2.2). They are presented here to help frame the analysis.

4.2.2.1. National strategy

In 2009, Cameroon adopted a national development strategy aimed at providing a policy framework for a 25- to 30-year period (Cameroon, 2009). The strategy notably foresees three implementation stages, including (pp. 28–31):

- 2010–2019, with the objective of modernizing the economy and accelerating growth;
- 2020–2027, with the objective of achieving middle-income-country status (per capita income of between $3,706 and $11,455 in 2007 dollars);
- 2028–2035, with the objective of becoming a newly industrialized and emerging country (with the secondary sector accounting for more than 40 per cent of gross domestic product).

For the 2020–2027 period, the economic growth pillar of the strategy includes the following trade in service-oriented elements:

- Construction, through the development of information and communications technology and transportation infrastructure;
- Education, through the development of a skilled workforce and mid-level managers and investment in the knowledge economy.

For the 2028–2035 period, the economic growth pillar of the strategy includes increasing trade in services, notably tourism.

4.2.2.2. Trade strategy

To achieve the aforementioned objectives, the Government of Cameroon has committed to developing an AfCFTA implementation strategy. Notably, sex-disaggregated data on the effects of the AfCFTA commitments have been given noteworthy attention in the elaboration of the strategy, with attention paid to reduce trade-liberalization-related sex inequalities. To this end, an effort was made to mainstream the gender dimension in the strategy, including through voluntary policies to facilitate women’s ownership of productive capacity, taking into account their overrepresentation in some economic sectors (see Figure IV).

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Based on these indications, priority is given to the development of the agro-processing industry, including all supporting services such as export finance, logistics and transportation.

4.2.3. Application

In the application of the tools discussed previously, the ATTiC model is used to assess how the principle of good governance guides the crafting of negotiating institutions, here applied in the context of the AfCFTA negotiations and development of AfCFTA negotiation strategies (section 4.2.3.1). Furthermore, building on the primary and secondary data, an initial attempt is made to construct dimensions of the Inclusive Trade Policy Making Index, though it is acknowledged that the construction is only partial (section 4.2.3.2).

4.2.3.1. Agents, targets, tactics and context model: general considerations

Unfortunately, the low response rate during the data collection exercise meant that there was insufficient data to produce any results beyond anecdotal evidence. Boxes 23, 24, 25, 26 and 27 present indicative vignettes of the circumstances in the surveyed countries with respect to the five guiding principles of good governance, namely openness and transparency, participation, accountability, effectiveness and appropriateness.
Box 23

Openness and transparency

All interviewees from the target group (the negotiating team) considered that the communication with the actors, primarily the private sector, were generally initiated by the negotiating team, mainly through information dissemination by means such as open letters, press releases and calls for participation in meetings organized in accordance with the government agenda and initiative.

The frequency of the meetings in question is notably very dependent on the timing of international events that call for prior consultations. One difference that emerged from the interviews, however, was that the target in Mauritius seeks, as much as possible, to brief the stakeholders on the outcomes of the international round of negotiations during a dedicated event, while Cameroonian representatives did not mention attempting to provide such feedback.

![Bar chart showing perception of frequency of consultations of the targets by the actors](chart)

Nevertheless, the Mauritian target suggested that the main recipients of those consultative and debriefing sessions were primarily the private sector and other relevant government or parastatal agencies. This perception was echoed by the Mauritian civil society organization interviewed, which suggested that, except when formally invited – mostly for formal representation purposes – civil society organizations were not well represented in regional trade agreement negotiation consultations.
One actor mentioned that their most effective means of interaction with the target was direct provision of an unsolicited opinion, with the COVID-19 crisis seen as an opportunity for that specific purpose. The reason given was that with the travel restrictions and reduced activities in national, regional and international forums, the negotiating team was more often in the country, with less demand for their attention, creating an opportunity for increased engagement.

Box 24
Participation

Cameroonian civil society organizations tend to consider themselves as having little to no influence over trade talks. Nevertheless, one Cameroonian civil society organization managed to have its recommendations incorporated into trade negotiation outcomes through proactively submitting written proposals; they perceived their proposal to be well-reflected into the outcome even though they were not invited to present or defend it during the discussion.

Mauritian civil society organizations perceive that although they are under-involved in the discussion, when solicited, their expert opinion is well considered.

On the other side, while government officials were more available because of the pandemic, the pandemic had a severe adverse impact on the Government’s ability to actively participate in international negotiations and to advance its trade agenda. All government and parastatal agencies in Cameroon said that activities had slowed if not completely stopped. For some, by June, the slack was thought to represent at least a four-month delay compared to their annual work plan.
Box 25
Accountability

Cascading from the perceptions on openness and transparency, all government and parastatal agencies indicated that their means of disseminating information and calling for participation was mostly based on outgoing communication channels, the perception of the actors to hold the targets accountable is limited. More specifically, they suggested that no formal or information dissemination channels had been set up and that they relied on more *ad hoc* communication channels, including their own media, as well as external press coverage, when invited. Press coverage seems notably to be in fairly common usage in Cameroon, although the content of the information is usually limited to the organizational aspects of the negotiating institution forum (e.g. participants, summary of the opening statements, location and duration of the event, listing of the topics on the agenda, etc.) without any details pertaining to the proceedings or conclusions. The target’s control of outgoing information was mentioned by one civil society organization as a limiting factor for accountability purposes.
Unsurprisingly, the responding organizations of the “actors” group considered the design of the public-private dialogue mechanisms fairly ineffective (see section 4.2.3.2). This can be mostly explained by the fact that such mechanisms mainly target private sector organizations, and that civil society organizations seem to be underrepresented.

Furthermore, governmental organizations considered their intervention at the intergovernmental level to be very effective, and parastatal organizations, somewhat effective.

<table>
<thead>
<tr>
<th>Effectiveness of the tactics in the intergovernmental setting</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-governmental organization</td>
</tr>
<tr>
<td>Very low Effectiveness</td>
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</table>

<table>
<thead>
<tr>
<th>Effectiveness of the public-private dialogue mechanisms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-governmental organization</td>
</tr>
<tr>
<td>Very low Effectiveness</td>
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</tbody>
</table>
Respondents expressed deep frustration regarding the lack of capacity to ensure proper implementation of the regional trade agreements. More specifically, the most salient point related to the fact that where Mauritius (regional comparator) did the utmost to comply with all the provisions of the trade agreements, including transparency provisions, the lack of reciprocity from partner countries to ensure the same level of commitment in implementing the agreement had a huge bearing on the trust businesses had in regional trade agreements. As such, they estimated that although seen as a major barrier to trade, the political or diplomatic nature of the dispute avoidance and settlement systems were more power-based than rule-based. As such, the Mauritian respondents expressed diminished faith in the effectiveness of regional trade agreements as catalysts for regional integration, notably owing to the fact that small States were less able to engage in amicable trade dispute and the fact that the secretariat of the regional economic community was seen as incapable of providing any mediation and advisory services. On this last point, it was mentioned that in one case the regional economic community secretariat had declined to assist in a matter pertaining to one party’s lack of means to fulfil its commitments under the regional trade agreement, apparently saying instead that the matter should be resolved on a bilateral basis.

This point also emerged as a constraint to regional trade agreement utilization. See the SADC compliance study.

4.2.3.2. Inclusive Trade Policymaking Index construction: example of an implementation strategy consultation in Cameroon

As described in section 3.1.2.2, once the analytical framework has been defined, an Inclusive Trade Policy Making Index is constructed based on variables measured against a simple five-point scale, depending on the level of action undertaken (maximum value of 1 (fully), high value of 0.75 (mostly), intermediate value of 0.5 (somewhat), low value of 0.25 (little) and minimum value of 0 (no)).

The index is constructed based on the interviewees’ responses and information from secondary sources, as shown in Table 6 for the case of Cameroon.

The index is a means of evaluating the inclusiveness of the preparation process for the AfCFTA implementation strategy through consultation of preparatory documents and interviews.
Table 6
Inclusive Trade Policymaking Index – Cameroon

<table>
<thead>
<tr>
<th>Variable</th>
<th>Remark</th>
<th>Potential score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Lead ministry: Ministry of Trade</td>
<td>- Some interviewees expressed concern regarding past experiences with regional initiatives and, in particular, frustrating regional integration efforts in the ECCAS region. Others were more concerned about the “inclusive” nature of the AfCFTA Agreement, which had not always registered at the national level because non-government actors in the country had not been closely associated with the negotiations. <em>(Source: Mission report by ECA official, further to AfCFTA implementation strategy formulation consultations from 15 to 19 April 2019)</em></td>
<td>0.25</td>
</tr>
<tr>
<td>A. Identification of all key stakeholders</td>
<td>- During the consultations held from 9 to 13 August 2019, 42 participants were listed, including 2 from the lead ministry, 24 from other ministries and government agencies, 11 from the private sector and 5 from civil society organizations (based on the classification described in sections 2.2.2.1 and 2.2.2.2). <em>(Source: Consultative report by the international consultant responsible for the supervision of the AfCFTA implementation strategy formulation consultations held from 9 to 13 August 2019)</em> - Five Cameroonian interviewees responded to the question “Do you think your organization is given the opportunity to express their interests and concerns sufficiently?”, with three (two civil society organizations and one other government agency) responding “1-Not enough given” (other government agency), one responding “2-Somewhat given” (other government agency) and one responding “3-Very much given” (lead ministry). <em>(Source: Primary data)</em> - Civil society organizations mostly identified are consular and business owners’ associations. <em>(Source: Interview with the Cameroonian official responsible for the AfCFTA negotiations, on 11 June 2020)</em></td>
<td></td>
</tr>
<tr>
<td>B. Creating awareness about the need for trade policy</td>
<td>- Five Cameroonian interviewees responded to the question “To what extent does the policymaker actively communicate about activities and decisions related to preferential trade agreements (PTAs) and encourage participation by stakeholders?”, with three (two civil society organizations and one other government agency) responding “1-Not enough” (other government agency), one responding “2-Somewhat” (lead ministry) and one responding “3-Very much” (other government agency). <em>(Source: Primary data)</em></td>
<td>0.5</td>
</tr>
<tr>
<td>C. Establishment of formal consultative mechanisms</td>
<td>- As at the date of the report, the Cameroon AfCFTA National Implementation Committee had yet to be established. <em>(Source: Consultative report by the international consultant responsible for the supervision of the AfCFTA implementation strategy formulation consultations from 9 to 13 August 2019)</em></td>
<td>0</td>
</tr>
<tr>
<td>D. Regular functioning of See field C</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>formal consultative mechanisms</td>
<td>E. Regular information flow to stakeholders, including on the content of trade policy</td>
<td>Insufficient data</td>
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<td>-------------------------------</td>
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</tr>
<tr>
<td></td>
<td>Among lead ministry respondents, one Cameroonian interviewee responded to the question “How often do these [consultation] circumstances arise?”, responding “Quite often” (lead ministry). <em>(Source: Primary data)</em></td>
<td></td>
</tr>
<tr>
<td></td>
<td>II. Other government agencies</td>
<td></td>
</tr>
<tr>
<td>F. Regular participation in the process and feedback to the relevant authorities</td>
<td>Among other government agency respondents, two Cameroonian interviewees responded to the question “How often do these [consultation] circumstances arise?”, both responding “3-Sometimes”. <em>(Source: Primary data)</em></td>
<td>0.5</td>
</tr>
<tr>
<td>G. Faithful representation of and regular feedback to the represented constituencies</td>
<td>Among other government agency respondents, two Cameroonian interviewees responded to the question “Depending on the circumstances under which you submit your ideas, how well reflected are your organization’s concerns and expectations reflected in the output transmitted to the policymaker?”, both responding “5-Sometimes”. <em>(Source: Primary data)</em></td>
<td>1</td>
</tr>
<tr>
<td>H. Acquiring relevant knowledge and expertise</td>
<td>Among other government agency respondents, to the question “How many people in the organization work on trade policy advocacy?” one interviewee responded “5 people” and one responded “10 people”. <em>(Source: Primary data)</em></td>
<td>0.75</td>
</tr>
<tr>
<td></td>
<td>- Among other government agency respondents, to the question “How much of their time do these people spend on advocacy work?”, one interviewee responded “25 per cent of their time” and one responded “full time”. <em>(Source: Primary data)</em></td>
<td></td>
</tr>
<tr>
<td></td>
<td>III. Private sector</td>
<td></td>
</tr>
<tr>
<td>I. Regular participation in the process and feedback to the relevant authorities</td>
<td>Insufficient data</td>
<td>n.a.</td>
</tr>
<tr>
<td>J. Faithful representation of and regular feedback to the represented constituencies</td>
<td>Insufficient data</td>
<td>n.a.</td>
</tr>
<tr>
<td>K. Acquiring relevant knowledge and expertise</td>
<td>Insufficient data</td>
<td>n.a.</td>
</tr>
<tr>
<td></td>
<td>IV. Civil society organizations</td>
<td></td>
</tr>
<tr>
<td>L. Regular participation in the process and feedback to the relevant authorities</td>
<td>Among civil society organizations, two Cameroonian interviewees responded to the question “How often do these [consultation] circumstances arise?”, with one responding “1-Rarely” and the other responding “2-Not very often”. <em>(Source: Primary data)</em></td>
<td>0.25</td>
</tr>
</tbody>
</table>
M. Faithful representation of and regular feedback to the represented constituencies

- Among civil society organizations, two Cameroonian interviewees responded to the question “Depending on the circumstances under which you submit your ideas, how well reflected are your organization’s concerns and expectations reflected in the output transmitted to the policymaker?”, with one responding “1-Not at all” and the other responding “4-Well”. *(Source: Primary data)*

N. Acquiring relevant knowledge and expertise

- Among civil society organizations, to the question “How many people in the organization work on trade policy advocacy?”, one interviewee responded “1 person” and one responded “7 people”. *(Source: Primary data)*

- Among civil society organizations, to the question “How much of their time do these people spend on advocacy work?”, one interviewee responded “Not all” and one responded “75 per cent of their time”. *(Source: Primary data)*

*Abbreviations: n.a., not available.*

*In Cameroon, the lead ministry for trade negotiations can vary. For instance, the AfCFTA negotiations are led by the Ministry of Trade whereas the negotiations for the Economic Partnership Agreement with the European Union are led by the Ministry of Economy. *(Source: Interview with Cameroonian official responsible for the AfCFTA negotiation, on 11 June 2020)*

Based on this preliminary data, it seems that the AfCFTA implementation strategy consultations are led by the Ministry of Trade, which provides a fair amount of information and is somewhat respectful of the opinions expressed by the stakeholders, suggesting a fairly open and transparent process. The participating stakeholders may not necessarily be reflective of all the concerned social groups, however, which leaves hanging the question of participation and accountability.

The data were insufficient to evaluate the effectiveness and appropriateness of the negotiation process.

5. Conclusion

It is with the following opening remarks that Professor Daniel W. Drezner introduced the central piece of his lecture on the political foundations of prosperity (2013):

“No form of government is perfect. All governments make mistakes, and all political institutions have the capacity to subvert the prosperity engine. Still, governments with broad-based representative institutions tend to make fewer mistakes than those with narrow ones”.

The lecturer argues that, with more checks and balances, inclusive political systems tend to have more lasting and reliable judicial systems to protect individual interests and more transparency in public life. These two elements, in turn, contribute to establishing a more enabling environment for private initiatives to innovate and seek reward through the operation of market forces, provide some degree of public oversight to allow scrutiny over the use of State-owned resources and limit the power of governing bodies to use those resources with confiscatory discretion.

Carrying this idea into the field of international relations and economic cooperation, one can ask whether a similar observation can be made about the decision-making process leading the conclusion of preferential trade instruments.

This question seems to be of timely relevance for the African continent – at a stage where the negotiation of the AfCFTA Agreement is ongoing – as political and opinion leaders call for greater
participation of civil society to act as “gatekeepers, advocates, mobilizers, educators, researchers and policy analysts”.  

Indeed, whereas the process of creating a legal instrument establishing the pan-African trade area is driven by the African Union member States and purely governed at the intergovernmental level, the success of the initiative primarily depends on the private sector’s ownership of it. It is for this reason that, on the occasion of a trade policy experts meeting held in May 2019 at the African Union Commission headquarters in Addis Ababa, the former African Union Commission Director for Trade and Industry, Ms. Treasure Maphanga, called for re-emphasizing the importance of involving the private sector in the whole cycle, from preparation through negotiations up to implementation (Karuhanga, 2019).

If the AfCFTA Agreement – or any other preferential trade instrument – is to create opportunities for businesses, the negotiating interests of the private sector and of civil society at large must be accurately understood by negotiators and policymakers. That in turn requires that negotiators have access to working mechanisms for consulting with and soliciting the views of the national constituencies.

Well-functioning participatory forums allow the needed discussions to take place between policymakers and civil society, thereby supplying channels for negotiators and businesses to communicate their negotiating objectives, concessions and trade-offs. Such communication channels, coupled with adequate negotiating capabilities, lay the ground for impactful participation in the trade negotiation arena.

Despite widespread understanding of the above-mentioned prerequisites, there remains an impression that many countries have poorly established negotiating institutions, leaving their negotiators entering negotiations impaired, if not blind, to the interests of their private sector and prone to trade policy incoherence. This impression seems to hold firm, both anecdotally in the reported experiences of African trade negotiators and trade negotiation observers, and through more documented research.

Across the pilot countries of this study, a few large organizations representing the private sector have good opportunities to participate in the public-private dialogue on regional trade agreements; however, one could ask how representative of the private sector those organizations are. Furthermore, outside such organization, it would seem that small groups are not as able to participate in the dialogue. Civil society organizations in particular appear to be underrepresented in the regional trade agreement public-private dialogue. Given that a common element of Central African economies is that their economic fabric is mostly composed of small-scale – or even informal – businesses, inclusive regional trade agreement negotiating institutions should endeavour first and foremost to ensure a wider range of interests.

5.1. Quick wins: easily and quickly implementable steps for improving negotiating institutions

The survey results indicate that some of the easier measures could be taken to enhance negotiating institutions relate to two main parameters: (i) openness and transparency; and (ii) participation. Consequently, the following suggestions are offered:

i. To enhance openness and transparency

To negotiating teams:

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34 Excerpt of the opening speech of Minister of Trade and Private Sector Promotion of Niger, Mr. Secko Seydou, on the occasion of the Civil Society Forum 2019, held in the margins of the Twelfth Extraordinary Summit on AfCFTA. Source: (African Union Commission, ECA and CODA, 2019).

35 The data gathered during the assignment were too limited to really assess the quality of the institutions, including the accountability, effectiveness and appropriateness aspects, at this point, being the stage of assessing the accessibility of the institution (i.e. the openness and transparency and participation aspects).
• Actively communicate on trade policy objectives, publication of event calendars, and written and oral briefings and debriefings. The communication channels used should be easily accessible and continuously open. In that regard, publication on websites, coupled with dissemination through social media and specialized press outlets, appears to be a modern, reliable means of communication; however, online platforms must be maintained and kept up-to-date, with access facilitated for all social groups. The existence of an appropriate regulatory framework that sets the rules and procedures and the rights and obligations of providers and users of information for transparency purposes is key to establishing predictable and reliable communication channels.

• With an appropriate framework in place, in addition to regular and continuous consultations through policy dialogue events and calls for written or oral contributions, clear guidelines on the consultation processes, deadlines and conditions for participation can help ensure that adequate information is afforded in line with transparency best practice.

ii. To enhance participation

To negotiating teams:

• Ensure a balanced representation of the interests of companies of all sizes, including micro-, small and medium-sized enterprises, when calling for contributions or arranging dialogue events. There are two prerequisites for achieving this balanced representation: (i) make a resolute effort to identify all key stakeholders and (ii) give all key stakeholders the opportunity to participate. Notably, special attention should be paid to the asymmetry of influence between companies, even within business organizations, where some more influential companies and other interest groups may skew the representation towards overstating their interests, to the detriment of the rest of the membership. Furthermore, the same recommendation is applicable to business size, as well as to sector coverage (notably of emerging sectors such as digital services or green technologies) and demographic-specific organizations (such as women or youth economic empowerment groups).

• Endowing a government body with the responsibility for women, young people and small and medium-sized enterprises or economic development more broadly (not only trade) can foster policy coherence and facilitate outreach to all relevant stakeholders, including those that might not be known to negotiating teams from a trade background, thus providing a platform for broad-based consultations.

To the private sector:

• Personalities matter.\(^{36}\) Ensure that representatives are duly mandated and that their guidelines are neither too strict to preclude any positive negotiating outcome nor so loose as to leave room for personal interpretation on committal matters. While coalitions may constitute an opportunity to have weight in the discussion, the larger number of organizations represented, the more diluted and general the coverage of the assigned mandate. Beyond the issue of the representativity of the participants, the issue of the creation of coalitions or sectoral groups may lie at the intersection of participation and openness and transparency; such groups might not be constituted in the first place if there is a lack of information pertaining to an issue of

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\(^{36}\) See (Kotcho Bongkwaha, 2017, pp. 376–389; Gaudiosi, Roesch, and Ye-Min, 2019, pp. 37–38). But also, on the double-level negotiating interests of the negotiator and the organization they represent (Subramanian, 2012).
interest to them. More research may be useful to allow a strong conclusion to be formulated on this point. This may also be true for civil society organizations.

To civil society organizations:

- Actively engage with government and parastatal agencies to ensure that interests are well conveyed. This can be achieved through such things as unsolicited contributions, open letters through widely consulted outlets and the organization of civil society organization events in which public officials are invited to participate. This will contribute to wider participation and foster better accountability, including on topics related to social inclusivity (e.g. universal coverage of basic services within the context of liberalization commitment negotiations in the communication,37 education or health sector38).

- Use trade negotiation monitoring strategies to ensure an up-to-date overview of the discussions, as well as a clear understanding of the actors and the issues. This allows timely contribution to the public-private dialogue, even in the event of insufficient information dissemination on official channels. It is worth highlighting, however, that without an appropriate binding transparency framework requiring the public sector to share substantive and procedural information, such participation may prove difficult. This point is therefore linked to the previous point, as ensuring that the interests of civil society organizations are conveyed is one area where active engagement may be required.

5.2. Implications for women, young people and micro, small and medium-sized enterprises

Upstream participation in trade negotiations through national-level institutions and contributing to implementing the negotiation outcomes may constitute opportunities for overcoming the path dependencies and embedded inequalities that may carry over from underrepresentation and defence of traditional interests.

Notably, the identification of sectors and products with high export potential and positive socioeconomic contribution, coupled with complementary measures that support beneficiaries in effectively tapping into those opportunities (ECA, 2019) has the potential to catalyse the economic empowerment and participation of marginalized groups, including women and young people. The identification of such high potential sectors and products, but also of potential risks such as leveraging occupational segregation for competitiveness purposes, can be better achieved through increased and balanced participation of the civil society organizations.

Trade negotiators are generally in a tenuous position, between a rock and hard place, when negotiating at the international level (Cutler, 2018), and, when not properly mandated or guided, are usually pressured into seeking safe outcomes through rather conservative stands (Rochas, 2020). Nevertheless, negotiating teams should be provided with awareness-raising and training in broad consultation for more inclusive outcomes. For this reason, early participation through solicited or unsolicited contributions can enhance the economic benefit of trade negotiations. This can notably be achieved by reinforcing the trade advocacy capacities of interest groups, including associations of women, young people and cross-border traders.

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37 Communication is one of the five priority sectors for liberalization under the AfCFTA Agreement.
38 See ECA, “Policy brief on frontloading AfCFTA health and education services negotiations”. For presentation at the tenth AfCFTA technical working group on trade in services, in October 2020.
Annex

Methodology

Background

The present report has been prepared under the component of the project entitled “Study on Negotiating Institutions”.

The project aims to strengthen the capacity of the African private sector to foster public-private partnerships with a view to overcoming bottlenecks to optimal utilization of trade agreements. In this light, the project seeks to identify best practices pertaining to trade negotiation-related policymaking, with a regional focus on the Economic Community of Central African States (ECCAS). More specifically, it reviews the institutional mechanisms that allow the private sector of the ECCAS region to better engage in the negotiation and implementation of preferential trade agreements and arrangements, and particularly those relating to trade in services, through evidence-based research and technical assistance.

The present document is the second output delivered under the present project.

For the record, the Economic Commission for Africa (ECA), through the African Trade Policy Centre, is implementing a project to build capacity of both the public and private sector stakeholders in African countries to better use preferential trade schemes with view of reaching their development aspirations.

The objective of the project is to contribute to the enhancement of intra-African trade and the share of Africa in global trade through inclusive, sustainable and development-friendly trade reforms. It should thus assist private sector organizations and government institutions to foster public-private partnerships overcoming bottlenecks to the utilization of preferential trade programs.

Methodology

Choice of case units

For the record, the present report contributes to the project by surveying some existing institutional mechanisms for public-private partnership in negotiating and implementing regional trade agreements. Therefore, as the public-private dialogue is the main focus of the study, attention was put on the mechanisms allowing for consultation with and solicitation of the views of all stakeholders, including seeking private sector’s views on concessions and trade-offs while ensuring the appropriate representation of vulnerable groups, women and young people; as well as catering for the economic, social and environmental sustainability trade programs implementation.

To do so, the chosen case units were organizations of all sizes in the selected two pilot countries in the Central African region – with a focus on the Economic Community of Central African States (ECCAS) and the Economic and Monetary Community of Central Africa (CEMAC)39 – and one African comparator

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39 CEMAC is the French acronym of the Economic and Monetary Community of Central Africa. It stands for “Communauté économique et monétaire d’Afrique centrale”.
to benchmark the best negotiating institutional practices, hence in Cameroon, Chad and Mauritius, in the following sectors:

- Governmental departments and parastatal agencies;
- Private sector organizations;\(^{40}\)
- Non-governmental organizations.

The intended scope of the research was initially limited to negotiated trade agreements referred to as regional trade agreements by the World Trade Organization (WTO). However, due to (i) the changing mandates and portfolios of the relevant public organizations and (ii) the capacity available in civil society organizations to deal with trade policy issues, it was not always possible to make a strict and clear distinction between influence strategies pertaining to preferential trade and non-preferential trade policy.

**Protocol**

The present study relies on the findings of the literature review undertaken during the first phase of the present project, which were highlighted under the first output, entitled “Deliverable 1: Literature review on negotiating institutions for international trade negotiations”, dated 8 May 2020.

Building on the above-mentioned literature review, semi-structure interviews were conducted following the guidelines set out in appendix 1. They comprised open-ended questions and quantitative indicators.\(^{41}\)

Invitation to participate in interviews were sent to recommended people, either by the interviewer through referrals or by direct mailing by the recommending people,\(^{42}\) as well as to a list of 75 prospective interviewees whose contact details were gathered through data scraping methods.

The targeted number of interviews was 10 people per target group (i.e. 10 people in three groups in three countries, amounting to a total of 90 people); however, to date, interviews have effectively been conducted with 7 people only.

**Limitations**

A certain number of constraints are to be acknowledged and taken into consideration when analysing the results of the present case study.

The COVID-19 crisis continues to have significantly disrupting effects on the economic and administrative activities in most countries of the world. Although the number of countries under lockdown is now decreasing, social distancing continues to be applied mostly in every country and some countries continue to be under lockdown or undergo a second waves of lockdowns.

The cost of communication – either voice or Internet – in the Central African region and the burden of responsibility in a context of telecommuting with limited access to everyday work resources, including hierarchical guidance, are considered a possible explanatory factor for such a low response rate. Indeed, during discussions with some of the interviewees (especially in Cameroon), it was suggested that the means to work on a remote basis were only given to senior management officials. Therefore, mid-level

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\(^{40}\) Those include all organizations whose members are profit-driven, including chambers of commerce and business associations.

\(^{41}\) See [https://docs.google.com/forms/d/1uM5tG3laAPI8f9XunZ3ZKpN5q13CogNZ9D3tyvInbEE/prefill](https://docs.google.com/forms/d/1uM5tG3laAPI8f9XunZ3ZKpN5q13CogNZ9D3tyvInbEE/prefill).

\(^{42}\) The interviewer was not always copied in the direct exchanges. It is thus difficult to estimate with precision the number of direct recommendations. From the interviewer’s end, the number of direct contacts is estimated at 50.
technical staff are less likely to participate in the interviews, although they are likely to be the adequate target group in most medium- to large-sized organizations.

**Data collection methods**

**Channels of communication**

Requests for assistance and direct emailing

Further to a phone discussion the previous day with an ECCAS official, an informal request-for-assistance email was sent on 29 May 2020 and an official one on 16 July 2020. As at 20 July 2020, no lead had been reported through this channel.

A request for assistance email was sent to the ECA subregional office for Central Africa on 29 May 2020 and a reminder on 29 June 2020. As at 20 July 2020, no lead had been reported through this channel.

A request-for-assistance email was sent to the Chadian AfCFTA chief negotiator and his director on 5 June 2020 and a reminder on 22 June 2020. As at 20 July 2020, no response or lead had been reported through this channel. In addition, some follow-up was also expected from the African Trade Policy Centre consultants seconded to the ECCAS Secretariat; however, that channel did not appear to yield any more successful result.

**Recommended contacts**

When interviews were secured, the respondent was systematically requested to provide some recommendations of contacts who were likely to increase the participation rate and diversity of respondents.

On 8 June, one of the African Trade Policy Centre consultants seconded to the ECCAS Secretariat provided the list of members of the Cameroonian Inter-ministerial Committee for evaluation and implementation of the European Union-Central Africa Economic Partnership Agreement. The list contained 45 valid contact details, which were all added to the list of contacts. A follow-up email was sent to them the next day. It is to be noted that the emails were sent directly and were untracked; therefore, no information on engagement is available. Nevertheless, following an interview with a Cameroonian official, it was recommended that two highly influential people on the same list be contacted. As at 20 July 2020, two responses had been received but only one contact had been effectively interviewed. In addition, one recommended person whose contact information was found on LinkedIn was successfully interviewed.

On 17 June, the Ministry of Foreign Affairs, Regional Integration and International Trade of Mauritius reached out to five groups of enterprises (the Mauritius Chamber of Commerce and Industry, the Mauritius Export Association, Economic Development Board Mauritius, SME Mauritius, and Business Mauritius) seeking their assistance in disseminating the call for contributions to their respective networks. I sent a follow-up email the next day. As at 20 July 2020, no response had been received.\(^43\) It is to be noted that the emails were sent directly and were untracked. Therefore, no information on the engagement is available.

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\(^43\) In a phone conversation on 18 July 2020, a business contact in Seychelles information said that many of those contacts were long outdated. This information – if confirmed – may provide valuable insight into the state of cooperation between the Mauritian Ministry of Foreign Affairs and its acknowledged privileged Mauritian civil society business partners.
On 18 June, a list of four Mauritian non-governmental organizations was received. They were contacted on 29 June 2020, and individual follow-up emails were sent on 6 July 2020. As at 20 July 2020, no response had been received.

Tracked email campaign

To grow the list of contacts availed through the above-mentioned methods, data mining of publicly available information44 was made, with a final extraction of personal data belonging to people working in a public service organization, non-governmental organization, enterprise or business group in Cameroon, Chad and Mauritius. In the end, the following numbers were used: 86 valid contacts in Cameroon; 51 valid contacts in Chad; and 355 valid contacts in Mauritius.

The list of contacts was reduced to the most relevant contacts (sorted by professional title, institutions and seniority). Additional data was mined from the main parastatal websites in three countries.45 In an initial phase, the campaign email was sent to a total of 75 contacts on 8 June 2020, with an initially foreseen two-week timespan.

A first follow-up, on 15 June 2020, targeted 67 contacts selected as a segment of the initial campaign’s list of contacts, based on the initial campaign’s “unread email” tracking data. As the opening rate had not been tracked in the initial campaign, the list for the first follow-up campaign contained all the contacts of the initial campaign, minus the bouncing and unsubscribed contacts.

A second follow-up phase, on 7 July 2020, targeted 52 contacts selected as a segment of the list of contacts from the first follow-up, based on the “unread email” tracking data for the first follow-up.

Table A.1 shows the statistical reports for the initial, first follow-up and second follow-up phases of the tracked email campaign and figure A shows the trend in the daily opening rate for the follow-up phases.

Table A.1
**Statistical data for the tracked email campaign**
(Percentages)

<table>
<thead>
<tr>
<th>Phase</th>
<th>Opening rate</th>
<th>Click rate&lt;sup&gt;a&lt;/sup&gt;</th>
<th>Bouncing rate</th>
<th>Unsubscription rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial</td>
<td>Failed tracking</td>
<td>6.67 (5 of 75)</td>
<td>9.33 (7 of 75)</td>
<td>1.33 (1 of 75)</td>
</tr>
<tr>
<td>First follow-up</td>
<td>22.39 (15 of 67)</td>
<td>2.99 (2 of 67)</td>
<td>0 (0 of 67)</td>
<td>0 (0 of 67)</td>
</tr>
<tr>
<td>Second follow-up</td>
<td>3.85 (2 of 52)</td>
<td>3.58 (2 of 52)</td>
<td>0 (0 of 52)</td>
<td>0 (0 of 52)</td>
</tr>
</tbody>
</table>

Source: ActiveCampaign, as at 20 July 2020.
<sup>a</sup> Indicates the number of people who opened the official letter attached to the campaign email

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44 The data were gathered from the professional social network LinkedIn using the data scraping engine Skrapp.io.
45 The data were gathered from the websites using the data scraping engine Hunter.io.
Challenges

Availability

The campaign took place in a period of lockdown owing to the COVID-19 crisis. Based on the discussion I had with the interviewees in Cameroon, the contextual elements they provided indicate a nearly unanimous deficit in Internet access which severely limits the ability to efficiently use remote working solutions. One interviewee notably indicated that home-based work solutions were mostly performed by senior officials, but the rest of the government workforce has scarce access to Internet for work purposes. The situation has greatly hampered to efficiency and deliverability of work. One other interviewee estimated a four-month delay in delivery of activities compared to their organization’s 2020 workplan.

Technological capacity

One interview was carried out by phone. We initially tried to use a voice over Internet protocol application; however, the line was too unstable to allow a seamless conversation. We then decided to use a phone call, made by the interviewer to the interviewee. The phone call (to Cameroon) did last 41 minutes and 12 seconds at a rate of $0.484/min (amounting to a total call price of $20.44).

One questionnaire was filled directly by the interviewee. We tried to have the interview through three different voice over Internet protocol applications and then a telephone conversation but none of the methods allowed to continue due to the poor quality of the line. Finally, we agreed that the questionnaire be filled directly by the interviewee. Although it offered better quality quantitative data collection, the loss of contextual, spontaneous information yield is notable.

Data breakdown

Statistical report

To date, out the 90 interviews targeted, 7 have actually been conducted. The breakdown is shown in table A.2.
Table A.2
Percentage of targeted interviews actually conducted, by country

<table>
<thead>
<tr>
<th>Country</th>
<th>Government/parastatal</th>
<th>Private sector</th>
<th>Non-governmental organization</th>
<th>Overall</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cameroon</td>
<td>10</td>
<td>3</td>
<td>3</td>
<td>17</td>
</tr>
<tr>
<td>Chad</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Mauritius</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>8</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Statistics: https://docs.google.com/spreadsheets/d/1s7iAGsxoh32cPEEl43RF7jxmGrfKfkw1PGJY_eHrBTU/edit#gid=2102380391.

It is to be noted that at this point, the data are insufficient to draw any lessons from the exercise.

In this light, decision was made in collaboration with the project management team to continue the exercise and keep seeking to secure interviews until the date of delivery of the third project output, expected in September 2020.

Remarks and way forward

As identified earlier in this report, the data collection has fallen short from the targets for reasons deemed to be linked to the manner the COVID crisis affects the pilot countries and their ability to pursue activities in a context of lockdown.

For this reason, recommendation is made to extend the data collection exercise to September (against end of July as originally planned), in hope to manage to collect more data.

In case sufficient data is collected, analysis will be updated and reflected under the project output 3. Therefore, the expected final output should be delivered by the end of the project with only few modifications to the original planned project.

In case data is insufficient, suggestion is made to turn the final output into a regionally focused literature review, with case illustration from the anecdotal / case study evidence gathered throughout the project.

Additionally, it is suggested that the Experts Group Meeting held to review the draft report is structured as an opportunity to gather further insights and findings to buttress the initial report.
Appendix 1

Semi-structured interview guidelines

Objectives
Assess the perceived obstacles to the effective participation in public-private dialogue on preferential trade agreements (PTAs) in Cameroon and Chad.

Focus on trade in services

Population
About 10 representatives of government or parastatal organizations
About 10 representatives of non-governmental organizations
About 10 representatives of private sector organizations

Content
The interview aims at gathering the information concerning the perception of the following elements:
- Actors, circumstances and ideas
- Opportunities

Thematic sequences:
1. Contextualization
2. Actors, circumstances and ideas
   a. Actors
   b. Circumstances
   c. Ideas
3. Institutions
   a. Openness and transparency
   b. Participation
   c. Accountability
   d. Efficiency
   e. Appropriateness
4. Suggested improvements
## Questions:

<table>
<thead>
<tr>
<th>Thematic sequence</th>
<th>Question</th>
<th>Follow-up</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Contextualization</strong></td>
<td><strong>Could you please present yourself?</strong></td>
<td>What is your title? What are your main responsibilities? Which organization do you represent?</td>
</tr>
<tr>
<td>Presentation of the personal implication in PTA public-private dialogue</td>
<td>How much are you involved with trade negotiations? (qualifying question)</td>
<td></td>
</tr>
<tr>
<td>Presentation of the allocated resources</td>
<td><strong>Can you provide some information about how much resource your organization puts into trade negotiation research, advocacy and participation in public-private dialogue?</strong></td>
<td>In terms of human resources? In terms of time?</td>
</tr>
<tr>
<td>Presentation of the allocated resources</td>
<td><strong>How many people of your department were involved in the processes?</strong></td>
<td>Are those resources adequate? If no, what additional resources would be needed to operate at optimal capacity?</td>
</tr>
<tr>
<td>Personal implication</td>
<td><strong>How would you qualify the role of your department/institution in the process?</strong></td>
<td>Do you consider that this human resource allocation is sufficient? If no, why are there not more people involved?</td>
</tr>
</tbody>
</table>

**Quantitative**

- Advocate/lobbyist? i.e. you directly represent your organization in the public-private dialogues
- Facilitator? i.e. you have contribute ensuring that your organization is adequately represented in the public-private dialogues
- PR? i.e. you speak on behalf of your organization but do not participate yourself in the negotiations
- Principal-agent? i.e. you are either the spokesperson for or representative of a group or association of interested parties (agent); or you mandate an organization (association, union, federation, syndicate, etc.) to represent you in public-private dialogues (principal)
- Other role? If so please define.

To be noted that one can consider having a multiple role.
## 2. Actors, circumstances and ideas

<table>
<thead>
<tr>
<th>Overall process</th>
<th>Could you explain what your means of action or intervention to manifest your interests in trade public-private dialogues?</th>
<th>What are your challenges?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>How do you reach out to those institutions?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Quantitative</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Do you or your representative directly participate in public-private dialogues?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Inbound or outbound communication?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Which institutions?</td>
<td></td>
</tr>
<tr>
<td>Actors</td>
<td>Do you know who else is involved in the negotiations country-wide?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Could you provide me with some examples?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>How and where does your organization see itself in the ecosystem of the negotiation?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Do you consider your organization as an influential actor of your sector? If no, has any option been envisaged to reposition your organization as a more influential actor?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Any other thoughts about the participations of actors?</td>
<td></td>
</tr>
<tr>
<td>Circumstances</td>
<td>Usually, under which circumstances are the public-private dialogues organized?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Does it happen at a particular moment in the broader international context? In the national context? How often? Is it a government initiative? Is it organized in response to a request?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Do sectoral consultations happen beforehand? Do you carry your concerns and expectations directly to the policy maker? Does the debate cascade from a move by influential actors in your sector?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Outside formal public-private dialogues, which other means do you use to share your ideas and influence the policy debate?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>E.g. open letters in general public or sector-specific media outlets? Social media campaigns? Petitions?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Any other thoughts about the circumstances of actors?</td>
<td></td>
</tr>
<tr>
<td>Ideas</td>
<td>Depending on the circumstances under which you submit your ideas, how well reflected are your organization’s concerns and expectations reflected in the output transmitted to the policymaker?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>What do you think of this decision? Has it posed any challenge? If so, what and how did you overcome it?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Have you met any challenge? Can you explain why it has been a challenge and how you managed to overcome it?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>What is the impact of those ideas?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>How could you improve this impact?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Any other thoughts about the communication of your organization’s ideas?</td>
<td></td>
</tr>
<tr>
<td>3. Institutions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Openness and transparency</strong></td>
<td>Do you think that the dissemination of PTA negotiation-related information comes at a time</td>
<td>Can you explain?</td>
</tr>
<tr>
<td></td>
<td>that allows stakeholders to conveniently act or use the information as they deem appropriate?</td>
<td></td>
</tr>
<tr>
<td></td>
<td><em>Quantitative</em></td>
<td></td>
</tr>
<tr>
<td></td>
<td>To what extent does the policymaker actively communicate on activities and decisions related</td>
<td>Can you give some more explanation? Any examples?</td>
</tr>
<tr>
<td></td>
<td>to PTAs and encourage participation by stakeholders?</td>
<td></td>
</tr>
<tr>
<td></td>
<td><em>Quantitative</em></td>
<td></td>
</tr>
<tr>
<td></td>
<td>What recommendations would you have to make the negotiation process more open and transparent?</td>
<td></td>
</tr>
<tr>
<td>Appropriateness</td>
<td>How well designed are mechanisms to participate in the public-private dialogue?</td>
<td>How can they be improved?</td>
</tr>
<tr>
<td>-----------------</td>
<td>---------------------------------------------------------------------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td></td>
<td><strong>Quantitative</strong></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4. Suggested improvements</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Has the COVID-19 crisis adversely affected your means of influencing your country’s negotiating positions?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Quantitative</strong></td>
</tr>
<tr>
<td></td>
<td>How would you rate the overall means of opportunity to make a difference in the PTA negotiations?</td>
</tr>
<tr>
<td></td>
<td><strong>Quantitative</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>How can it be improved?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>How can they be improved?</td>
</tr>
<tr>
<td></td>
<td>Are they too restrictive? Too large?</td>
</tr>
</tbody>
</table>

If yes, in what way? If no, why not? (e.g. online communicating tools)  
Can you elaborate?
## Appendix 2

### List of interviewees

1. **Cameroon**

<table>
<thead>
<tr>
<th>Organization</th>
<th>Sector</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministry of Trade</td>
<td>Government/parastatal</td>
<td>11 June 2020</td>
</tr>
<tr>
<td>Ministry of Economy, Planning and Land Use</td>
<td>Government/parastatal</td>
<td>15 June 2020</td>
</tr>
<tr>
<td>Aumazo</td>
<td>Non-governmental organization (education)</td>
<td>15 June 2020</td>
</tr>
<tr>
<td>Cameroon National Shippers Council</td>
<td>Government/parastatal</td>
<td>18 June 2020</td>
</tr>
<tr>
<td>Chamber of Commerce, industry, mining and craftsmanship of Cameroon</td>
<td>Private sector</td>
<td>22 June 2020 (CANCELLED)</td>
</tr>
<tr>
<td>Réseau des femmes actives de la CEMAC (REFAC)</td>
<td>Private sector</td>
<td>2 July 2020</td>
</tr>
</tbody>
</table>

2. **Chad**

<table>
<thead>
<tr>
<th>Organization</th>
<th>Sector</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3. **Mauritius**

<table>
<thead>
<tr>
<th>Organization</th>
<th>Sector</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministry of Foreign Affairs, Regional Integration and International Trade</td>
<td>Government/parastatal</td>
<td>11 June 2020</td>
</tr>
<tr>
<td>Mauritain Wildlife Foundation</td>
<td>Non-governmental organization (environmental)</td>
<td>17 June 2020</td>
</tr>
</tbody>
</table>
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